

# MIAMI-DADE COUNTY PUBLIC SCHOOLS



## Internal Audit Report



## School Board Attorney's Office



Operating practices were compliant, licensure credentials were active, internal controls over assigning work to outside counsel were adequate; however, controls over approving and containing those expenditures need improvement.

**March 2010**



## **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**

Dr. Solomon C. Stinson, Chair  
Ms. Perla Tabares Hantman, Vice Chair  
Mr. Agustin J. Barrera  
Mr. Renier Diaz de la Portilla  
Dr. Lawrence S. Feldman  
Dr. Wilbert "Tee" Holloway  
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Ms. Ana Rivas Logan  
Dr. Marta Pérez

Mr. Alberto M. Carvalho  
Superintendent of Schools

Mr. Jose F. Montes de Oca, CPA  
Chief Auditor  
Office of Management and Compliance Audits

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# **Miami-Dade County Public Schools**

*giving our students the world*

**Superintendent of Schools**  
**Alberto M. Carvalho**

**Miami-Dade County School Board**  
**Dr. Solomon C. Stinson, Chair**  
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**Dr. Lawrence S. Feldman**  
**Dr. Wilbert "Tee" Holloway**  
**Dr. Martin Stewart Karp**  
**Ana Rivas Logan**  
**Dr. Marta Pérez**

March 9, 2010

Members of The School Board of Miami-Dade County, Florida  
Members of the School Board Audit Committee  
Mr. Alberto M. Carvalho, Superintendent of Schools

Ladies and Gentlemen:

In accordance with the approved audit plan for the 2009-10 Fiscal Year, we have performed an audit of the School Board Attorney's Office for the period July 1, 2007 to June 30, 2009.

The objective of the audit was to determine the adequacy of internal controls in place and whether the Office functioned in compliance with applicable laws and rules during the two year audit period. We found the need for improvement in controls in containing expenditures to outside counsel, and for the Office's personnel practices. However, we found no material exceptions in our tests of Office payroll, contracting of outside attorneys, proper licensure of attorneys, and required reporting to the School Board.

Our benchmarking work revealed information and trends about the Office and District-wide legal function as a whole, compared to the profession, that we present in order for the School Board and new management to improve the efficiency and effectiveness of the District's provision for legal services.

We have discussed our findings and recommendations, and have received and included a response from the Office's management. We would like to thank management for the cooperation and courtesies extended to our staff during the audit.

Sincerely,

Jose F. Montes de Oca, CPA, Chief Auditor  
Office of Management and Compliance Audits

JFM:tlw



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## EXECUTIVE SUMMARY

The School Board Attorney's Office (BAO) has been in somewhat of a transitional period for the past couple of years. The Former Board Attorney was hired in October 2005, placed on administrative leave in June 2008, and then terminated in December 2008. During the time the Former Board Attorney was on leave, one of the assistant Board attorneys, the Chief of Regulatory Compliance and Government, Mr. Luis Garcia, served as the Interim Board Attorney through August 2009, when the School Board hired Mr. Walter Harvey as its Board Attorney.

The BAO performs a range of services for the School Board and senior management. Significant District legal activity also occurs outside the scope of the BAO's assigned responsibility, and a majority of costs that are under the control of the BAO are expended for the use of outside counsel. During Fiscal Year 2008-09, total District-wide legal expenditures (exclusive of settlements or judgments) were \$10.1 million of which \$6.3 million (62%) were under the BAO's responsibility and \$3.8 million (38%) were managed through other district offices/departments.

The objective of the audit was to determine the adequacy of internal controls in place and whether the Office functioned in compliance with applicable laws and rules during the two year period of July 1, 2007 through June 30, 2009.

We found that adequate internal controls are in place over certain operating practices in the School Board Attorney's Office. Organizationally, the Office is structured and positioned to be effective. The ratio of attorneys-to-support staff appears to be in line with the same ratio at other local governments surveyed. However, we noted a number of other district offices/departments outside of the Board Attorney's responsibilities manage significant legal activities. The Board Attorney's involvement with these activities is either none or limited. In our opinion, not having the School Board Attorney involved, at some level, in all legal activities of the District presents an unnecessary control risk. This matter is further discussed in Finding #4.

Our audit also found that the Office's operating practices contained in our scope were compliant with specific statutory requirements governing those areas. Specifically, we verified each attorney's licensure credentials and found that all attorneys employed in the School Board Attorney's Office maintained an active license to practice law in the State of Florida. Moreover, our sample test found that the outside counsels engaged to represent the District on legal matters also possessed proper licenses. In addition, although Florida Statute 287.057 exempts the procurement of outside legal services from a competitive process, the Office procures such services through a Request For Information (RFI) process – a more stringent practice. Based on our assessment, the internal controls over the process used to assign work to outside counsel appear to be adequate. Notwithstanding the internal controls found in place over selecting outside counsel and assigning work to them, we found the need for improvement in controls pertaining to approving and containing expenditures to outside counsel. Specifically, reimbursement for all expert witness fees were not pre-approved by written submittal,

as required, and pre-litigation and ongoing cost/benefit and budgetary control analyses were not formally prepared. These matters are further discussed in Findings #1 and #2.

We also reviewed the payroll procedures and practices of the Office and found no material exceptions in the time and attendance recordkeeping of the Office's bi-weekly payroll. However, we noted that during the tenure of the previous School Board Attorney, some attorneys were permitted to work from home on some days without a proper telecommuting policy and procedure being in place. The practice was discontinued in 2009. This matter is further discussed in Finding #3.

During the period covered by our audit scope, the Office completed its required reporting to the School Board. However, changes to the School Board Attorney's contract omitted such required reporting, prospectively.

Our benchmarking work revealed information and trends about the Office and District-wide legal function as a whole, compared to other selected local governments, that we present in order for the School Board and Board Attorney to improve the efficiency and effectiveness of the District's provision for legal services.

Although M-DCPS is the second largest of the five benchmarked organizations in terms of total entity budget, and the largest in terms of total employees, its Attorney's Office ranks fourth in terms of both the size of the Office budget and number of staff.

As of August 2009, the average annual salary of attorneys of the five benchmarked entities was \$149,404, with M-DCPS' attorneys averaging \$153,700. The average annual salary of legal support staff for the five entities was \$53,656, whereas M-DCPS legal support staff averaged \$52,285.

The average base salary for the Chief Legal Officer (CLO) at the benchmarked entities as of August 2009, was \$235,940, and ranged from \$194,500 to \$317,000. Chief Legal Officers' average total compensation, inclusive of additional non-standard benefits, was \$246,824, and ranged from \$200,500 to \$335,720. Mr. Walter Harvey's base and total compensation, using the aforementioned methodology, is \$205,000.

