

**INDEPENDENT AUDITOR'S REPORT  
PERFORMANCE AUDIT OF  
BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

## TABLE OF CONTENTS

	<u>PAGES</u>
<b>I. EXECUTIVE SUMMARY .....</b>	<b>i-iii</b>
<b>II. INDEPENDENT AUDITOR’S REPORT SERVICES .....</b>	<b>1-2</b>
<b>III. SCOPE OF SERVICES.....</b>	<b>3</b>
<b>IV. OBSERVATIONS AND FINDINGS</b>	
Task 1 .....	4
Task 2 .....	5
Task 3 .....	6-7
Task 4 .....	8-14
Task 5 .....	15-16
Task 6 .....	17
 <b>ADDITIONAL OBSERVATIONS AND RECOMMENDATIONS.....</b>	 <b>18</b>
 <b>V. INTERNAL AUDITOR’S REPORT ON INTERNAL CONTROL OVER THE SECURE THE NEXT GENERATION PROGRAM .....</b>	 <b>19-20</b>
<b>VI. EXHIBITS .....</b>	<b>21</b>
I – Policy 4400 .....	22-24
II – Policy 4480.....	25-27
III – Article 15 of BTU-TSP Agreement (Excerpt) .....	28-35
IV – Letter to the Florida Attorney General Requesting a Legal Opinion.....	36-43
V – Response From the Office of the Attorney General.....	44-45
VI – Footnote <sup>3</sup> Reference from the Office of Attorney General’s Response .....	46-49

## EXECUTIVE SUMMARY

The Firm of S. Davis & Associates, P.A. (“SDA”) was engaged by the School Board of Broward County (“SBBC” or “District”) and the Chief Auditor to provide a performance audit of termination agreements and payments to three employees of the District who were specifically referenced in the Final Report of the Twentieth Grand Jury Case No. 19-240 (“Report”). The objective of our performance audit was to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the Scope of Services included within this report.

### **Background**

Based on the Report and letter from the Florida Department of Education (FLDOE) dated September 7, 2022, Former Superintendent, Dr. Vickie Cartwright, took action to remove three employees referenced in the Report and inferred in the FLDOE letter.

The three employees were separated by the following means:

- a) Two via resignation, and
- b) One via retirement

The actions of the three District employees, cited in the Report, contributed to violations in the following areas:

- i. Failure to Plan,
- ii. Failure to Lead,
- iii. Failure to Inform, and
- iv. Failure to Account

The letter from the FLDOE dated September 7, 2022, addressed to Dr. Cartwright indicated that it was a follow-up from the Office of Safe School’s visit on September 1, 2022. The letter further indicated the FLDOE found that the District still had officials from the previous administration, who guided failed decisions on school safety still in its employ. It noted that said employees included:

- Key members of the prior superintendent’s leadership team;
- Staff directly named in the Grand Jury report;
- Procurement staff associated with the SMART Program

The letter further stated that lack of action by the District could “. . . only be perceived as the district’s tacit endorsement of past and future ineptitude.” It further stated “As the Superintendent, you must take ownership of the future safety of Broward’s students and staff with firm, immediate action” and that it was incumbent upon her to take real and decisive action that would represent Broward’s commitment to safer schools for its students and staff.

Dr. Cartwright, on or about September 8, 2022, informed the three named employees to resign or go on leave while being investigated. In response, the employees executed separation agreements, two on September 9<sup>th</sup> 2022 and one on the 12<sup>th</sup> 2022. Of the three, one retired and the others resigned.

## EXECUTIVE SUMMARY - Continued

The separation agreements were separately negotiated, therefore, resulting in different amounts for each employee. These payments were described as consideration for their waiver of potential harm claims and characterized as a business decision with the purpose of protecting the District.

SDA's work required communicating with the Offices of the Florida Attorney General, Florida Auditor General, District personnel from the Office of the Chief Auditor, Departments of Human Resources and Equity ("HR"), Payroll ("PR") and Risk Management ("Risk" or "RM"). We reviewed a recent report issued by the Auditor General's office regarding severance pay at Polk State College Report No 2022-050. Finding #1 in the report, addressed severance pay and the limitation prescribed by Section 215.425(4) of the Florida Statutes. SDA spoke with Greg Centers, Deputy Auditor General to discuss the report and how to locate others with like findings to use as a point of reference. We did not communicate with any of the former employees.

Our procedures included requesting information that was provided, as well as performing research to obtain the data required in order to perform this audit. All information was reviewed and additional inquiries were made to the aforementioned departments. Our team performed recalculations of amounts paid to the three employees; variances were noted but were deemed immaterial due to rounding.

### Summary of Results

The Office of the Florida Attorney General declined to provide an advisory opinion based on the fact that the District was seeking the answer to a question upon which it already acted and was seeking to justify the expenditures.

*Single payments* – the Risk Management Department handled the settlement payments by submitting an insurance claim. After the checks were processed, they were delivered to the department for distribution to each person.

- Single payments to Mr. Morgan and Mr. Watkins were processed on September 20, 2022 and sent via priority overnight delivery on September 22, 2022.
- Single payment to Mr. Moquin was processed on November 29, 2022 and delivered via priority overnight mail on November 30, 2022.

Mr. Moquin received his single payment check on December 1, 2022, his agreement stated that delivery "shall" not occur before December 2, 2022. Based on our discussion, in the abundance of caution, Risk sent the check via next day priority mail on November 30, 2022 to ensure timely delivery.

It is our understanding, single payments were not subject to specific formulas or components that had a defined value that was negotiated and agreed upon by the parties. As a result, we were not able to perform a recalculation for these amounts and were not privy to the negotiations.

*Other payments* – Information used to perform the recalculations was provided by HR and PR departments. All three employees received accrued vacation payouts, however, Mr. Morgan, as a result of his retirement status, was paid for accrued sick leave in accordance with Article 15 of the BTU-TSP bargaining unit agreement. Pursuant to Article 15, payouts are calculated on the hourly rate for the year in which a leave balance was carried forward. Accrued sick leave

## EXECUTIVE SUMMARY - Continued

remaining balances carried forward began as of June 30, 1999 at the hourly rate of \$31.54 through June 30, 2022's rate of \$65.34. The total amount paid to Mr. Morgan was \$104,500.

As to vacation balances, Mr. Moquin and Mr. Morgan who were hired prior to July 1, 1995 were allowed to carry over 62.5 days of accrued vacation and Mr. Watkins who was hired after July 1, 1995 was only allowed 60 days. Actual payouts are as follows:

J. Moquin	\$ 48,908.07
D. Watkins	\$ 35,599.00
R. Morgan	\$ 30,627.77

After re-performing the *Other payments*, given the rates provided, they were accurate with only small variances that were deemed immaterial due to rounding.

The use of sick time to extend an employee's date of departure is not specifically addressed in the District's policies or state law. Mr. Moquin, in his letter of resignation, indicated that he will utilize his sick time for any and all workdays between September 12, and December 2, 2022. This, as a point of negotiation, was accepted and agreed to by the District.

### **Findings**

- 1) Three of the policies that were used to prepare this report were not amended or revised for six or more years. Detailed in Task 4, pages 8-14.
- 2) Mr. Moquin's single payment check was delivered prior to December 2, 2022. Detailed in Task 5, pages 15-16.
- 3) A non-disclosure clause was not included in the separation agreements. Detailed in Task 4, pages 8- 14.