All five of the CLO's report to their organization's governing board. Four of the CLO's have a contract, ranging from 21 months to 5 years. The Miami-Dade County Attorney has no contract and serves at the will of a majority of the County Commission.

Of the ten largest school districts in Florida and the five largest counties or cities in South Florida, two outsource the entire legal services function while 13 maintain an in-house legal department. Hillsborough County Public Schools (Hillsborough Schools), the State's third largest school district and Brevard County Public Schools, the tenth largest, contract with law firms to serve as their Board Attorneys.



The benchmarked entities vary substantially in terms of which legal services are centralized under the authority of the CLO and which are entrusted to other departments. Similarly, the extent to which the benchmarked Attorneys' Offices use outside counsel as opposed to employing in-house counsel varies widely. It is meaningful to note that of the five benchmarked offices, M-DCPS' is the only one where both the entity's legal activity is not predominately centralized under the Attorney's Office and the Office uses outside counsel extensively. In our opinion, not having the School Board Attorney involved, at some level, in all legal activities of the District presents an unnecessary control risk. Other departments entrusted with managing their own legal affairs may not have the expertise to ensure the District is getting the best legal services at the lowest cost.

Four of the five offices surveyed, including M-DCPS, reported using some form of automated case management software capable of tracking staff time and resources invested in a case. Only one of the five offices, Palm Beach County Schools, had a requirement for their attorneys and paralegals to record their time. All of the offices indicated they do track time when a matter appears to be headed to litigation.

We made seven recommendations to correct control deficiencies and improve the efficiency of the School Board Attorney's Office. The detailed findings and those recommendations begin on page eight.

## INTERNAL CONTROLS

Our overall evaluation of internal controls for the School Board Attorney's office for the period of July 1, 2007 through June 30, 2009 is summarized in the table below.

INTERNAL CONTROLS RATING			
CRITERIA	SATISFACTORY	NEEDS IMPROVEMENT	INADEQUATE
Process Controls		X	
Policy & Procedures Compliance		X	
Effect		X	
Information Risk	X		
External Risk	X		

INTERNAL CONTROLS LEGEND			
CRITERIA	SATISFACTORY	NEEDS IMPROVEMENT	INADEQUATE
Process Controls	Effective	Opportunities exist to improve effectiveness.	Do not exist or are not reliable.
Policy & Procedures Compliance	In compliance	Non-Compliance Issues exist.	Non-compliance issues are pervasive, significant, or have severe consequences.
Effect	Not likely to impact operations or program outcomes.	Impact on outcomes contained.	Negative impact on outcomes.
Information Risk	Information systems are reliable.	Data systems are mostly accurate but can be improved.	Systems produce incomplete or inaccurate data which may cause inappropriate financial and operational decisions.
External Risk	None or low.	Potential for damage.	Severe risk of damage.

## **BACKGROUND**

School Board rule 6Gx13-8A-1.05 authorizes the School Board to employ an attorney to serve as its legal counsel. The rule also authorizes the Board to employ assistant School Board attorneys and special counsel to assist the Board Attorney, when necessary. Local governments, such as counties, cities, and school districts typically have such an in-house attorney office, but the duties, scope of responsibilities, extent of using outside counsel, and staff compensation, vary significantly.

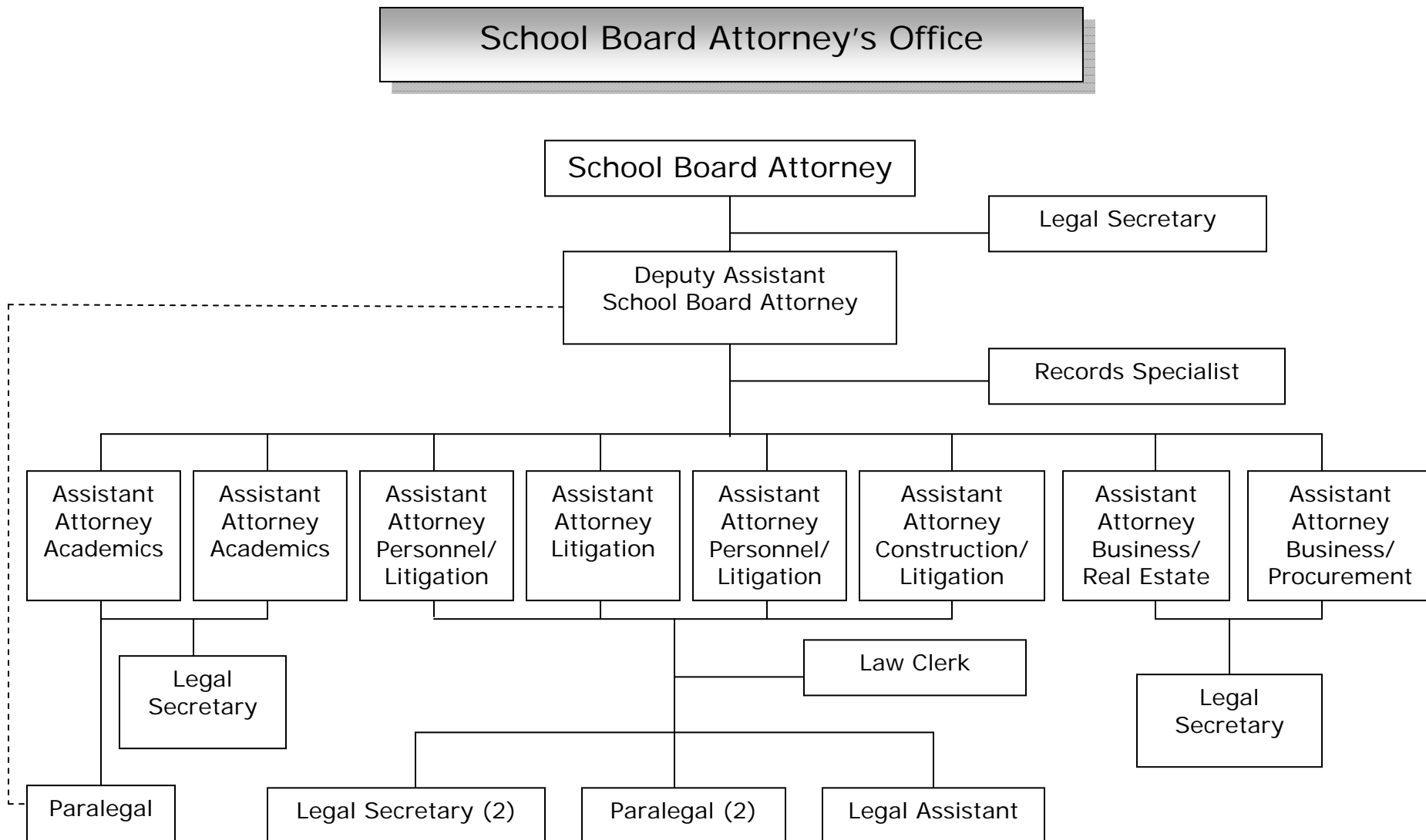
The BAO has been in somewhat of a transitional period for the past couple of years. The Former Board Attorney was hired in October 2005, placed on administrative leave in June 2008, and then terminated in December 2008. During this time, one of the assistant Board attorneys, the Chief of Regulatory Compliance and Government, Mr. Luis Garcia, served as the Interim Board Attorney through August 2009, when the School Board hired Mr. Walter Harvey as its Board Attorney.

The BAO performs a range of legal services for the School Board and senior management in various areas including academics, student discipline, personnel, exceptional student education, procurement and vendor contracts, discrimination, garnishments, legal opinions, public records, training, charter schools, real estate, and construction. As is discussed in greater detail in the benchmarking section of this report, significant District legal activities are managed by various departments (Treasury, WLRN Radio and Television Stations, Labor Relations, and Risk Management) other than the BAO. Moreover, a majority of costs under the control of the BAO are expended for the use of outside counsel.

During Fiscal Year 2008-09, total District-wide legal expenditures (exclusive of settlements or judgments) were \$10.1 million of which \$6.3 million (62%) were under the BAO's responsibility and \$3.8 million (38%) were managed through other District departments. For that year, the BAO's expenditures, exclusive of payments to outside counsel that were under its oversight, were \$2.7 million.

As of June 2009, the Office had nine attorneys and nine support staff. Shortly after Mr. Harvey's arrival, the Office was reorganized in October 2009, and now employs 10 attorneys, 11 support staff and a revised FY 2009-10 tentative budget of \$2.7 million. The reorganized structure is presented below.

## ORGANIZATIONAL CHART



## **OBJECTIVES, SCOPE, AND METHODOLOGY**

In accordance with the Audit Plan for the 2009-10 Fiscal Year, we have performed an audit of the School Board Attorney's office. The objectives of the audit were to evaluate the operating practices and procedures to determine whether adequate internal controls are in place and whether the Office functioned in compliance with applicable laws and rules during the audit period. In addition, we conducted extensive benchmarking to assist the School Board and the Office's new management in their efforts to improve the efficiency and effectiveness of the District's provision for legal services. The audit covered the Office's operations during the two-year period of July 1, 2007 through June 30, 2009. Much of our benchmarking with other large school districts and local governments comprised data subsequent to that period.

Procedures performed to satisfy the audit objectives were as follow:

- Interviewed district staff and other officials;
- Reviewed School Board rules, applicable Florida Statutes, and policies and procedures;
- Surveyed other large school districts and local governments;
- Reviewed the operations, structures, composition and staff compensation of the legal services function for other large school districts and local governments;
- Reviewed contracts of the Chief Legal Officers of benchmarked local governments;
- Examined, on a sample basis, payroll and personnel documentation;
- Reviewed the process for selecting and contracting with outside counsel;
- Examined, on a sample basis, contracts, invoices and payments for outside counsel approved by the School Board Attorney's office;
- Compiled total district legal expenditures including those legal services not under the authority of the School Board Attorney's office;
- Examined, on a sample basis, the proper licensure of staff attorneys and outside counsel;
- Reviewed the Board Attorney reporting requirements to the School Board; and
- Performed various other audit procedures as deemed necessary.

We conducted this performance audit in accordance with generally accepted Government Auditing Standards issued by the Comptroller General of the United States of America. Those standards required that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit also included an assessment of applicable internal controls and compliance with the requirements of policies, procedures and rules to satisfy our audit objectives.



## **FINDINGS AND RECOMMENDATIONS**

We found that adequate internal controls are in place over certain operating practices in the School Board Attorney's Office. Organizationally, the Office is structured and positioned to be effective. The ratio of attorneys-to-support staff appears to be in line with the same ratio at other local governments surveyed. However, we noted a number of other district offices/departments outside of the Board Attorney's responsibilities manage significant legal activities. The Board Attorney's involvement with these activities is either none or limited. In our opinion, not having the School Board Attorney involved, at some level, in all legal activities of the District presents an unnecessary control risk. This matter is further discussed in Finding #4.

Our audit also found that the Office's operating practices contained in our scope were compliant with specific statutory requirements governing those areas. Specifically, we verified each attorney's licensure credentials and found that all attorneys employed in the School Board Attorney's Office maintained an active license to practice law in the State of Florida. Moreover, our sample test found that the outside counsels engaged to represent the District on legal matters also possessed proper licenses. In addition, although Florida Statute 287.057 exempts the procurement of outside counsel from a competitive process, the Office procures outside legal services through a Request For Information (RFI) process – a more stringent practice. Based on our assessment, the internal controls over the process used to assign work to outside counsel appear to be adequate. Notwithstanding the internal controls found in place over selecting outside counsel and assigning work to them, we found the need for improvement in controls pertaining to approving and containing expenditures to outside counsel. These matters are further discussed in Findings #1 and #2.

We also reviewed the payroll procedures and practices of the Office and found no material exceptions in the time and attendance recordkeeping of the Office's bi-weekly payroll. However, we did note that during the tenure of the previous School Board Attorney, some attorneys were permitted to work from home on some days without a proper telecommuting policy and procedure being in place. The practice was discontinued in 2009. This matter is further discussed in Finding #3.

During the period covered by our audit scope, the Office completed its required reporting to the School Board. However, changes to the School Board Attorney's contract omitted such required reporting, prospectively.

Further, our benchmarking work revealed information and trends about the Office and District-wide legal function as a whole, compared to the other local governments, that we present in order for the School Board and new management to improve the efficiency and effectiveness of the District's provision for legal services.

**1. EXERCISE GREATER CONTROLS  
OVER PROCESSING PAYMENTS  
TO REIMBURSE OUTSIDE  
COUNSEL FOR LITIGATION  
CONSULTANTS (EXPERT WITNESSES)**

Section 4.5 of the legal contract between the District and an outside legal firm for the period July 2007 through July 2010, requires that reimbursement for all expert witness fees be pre-approved by written submittal, including estimated dollar amount. This requirement serves as a measure to control such costs, which may be necessary but can be substantial. In our sample of \$456,544 in outside counsel expenditures for the period of July 1, 2007 through June 30, 2009, we found one payment of \$1,875 to the referenced contracted legal firm for reimbursement of litigation consultant (expert witness) services provided by a third party consulting firm, that occurred in January 2009. Although requested, no evidence of the contract-required pre-approval was provided to us.