### **Recommendations**

- 1) As part of its current Procedural Handbook project, the District should consider moving policy 4305, 4409 and 4480 numbers ahead to an earlier time period based on the number of years since they were last revised. Detailed in Task 4, pages 8-14.
- 2) Improved interdepartmental communication in the District, specifically between the General Counsel's and Risk Management departments in this circumstance, would have avoided Mr. Moquin's check being delivered before the date specified in the agreement. Detailed in Task 5, pages 15-16.
- 3) The District should consider including non-disclosure clauses in its separation agreements. Detailed in Task 4, pages 8-14

### **Other Observations and Recommendations**

The Board should contemplate establishing a policy or policies for the Administration to create and implement procedures to address occurrences similar what is described in the Report now that the District has had this experience. The policy should require the Administration to document any rationale used for negotiations, in general terms, which can be communicated as to how terms of the agreements were derived. Detailed in Task 3, pages 6- 7.

## **INDEPENDENT AUDITORS' REPORT**

Honorable Chairperson and Board Members of  
the School Board of Broward County, Florida  
Audit Committee  
Superintendent of Schools

We have conducted a performance audit of payments made to three employees of the School Board of Broward County, Florida ("the District") based on the Twentieth Grand Jury No. 19-240 Report ("Report"). Management is responsible for the separation process, including but not limited to separation agreements and calculation of payments due to employees.

We were engaged by the School Board of Broward County ("District") to conduct this performance audit and conducted our performance audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusion based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

A performance audit includes examining, on a test basis, evidence supporting program transactions, effectiveness, economy and efficiency. The objective of our performance audit was to provide findings and conclusions based on an evaluation of sufficient, appropriate evidence against expected outcomes/objectives of the Bond Program based on the Scope of Services identified in Attachment A.

Our audit included obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of calculated amounts to employees who separated based on the Report and to design the nature, timing, and extent of further audit procedures. The performance of our audit was not specifically designed to provide assurance on internal control of the payments to the three separated employees or to identify all significant deficiencies or material weaknesses. However, for this performance audit, we designed and performed procedures to obtain sufficient, appropriate evidence to support our findings and conclusions on the design, implementation and operating effectiveness of internal control that were significant within the context of the audit objectives described in the Scope of Services identified in Attachment A, but not for the purpose of expressing an opinion on the effectiveness of internal controls. Accordingly, we do not express any assurance on internal control.

Our responsibility as auditors is limited to the Scope of Services identified in Attachment A and the period covered by our audit, and does not extend to any later periods for which we are not engaged as auditors.

Based on the procedures performed, the result of our tests indicate that the District properly calculated the “Other Payment” component amounts of the separation agreement in accordance with the District’s policies, bargaining unit agreement and applicable state laws. As to the “Single Payment” component of the separation agreement, these payments were the result of direct negotiation between the employee and the District’s General Counsel for which there were no specific calculable amounts.

A handwritten signature in blue ink that reads "S. Davis & Associates, P.A." The signature is written in a cursive style and is located on a light blue rectangular background.

Hollywood, Florida  
May 9, 2023

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

**SCOPE OF SERVICES**

- 1) Request documentation to gain an understanding the circumstances and decisions made relative to the payment of three District employees. Documents include but not limited to:
  - a. Employee contracts
  - b. Employee resignations, pension application, termination paperwork
  - c. Separation agreement
  - d. Employee groups contracts, administrative rules, guidance documents, etc.
  - e. Meeting minutes, videos, presentations where items were discussed
  - f. Reports and or communication issued by regulatory agencies, auditors or others with governance over the District
  - g. District policies and procedures
  - h. Federal and state law
  - i. Other (K-12) school Districts or comparable organizations in Florida
- 2) Conduct interviews and gather requisite information from department(s) and District personnel who have required documentation, knowledge of policies, procedures, rules, and references to federal and state laws. Departments/Sections include but not limited to Human Resources, Accounting, and Payroll.
- 3) Based on the Board Item BB-1 on the December 13, 2022 regular meeting agenda, prepare a request for a legal opinion from the either the Florida Auditor General or the Florida Attorney General regarding the separation agreements that were recently negotiated and executed by District Administration. The opinion should provide a determination if the three agreements collectively were in compliance with state law.
- 4) Gain an understanding of personnel/position status and related policy and procedure requirements. Calculate and conclude if the contract portion of the payouts relating to the separation is mathematically correct and in accordance with Federal and State laws and District policies.
- 5) Determine adherence to District policies and procedures.
- 6) Separation/Termination pay – determine if it was done timely in accordance with established rules.
- 7) Investigate whether the use of sick time can be used to extend the last day of separation in light of other documents, i.e. resignation, retirement, termination.
- 8) Perform additional tasks as agreed upon by the parties.
- 9) Prepare opinion report.
- 10) Perform presentation(s), as requested