Total payments to the referenced contracted legal firm for the two-year audit period ended June 30, 2009, were approximately \$3,875,000, comprising 706 invoices. Of that amount, \$899,000 (23%) associated with 161 (23%) invoices, was paid to the referenced third party consulting firm, as a litigation consultant (for expert witness services). We further tested a sample of five of those invoices, totaling \$51,941, and although those charges appeared relevant to supporting litigation of the District, approval of them by the District was after the fact with no evidence of pre-approval. We therefore concluded that there was no pre-approval of the said reimbursements to the referenced contracted legal firm for the third party consulting firm's services rendered.

It is recognized that expert witness cost as a percent of the total cost of litigation might be greater in construction-related cases than in other cases managed through the School Board Attorney's Office. In addition, although the services of the third party consulting firm were ultimately reviewed as to their validity and approved by District staff, the lack of pre-approval as required in the contract provides less assurance that reimbursement to outside counsel for expert witness fees will be properly controlled.

**RECOMMENDATION**

- 1.1 Ensure District staff charged with overseeing and managing legal contracts with outside counsel are familiar with such expenditure controls and pre-approval provisions, and comply with the contract provisions.**

**Responsible Department: School Board Attorney's Office**

**Management Response:** This recommendation is being addressed through the creation and implementation of a legal services contract control system that will allow the Board Attorney's Office to track the legal expenditures of all legal matters handled by outside counsel in a manner that is consistent with and complies with the terms of the legal services contracts. School Board attorneys and staff overseeing and managing legal contracts will be responsible for following the established procedures and utilizing required forms. All legal invoices submitted for payments will be processed in accordance with the terms set forth in the outside counsel contracts. Moreover, this recommendation will also be addressed through the revised Outside Counsel Guidelines, which will encompass a more involved and proactive management of all pending legal matters, and require outside counsel to submit litigation budgets and plans. These revised guidelines and procedures will contain specific requirements for communicating the need for the retention and approval of expert witnesses, consultants, and all other actions that will result in significant expenditures.

## **2. FORMAL COST/BENEFIT ANALYSIS TO CONTROL LITIGATION DECISIONS AND COSTS IS NEEDED**

We found that the Board Attorney's Office, over the years, has lacked effective processes to assess costs and benefits of litigation and budgetary control when using outside counsel.

Examples of this can be seen in several cases that were initiated by the District. One such case occurred back in October 2002, when the School Board sued Allstar Builders Corp., for defective, incomplete and delayed work on the additions and renovations at Hialeah Middle and Amelia Earhart Elementary Schools. Allstar Builders countersued the School Board shortly thereafter. Two years later, in March 2004, the School Board sued Travelers Casualty and Surety Co., the project's surety. The two cases were subsequently consolidated. In March 2009, almost seven years after the initial action, the District had incurred over a million dollars in legal fees and associated costs to outside counsel. The parties settled with the School Board receiving \$10,000 and being permitted to retain the contract balances of \$242,101, and each party bearing its own costs and attorney's fees.

It is not our contention that these lawsuits, initiated by M-DCPS, were not justified or prudent. Rather, our contention is that, based on the evidence provided, the Board Attorney's Office has not had sufficient budgetary and cost/benefit controls in place to assess and quantify the likely outcomes of various litigation strategies. Adequate reporting and feedback procedures have not been in place in order for outside counsel to communicate to the Board Attorney's Office and to the School Board, scenarios of likely outcomes and costs of various options so that informed decisions can be made.

We were provided the Office's *Guidelines to Outside Counsel* dated August 2007, which were developed under the tenure of the Former School Board Attorney. These guidelines include provisions to identify early settlement opportunities, the provision for a case budget for District administrative purposes, and certain matter assessment and case review forms. Although the development of these guidelines is recognized as an improvement to the control structure, we are not persuaded that they are sufficiently comprehensive or rigorous. Additionally, as shown in Finding # 1 of this report regarding the lack of pre-approving expert witness charges, these guidelines were not always adhered to. The present Board Attorney indicated that he is currently revamping the outside attorney guidelines to elaborate on practices such as developing and tracking a pre-litigation budget.

## **RECOMMENDATION**

- 2.1 Require outside firms to present a pre-litigation budget for the School Board Attorney's consideration and analysis. Enhance and enforce controls and procedures that quantify and communicate likely outcomes of various courses of action.**

**Responsible Department: School Board Attorney's Office**

**Management Response:** This recommendation is also being addressed through the revised Outside Counsel Guidelines. At the outset of all litigation or legal matters initiated by the District, a detailed review of the costs and benefits associated with the pursuit of such legal action will be performed. Moreover, the Board Attorney's Office will require a detailed litigation budget from outside counsel at the commencement of all legal matters and where applicable (a litigation plan). Outside counsel will also be required to keep the Board Attorney's Office updated through frequent status reports and updates, and will work with the Board Attorney's Office in developing and carrying out the legal strategy in the case. In conjunction with this review, periodic evaluations of the case or matter will be conducted to ensure continued compliance with the scope and purpose of the representation. Finally, significant pleadings and case expenditures will be discussed with the Board Attorney's Office where applicable.



### **3. TELECOMMUTING PRACTICES**

Under the Former School Board Attorney's tenure (October 2005 through December 2008), we noted the practice of allowing certain attorneys and support staff to work some days from home. This primarily applied to staff that lived in and normally commuted from Palm Beach County. In our sample of four payroll periods from July 1, 2007 through June 30, 2009, eight employees worked a total of 30 days from home. At the same time, the Office had no formal procedures or controls in place to guard against risks inherent in that arrangement. Such risks include diminished ability for management oversight, insurance/liability issues and data security risks. When Mr. Luis Garcia began his tenure as Interim School Board Attorney (December 2008), he discontinued the practice of allowing staff to work from home.

Given available communication technology today, it is not uncommon for both private and public sector organizations to offer their employees the option of working from home or telecommuting as a benefit. Many corporations and public sector organizations, including 84 of Fortune Magazine's 2010 100 Best Companies to Work For, the Federal Government, and the State of Florida offer their employees substantial telecommuting programs. In fact, this arrangement in some circumstances and with adequate controls, can benefit the employee, employer and the community at large. Benefits might include increased productivity, reduction in travel and office space costs, and the accommodation of an employee with medical or medical recovery needs.

Best practices for working from home/telecommuting would include policies and procedures that standardize the arrangement, a telework agreement outlining the expectations of the employer and employee, and provisions that address technology and insurance /liabilities issues.

#### **RECOMMENDATION**

- 3.1 If the School Board determines that working from home/telecommuting is a desired practice for the School Board Attorney's Office, a policy, procedures, and/or a written agreement to ensure that the risks inherent in that work arrangement are properly mitigated, should be developed.**

**Responsible Department: School Board Attorney's Office**

**Management Response:** The School Board Attorney's Office is in full agreement with this recommendation. The School Board Attorney's Office provides legal services to the Board and staff on a myriad of legal issues. This work normally requires that the attorneys and staff be physically present in the office to accomplish these tasks and be responsive to Board members and staff. As noted in the Operational and Performance Audit Report, however, today's technological advances (including laptops, blackberries and cellular phones) can make it very efficient and cost effective for legal work to be performed away from the office. The School Board Attorney's Office Procedures Manual will provide specific safeguards to protect against potential risks that may exist to the extent it becomes necessary for a Board Attorney's Office employee to perform legal work outside of the office.

#### **4. SCHOOL BOARD ATTORNEY'S OFFICE BENCHMARKED TO OTHER LOCAL GOVERNMENTS**

We filed public records requests and surveyed other large local governments in order to benchmark the School Board Attorney's Office's practices with theirs regarding the respective legal offices' duties, scope of responsibilities, organizational structure, extent of using and process of selecting outside counsel, relative size of staff and office budgets, staff compensation, personnel practices, use of case management software, and performance measures or means of evaluating the office's productivity. The governments benchmarked against were Miami-Dade County (the County), The City of Miami, Broward County Public Schools (Broward Schools) and the School District of Palm Beach County (Palm Beach Schools). The FY 2009-10 total budgets of the benchmarked entities averaged \$3.9 billion and ranged from approximately \$757 million to \$7.8 billion. The total number of full time employees averaged 24,600 and ranged from 3,500 to 39,000. M-DCPS was the second largest in terms of entity-wide budget (\$4.8 billion) and the largest in terms of number of full-time employees (39,000).

The data cited in this benchmarking section of our audit report was received via public records requests, official published documents such as budgets, written surveys and interviews with officials from the respective local government entities. Although we believe the data to have a good degree of reliability and usefulness, much of the data was not subject to audit.

##### **Size of In-House Attorney's Offices**

The FY 2009-10 budgets of the five benchmarked attorneys' offices averaged \$7.2 million and ranged from \$1.6 million to \$23.4 million. The number of in-house attorneys averaged approximately 25, and ranged from 6 to 73, whereas the number of support staff also averaged 25, and ranged from 5 to 70. Although M-DCPS is the second largest of the five benchmarked organizations in terms of total entity budget, and the largest in terms of total employees, its attorney's office ranks fourth in both the size of the office budget and number of staff.

##### **Compensation**

As of August 2009, the average annual salary of attorneys of the five benchmarked entities was \$149,404, and ranged from a low of \$115,540 for Palm Beach Schools to a high of \$205,885 for Miami-Dade County (the County). M-DCPS's attorneys' salaries averaged \$153,700.

The average annual salary of support staff for the five entities was \$53,656, and ranged from a low of \$44,911 for Palm Beach Schools to a high of \$69,455 for the County. M-DCPS's legal support staff salaries averaged \$52,285.

The average base salary for the Chief Legal Officer (CLO) at the benchmarked entities as of August 2009, was \$235,940, and ranged from \$194,500 to \$317,000. When factoring in additional benefits that some chief attorneys receive and that are beyond the standard benefits such as, a pension, paid leave, health/life insurance, etc., the benchmarked CLO's average total compensation was \$246,824, and ranged from \$200,500 to \$335,720. The County Attorney is the highest compensated and the Palm Beach Schools Board Attorney the least compensated. Upon her departure from M-DCPS in December 2008, the Former School Board Attorney's total compensation using the methodology described above was \$256,292, comprising a base salary of \$245,292 and \$11,000 in additional insurance premiums and investments. During Mr. Luis Garcia's tenure as M-DCPS Interim School Board Attorney, from December 2008 through August 2009, his base and total compensation was \$180,000. Mr. Walter Harvey's base and total compensation is \$205,000, using the aforementioned methodology. Mr. Harvey ranks the second lowest of the five benchmarked entities in terms of total compensation.

#### Legal Function Centralization and Extent of Using Outside Counsel

The benchmarked entities vary substantially in terms of which legal services are centralized under the authority of the Chief Legal Officer and which are entrusted to other departments. Three organizations, the County, the City of Miami and Broward Schools, have a structure such that the CLO and their office has influence, if not full responsibility for all legal matters. Conversely, M-DCPS and Palm Beach Schools have substantial legal activities that do not fall under the Board Attorney's span of responsibility. At M-DCPS, the Board Attorney has limited involvement for legal activities of Labor Relations, Treasury, Workers' Compensation (Risk Management) and WLRN Radio and TV Station. These services are addressed and managed by either in-house staff (in the case of Labor Relations) or law firms, which are contracted and overseen by the respective departments above. In our opinion, not having the School Board Attorney involved, at some level, in all legal activities of the District presents an unnecessary control risk. Other departments entrusted with managing their own legal affairs may not have the expertise to ensure the District is getting the best legal services at the lowest cost.

The following is a compilation of all legal expenditures (including in-house payroll and fringe benefits, operating expenses, and outside counsel cost, but excluding settlements and Judgments) of the District in Fiscal Year 2008-09:

<b>Summary of District-wide Legal Expenditures for the 2008-09 Fiscal Year</b>		
<b>Legal expenditures passing through Board Attorney's Office:</b>		
Office personnel and direct operating costs	<u>\$2,708,014</u>	\$ 2,708,014
Contracted outside counsel costs -		
Construction/Capital	\$2,183,841	
General and Auto Liability, E&O, etc.	<u>1,446,151</u>	
Subtotal	<u>\$3,629,992</u>	<u>3,629,992</u>
Total expenditures Board Attorney's Office		6,338,006
<b>Legal expenditures passing through Other Offices:</b>		
Risk Management (Workers' Compensation)	\$2,933,045	
Treasury Management (Bond Counsel)	461,407	
Labor Relations	312,380	
WLRN Radio and Television Station (General)	<u>100,000</u>	
Subtotal	<u>\$3,806,832</u>	<u>3,806,832</u>
<b>Total District-wide Legal Expenditures</b>		<u><b>\$10,144,838</b></u>