**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

**Task 1** Request documentation to gain an understanding the circumstances and decisions made relative to the payment of three District employees.

**Observation:**

Documents requested during the engagement were provided. After our initial meetings with the Chief Auditor, SDA performed searches on the District's website and other sources to gather information about the payments made to the three employees. Our research included the Florida Statutes, for sections governing School Districts and severance pay, and the Auditor General's website for audit reports that appeared to have employee overpayments, severance, and termination pay.

In addition, we also met with HR, PR and RM, for gain clarification and understanding of documents, calculations, and the relationships to processes, policies and contract/agreements. Between the HR, PR and Risk departments, information such as employment dates, salary and hourly/daily rates, leave balances, insurance claims and other related information was provided.

**Finding:**

None.

**Recommendation:**

None.

**Management Response:**

None.

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

**Task 2** Conduct interviews and gather requisite information from department(s) and District personnel who have required documentation, knowledge of policies, procedures, rules, and references to federal and state laws. Departments/Sections include but not limited to Human Resources and Equity, Payroll and Accounting.

**Observation:**

After reviewing data provided and researched items, we conducted follow up meetings with the Chief Auditor, Payroll Director and Executive Director of Human Resources and Equity, and Risk Management to discern the particulars of their employment classifications, the policies, rules, bargaining unit information, separation procedures and other aspects applied to each of the three employees.

We met with the departments referenced above to get clarification, understanding of the documents, calculations, and relationships to processes, and policies and contract/agreements. The personnel with whom we worked, were able to properly reference District policies, bargaining unit information and other references to the state statutes related to the District policies.

**Finding:**

None.

**Recommendation:**

None.

**Management Response:**

None.

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

**Task 3** Based on the Board Item BB-1 on the December 13, 2022 regular meeting agenda, prepare a request for a legal opinion from the either the Florida Auditor General or the Florida Attorney General regarding the separation agreements that were recently negotiated and executed by District Administration. The opinion should provide a determination if the three agreements collectively were in compliance with state law.

**Observation:**

After researching the criteria and contacting the Florida Attorney General's office, the format outlined the five following areas:

- 1) Question of Law
- 2) Description of Facts and Circumstances
- 3) Memorandum of Law
- 4) Interested Parties
- 5) Certification

SDA prepared an outline which was submitted and discussed with the Chief Auditor. Interim General Counsel Batista, later prepared the request on behalf of the Chief Auditor. Chief Auditor Jabouin reviewed the General Counsel's document and noted that it included the criteria required by the Office of the Attorney General. Chief Auditor Jabouin transmitted the request for advisory opinion, dated January 12, 2023, to the Office of the Attorney General.

Chief Auditor, Mr. Jabouin received a response dated February 27, 2023, from the Office of the Attorney General signed by Ms. Teresa L. Mussetto, Senior Assistant Attorney General. In part, the letter stated that it appeared that the request was being made after "separation payment(s)" were already made as part of the separation agreements. Ms. Mussetto stated that pursuant to Office of Attorney General Policy for requesting an opinion, they declined to answer "questions an official or agency has already acted upon and is seeking to justify such expenditure(s) ..." Due to the fact that SBBC had already authorized the separation payment(s) and was, (after the fact), seeking a determination about them, they would not comment any further.