Table 1

Similarly, the extent to which the benchmarked attorneys' offices use outside counsel as opposed to employing in-house counsel varies widely. M-DCPS and Broward Schools contract outside counsel extensively. Palm Beach Schools does so moderately, while the other two benchmarked offices use outside counsel minimally. Consequently, there is an inverse correlation between the relative size of the attorneys' offices and the extent of contracting outside counsel. For example, M-DCPS and Broward Schools have small in-house attorneys' offices relative to the size of their respective districts, but they use outside counsel extensively. Conversely, Miami-Dade County and the City of Miami have relatively large in-house attorneys' offices and minimal use of outside counsel. In FY 2008-09 for M-DCPS, of the \$6,338,006 in legal expenditures that were under the control of the Board Attorney's Office, \$3,629,992 (57%) went to outside counsel while \$2,708,014 (43%) was used for the Board Attorney's Office salaries, benefits and operating expenses. Surveys of Chief Legal Officers conducted by Altman Weil, Inc., in June 2008 and 2009, reported corporate law departments' plans to increase law department staffing and decrease outside counsel usage<sup>1</sup>.

Note that of the five benchmarked offices, M-DCPS is the only one where both the entity's legal activity is not predominately centralized under the attorney's office and the office uses outside counsel extensively.

<sup>1</sup> Altman Weil, Inc., Newtown Square, PA, Chief Legal Officer Surveys, June 24, 2008 and June 30, 2009.



### Use of Case Management Software and Time Tracking Requirements

Four of the five offices surveyed, including M-DCPS, reported using some form of automated case management software that is capable of tracking staff time and resources invested in a case. M-DCPS and Palm Beach Schools use **Hourglass**, a program created in-house at Palm Beach Schools. The City of Miami uses **ProLaw** and Miami-Dade County uses **Client Profile**; both long standing licensed law firm management programs requiring an initial start-up charge and an annual maintenance fee. The County Attorney's Office indicated that the start-up charge in the first year approximated \$60,000 and the continuing annual fee \$13,000. It would appear that the larger offices, such as the County and City, with 143 and 58 staff, respectively, have invested in more expensive and sophisticated legal management software, whereas the smaller offices either use less expensive in-house-developed software or none at all.

It was our expectation that the attorneys' offices surveyed would require their attorneys and certain support staff to record their time on various cases and activities, in part as a management control and productivity measure, as is done in many private law and other professional firms. However, we found that only one of the surveyed offices - Palm Beach Schools, reported to us that they require their attorneys and paralegals to log time spent on daily tasks as an internal management tool and a means to recover legal costs in certain litigation. All of the offices indicated they do track time when a matter appears to be headed to litigation.

### Procurement of Outside Counsel - Use of Request for Information

Although the procurement of outside counsel is exempt from a competitive process, pursuant to Florida Statute 287.057, some local government entities choose to issue a Request for Information (RFI), wherein firms delineate the terms and rates that would be offered should the government contract legal services from them. M-DCPS issued two RFI's in May and June 2007, wherein 49 law firms offered terms and rates for various types of legal services. M-DCPS and Broward Schools were the only two benchmarked entities that solicited RFI's. That may be attributable to the fact that those two attorneys' offices had the most extensive use of outside counsel.

### Chief Legal Officer Reporting, Contracts and Evaluation Mechanisms

All five of the CLO's report to their organization's governing board. Four of the CLO's have contracts, ranging from 21 months to 5 years. The County Attorney has no contract and serves at the will of a majority of the County Commission. The Broward Schools CLO's contract requires both an annual evaluation and a written annual report to the Board. The CLO contracts for M-DCPS and Palm Beach Schools provide for an annual evaluation but are silent as to an annual report. The City Attorney of Miami is required to periodically provide a public status report.

<b>Table of Benchmark Data and Averages – Entity-wide</b>						
	Miami-Dade County Public Schools <sup>2</sup>	Miami-Dade County	City of Miami	Broward County Public Schools	Palm Beach County Public Schools	Average
Total Entity Budget	\$4.8 Billion	\$7.8 Billion	\$757 Million	\$3.5 Billion	\$2.7 Billion	\$3.9 Billion
Total Entity Employees (FT)	39,000	28,000	3,500	31,500	21,000	24,600
Attorney's Office Budget	\$2,688,120	\$23,388,000	\$5,133,366	\$1,636,059	\$3,112,921	\$7,191,693
Number of Attorneys	10	73	27	6	12	25.5
Number of Support Staff	9	70	31	5	11	25.2
Average Attorney Salary	\$153,700	\$205,885	\$142,812	\$129,081	\$115,540	\$149,404
Range of Attorneys' Salaries	\$120,000 to \$205,000	\$99,320 to \$317,000	\$63,345 to \$247,200	\$68,852 to \$216,010	\$91,821 to \$194,500	\$88,668 to \$235,942
Average Support Staff Salary	\$52,285	\$69,455	\$54,817	\$46,812	\$44,911	\$53,656
Range of Support Staff Salaries	\$34,206 to \$86,312	\$18,820 to \$109,313	\$28,483 to \$90,379	\$40,860 to \$55,411	\$36,713 to \$71,539	\$31,816 to \$82,591
Use of Outside Counsel	Extensive	Minimal	Minimal	Extensive	Moderate	
Legal Services Largely Centralized under Attorney's Office	No	Yes	Yes	Yes	No	
Use of Case Management Software	Yes	Yes	Yes	No	Yes	
Attorneys Required to Record Hours	No	No	No	No	Yes	
RFI Process Used	Yes	No	No	Yes	No	

Table 2

<b>Table of Benchmark Data and Averages – Chief Legal Officer</b>						
	Miami-Dade County Public Schools	Miami-Dade County	City of Miami	Broward County Public Schools	Palm Beach County Public Schools	Average
Base Salary	\$205,000	\$317,000	\$247,200	\$216,000	\$194,500	\$235,940
Additional Executive Benefits	-0-	\$18,720 <sup>3</sup>	\$29,700 <sup>4</sup>	-0-	\$6,000 <sup>5</sup>	\$10,884
Total Compensation	\$205,000	\$335,720	\$276,900	\$216,000	\$200,500	\$246,824
Term of Contract	3 yrs	No Contract	Concurrent with General Election	21 months with 1 yr extension	5 yrs	
Reports To	School Board	County Commission	City Commission	School Board	School Board	
Evaluation Mechanisms	Annual Evaluation	Periodic Evaluation	Periodic Public Status Report	Annual Evaluation, Annual Report	Annual Evaluation	

Table 3

<sup>2</sup> The number of attorney and staff, and average attorney salary and their range are prior to the office's reorganization in October 2009. Post October 2009, attorney average salary is \$135,444 and ranges from \$65,000 to \$205,000.

<sup>3</sup> Executive benefits including car allowance, additional deferred compensation and other expenses.

<sup>4</sup> Executive benefits including car and phone allowances, and additional deferred compensation.

<sup>5</sup> Car allowance.

### Full Outsourcing of Legal Services Function

Of the ten largest school districts in Florida and the five largest counties or cities in South Florida, only two agencies - Hillsborough County Public Schools (Hillsborough Schools) and Brevard County Public Schools, the State's third and tenth largest school districts, respectively, outsource the entire legal services function, while 13 maintain an in house legal department.

We filed a public records request and interviewed senior staff of Hillsborough Schools to determine their experience with outsourcing the legal services function and the associated pros and cons. According to Hillsborough School's staff, in 2005, the School Board hired the firm Thompson, Sizemore and Gonzalez, which had previously provided litigation, labor, employment and civil rights legal representation, as the School Board attorney. As the Board's attorney, the firm provides general legal advice to the School Board and staff, and attends Board meetings and workshops when requested. It also continues to represent the Board in labor, employment and civil rights matters, as well as other types of litigation upon request. The firm also handles matters arising under the Individual with Disabilities Education Act and Section 504 of the U.S. Rehabilitation Act of 1973. Other firms provide representation to the Board in liability defense, workers' compensation, environmental law, change-of-placement and truancy matters, bond issues, immigration, construction, eminent domain, land-use and real property matters. According to Mr. Tom Gonzalez, the firm's partner, the firm serves at the pleasure of the Board, and its services may be terminated without cause or notice. All outside counsel except the School Board Attorney are selected through an RFP process. Monthly statements are reviewed by the Deputy Superintendent who requires users to verify the charges.

According to Mr. Gonzalez, it has been the belief of the Board, that the Board's system of providing legal services is more cost efficient than the use of in-house counsel and also allows for obtaining needed expertise when the circumstances dictate. He indicated that the Board's conclusion is based on various studies performed by others, including OPPAGA, throughout the years. A drawback of this arrangement, according to Mr. Gonzalez, is that the system does not provide as much responsiveness as in-house counsel, simply as a matter of scheduling and workload. Although requested, Hillsborough Schools did not provide to us data on the total district-wide legal costs to support the notion that their arrangement may be more cost efficient.

## **RECOMMENDATIONS**

- 4.1 Ensure that the School Board Attorney is kept informed, at some level, with all legal activity of the District.**

**Responsible Department: School Board Attorney's Office**

**Management Response:** The School Board Attorney's Office agrees that it should be kept informed of all areas involving the District's legal representation, especially those areas that can significantly or directly impact the daily legal work that the Board has authorized and charged the School Board Attorney's Office with performing. The School Board Attorney's Office will work to ensure that communications exist with the District staff overseeing specific areas that have a potential legal impact on the District. Such communication will serve to ensure that all services provided to the Board are adequate and appropriate.

- 4.2 Consider shifting more legal services work in-house, and reducing the use of outside counsel.**

**Responsible Department: School Board Attorney's Office**

**Management Response:** The School Board Attorney's Office has already commenced the process of further reducing reliance on outside counsel and has drastically increased the number of cases that are handled in-house. While it is the School Board Attorney's desire and long-term goal to further increase the number of cases handled by in-house counsel, unfortunately the continuation of this effort in an incremental manner will be hindered by the relatively small number of in-house counsel presently employed by the School Board and which is not expected to increase due to the current economic climate. Nonetheless, in an attempt to further reduce expenditures on outside counsel and related fees and costs, the School Board Attorney has implemented various cost-saving measures, such as requiring proposed litigation budgets upon assignment of a case and through the implementation of rigorous contract management strategies applicable to outside counsel services. In addition, it is anticipated that a new Request For Information (RFI) for legal services will soon be issued with the ultimate purpose of further reducing outside counsel expenses.

**4.3 Consider implementing more formal mechanisms to measure and quantify the productivity of staff attorneys and support staff.**

**Responsible Department: School Board Attorney's Office**

**Management Response:** The School Board Attorney's Office is in the process of evaluating different software programs (including those referenced in the Operational and Performance Audit Report) that are available for the tracking of matters handled by its attorneys and staff. However, given the costs associated with some of these programs and the District's limited financial resources, it may not be feasible to purchase these programs at this time. As such, the School Board Attorney's Office is also working on improving the current systems used to track the work and cases processed by the office, including work that is routed to the office from different departments. Attorneys and staff recently created programs to monitor the number of legal agreements under review, and the expediency in which such agreements are reviewed and returned to the Departments. In addition, the attorneys and staff have formed an informal working group with technical support from the Office of Information Technology. This group is currently reviewing the office's case management and document management systems and has made several significant recommendations that are being implemented. In addition, attorneys in the School Board Attorney's Office who work on litigation cases record their time, as it may become necessary to use such records in resolving an issue of attorneys' fees and costs.

**4.4 Include in the duties of the Board Attorney the requirement of providing an annual report to the School Board reporting on such items as the work of the office, cases and significant legal matters handled and their disposition, internal staffing, budgetary data, and accomplishments.**

**Responsible Department: School Board Attorney's Office**

**Management Response:** It is the intent of the School Board Attorney to provide such an annual report. The first annual report is slated to be issued in September of this year to coincide with the one-year employment anniversary of the School Board Attorney. Staff of the Board Attorney's Office already created new and revised existing databases that will be used in generating the upcoming annual report.



## MANAGEMENT'S RESPONSE

### MEMORANDUM

March 9, 2010

TO: Mr. Jose F. Montes de Oca, Chief Auditor  
Office of Management and Compliance Audits

FROM: Walter J. Harvey, School Board Attorney  
School Board Attorney's Office



SUBJECT: **RESPONSE TO THE INTERNAL AUDIT REPORT OF THE  
BOARD ATTORNEY'S OFFICE**

It was a pleasure working with you and your staff during the audit of our office. Your professionalism and openness to our suggestions reflect on your willingness to see our office succeed. It is through this process that we can all reach our goal of improving the day-to-day operations of our office. We have read your findings and have prepared our responses as follows:

**1.1 Ensure District staff charged with overseeing and managing legal contracts with outside counsel are familiar with such expenditure controls and preapproval provisions, and comply with the contract provisions.**

**Management Response:** This recommendation is being addressed through the creation and implementation of a legal services contract control system that will allow the Board Attorney's Office to track the legal expenditures of all legal matters handled by outside counsel in a manner that is consistent with and complies with the terms of the legal services contracts. School Board attorneys and staff overseeing and managing legal contracts will be responsible for following the established procedures and utilizing required forms. All legal invoices submitted for payments will be processed in accordance with the terms set forth in the outside counsel contracts. Moreover, this recommendation will also be addressed through the revised Outside Counsel Guidelines, which will encompass a more involved and proactive management of all pending legal matters, and require outside counsel to submit litigation budgets and plans. These revised guidelines and procedures will contain specific requirements for communicating the need for the retention and approval of expert witnesses, consultants, and all other actions that will result in significant expenditures.

- 2.1 Require outside firms to present a pre-litigation budget for the School Board Attorney's consideration and analysis. Enhance and enforce controls and procedures that quantify and communicate likely outcomes of various courses of action.**

**Management Response:** This recommendation is also being addressed through the revised Outside Counsel Guidelines. At the outset of all litigation or legal matters initiated by the District, a detailed review of the costs and benefits associated with the pursuit of such legal action will be performed. Moreover, the Board Attorney's Office will require a detailed litigation budget from outside counsel at the commencement of all legal matters and where applicable (a litigation plan). Outside counsel will also be required to keep the Board Attorney's Office updated through frequent status reports and updates, and will work with the Board Attorney's Office in developing and carrying out the legal strategy in the case. In conjunction with this review, periodic evaluations of the case or matter will be conducted to ensure continued compliance with the scope and purpose of the representation. Finally, significant pleadings and case expenditures will be discussed with the Board Attorney's Office where applicable.

- 3.1 If the School Board determines that working from home/telecommuting is a desired practice for the School Board Attorney's Office, a policy, procedures, and/or a written agreement to ensure that the risks inherent in that work arrangement are properly mitigated, should be developed.**

**Management Response:** The School Board Attorney's Office is in full agreement with this recommendation. The School Board Attorney's Office provides legal services to the Board and staff on a myriad of legal issues. This work normally requires that the attorneys and staff be physically present in the office to accomplish these tasks and be responsive to Board members and staff. As noted in the Operational and Performance Audit Report, however, today's technological advances (including laptops, blackberries and cellular phones) can make it very efficient and cost effective for legal work to be performed away from the office. The School Board Attorney's Office Procedures Manual will provide specific safeguards to protect against potential risks that may exist to the extent it becomes necessary for a Board Attorney's Office employee to perform legal work outside of the office.

**4.1 Ensure that the School Board Attorney is kept informed, at some level, with all legal activity of the District.**

**Management Response:** The School Board Attorney's Office agrees that it should be kept informed of all areas involving the District's legal representation, especially those areas that can significantly or directly impact the daily legal work that the Board has authorized and charged the School Board Attorney's Office with performing. The School Board Attorney's Office will work to ensure that communications exist with the District staff overseeing specific areas that have a potential legal impact on the District. Such communication will serve to ensure that all services provided to the Board are adequate and appropriate.

**4.2 Consider shifting more legal services work in-house, and reducing the use of outside legal counsel.**

**Management Response:** The School Board Attorney's Office has already commenced the process of further reducing reliance on outside counsel and has drastically increased the number of cases that are handled in-house. While it is the School Board Attorney's desire and long-term goal to further increase the number of cases handled by in-house counsel, unfortunately the continuation of this effort in an incremental manner will be hindered by the relatively small number of in-house counsel presently employed by the School Board and which is not expected to increase due to the current economic climate. Nonetheless, in an attempt to further reduce expenditures on outside counsel and related fees and costs, the School Board Attorney has implemented various cost-saving measures, such as requiring proposed litigation budgets upon assignment of a case and through the implementation of rigorous contract management strategies applicable to outside counsel services. In addition, it is anticipated that a new Request For Information (RFI) for legal services will soon be issued with the ultimate purpose of further reducing outside counsel expenses.

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some of these programs and the District's limited financial resources, it may not be feasible to purchase these programs at this time. As such, the School Board Attorney's Office is also working on improving the current systems used to track the work and cases processed by the office, including work that is routed to the office from different departments. Attorneys and staff recently created programs to monitor the number of legal agreements under review, and the expediency in which such agreements are reviewed and returned to the Departments. In addition, the attorneys and staff have formed an informal working group with technical support from the Office of Information Technology. This group is currently reviewing the office's case management and document management systems and has made several significant recommendations that are being implemented. In addition, attorneys in the School Board Attorney's Office who work on litigation cases record their time, as it may become necessary to use such records in resolving an issue of attorneys' fees and costs.

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Should you have any questions or concerns, kindly contact me at 305-995-1309.

WJH:mm

The School Board of Miami-Dade County, Florida, adheres to a policy of nondiscrimination in employment and educational programs/activities and programs/activities receiving Federal financial assistance from the Department of Education, and strives affirmatively to provide equal opportunity for all as required by:

**Title VI of the Civil Rights Act of 1964** - prohibits discrimination on the basis of race, color, religion, or national origin.

**Title VII of the Civil Rights Act of 1964**, as amended - prohibits discrimination in employment on the basis of race, color, religion, gender, or national origin.

**Title IX of the Education Amendments of 1972** - prohibits discrimination on the basis of gender.

**Age Discrimination in Employment Act of 1967 (ADEA)**, as amended - prohibits discrimination on the basis of age with respect to individuals who are at least 40.

**The Equal Pay Act of 1963**, as amended - prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

**Section 504 of the Rehabilitation Act of 1973** - prohibits discrimination against the disabled.

**Americans with Disabilities Act of 1990 (ADA)** - prohibits discrimination against individuals with disabilities in employment, public service, public accommodations and telecommunications.

**The Family and Medical Leave Act of 1993 (FMLA)** - requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

**The Pregnancy Discrimination Act of 1978** - prohibits discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions.

**Florida Educational Equity Act (FEEA)** - prohibits discrimination on the basis of race, gender, national origin, marital status, or handicap against a student or employee.

**Florida Civil Rights Act of 1992** - secures for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.

**School Board Rules 6Gx13- 4A-1.01, 6Gx13- 4A-1.32, and 6Gx13- 5D-1.10** - prohibit harassment and/or discrimination against a student or employee on the basis of gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy, or disability.

*Veterans are provided re-employment rights in accordance with P.L. 93-508 (Federal Law) and Section 295.07 (Florida Statutes), which stipulate categorical preferences for employment.*



**INTERNAL AUDIT REPORT**  
*School Board Attorney's Office*



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