SDA contacted the Florida Auditor General's office about requesting an opinion. We spoke with Mr. Greg Centers, Deputy Auditor General – Educational Entities and Local Government Audits Division. In his reply to one of our emails dated December 20, 2023, he indicated "...while Section 11.45, Florida Statutes, authorizes the Auditor General to perform audits of State and local governments, the Auditor General is not authorized to issue legal opinions." On that basis, the request was declined.

The link below is an excerpt from the SBBC's Board Meeting on October 4, 2022, the meeting when Ms. Batista and Dr. Cartwright explained the rationale for the separation agreements and the District's legal position on why payments in the agreements are not considered "severance." The agreements were referred to as a "financial" or "business" decision. Our understanding of that

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

statement, a “business decision” implied that the separation agreements and related payments were to mitigate the District’s risk exposure to future claims for wrongful termination and required the waiving of some rights by the employees.

*Below is a link to Attorney Marylin Batista’s October 4, 2022 response to inquiries on the agreements. It includes comments from the Former Superintendent. Video total time is 59:36 minutes; then Interim General Counsel Batista begins speaking at 20:26 – 26:26 and 27:17 - 28:17. The Superintendent speaks in between the times referenced*

[https://browardschools.granicus.com/player/clip/231?meta\\_id=116658](https://browardschools.granicus.com/player/clip/231?meta_id=116658)

**Finding:**

None.

**Recommendation:**

None.

**Management Response:**

None.

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

**Task 4** Gain an understanding of personnel/position status and contract requirement related employee group, ex. ESMAB. Calculate and conclude if the contract portion of the payouts relating to the separation are mathematically correct and in accordance with federal and state laws and District policies.

**Observation:**

**Personnel/Position Status:**

The District's employees are made up of instructional, non-instructional and support positions. There are several bargaining units and professional association categories that are not bargaining units (see matrix below). These groups are based on the employees' type of work or job classification. Established bargaining units negotiate matters, including but not limited to, wages, benefits, hours, rights of management and employee, grievance, employee development, duties, promotion/demotion and terms and other conditions of employment. Professional Associations are not organized bargaining units and are subject to District rules which are guided by established policies, state and federal laws.

Mr. R. Morgan was a member of the BTU-TSP bargaining unit and therefore subject to the terms the agreement, state, federal and local laws, and District policies.

Mr. J. Moquin and D. Watkins were members of the ESMAB called the Meet and Confer group of employees that have no bargaining unit associated with it. This group is subject to the state, federal and local laws and District policies.

While there is some legislation and program funding provided by the federal government, states are primarily responsible for legislating rules and policies for schools in their respective state.

The following tables show the employee groups and the group to which each employee belong:

<b>Table 1 - District</b>	<b>Employee</b>	<b>Group</b>
<b>Groups</b>	<b>Collective Bargaining Unit (Y/N)</b>	<b>Description</b>
BTU – EP	Y	Broward Teachers Union – Educational Professionals
BTU – ESP	Y	Broward Teachers Union – Education Support Professionals
BTU – TSP	Y	Broward Teachers Union – Technical Support Professionals
FOPE	Y	Federation of Public Employees – Maintenance, Facilities Services, Transportation, Security
FOPE Clerical	Y	Federation of Public Employees – Secretarial/Clerical
FOPE - Food Services	Y	Federation of Public Employees – Food Services

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

**Table 1 - District Employee Group**

<b>Groups</b>	<b>Collective Bargaining Unit (Y/N)</b>	<b>Description</b>
PBA	Y	Police Benevolent Association
Meet and Confer Groups		Professional Associations (Non Bargaining Units):
ESMAB	N	Educational Support and Management Association of Broward, Inc.
BPAA	N	Broward Principals and Assistants Association
COPA	N	Confidential Office Personnel Association

Collective Bargaining Units in general:

- Allowed by federal laws.
- Subject to state laws, District policies when the agreement is silent on matters not covered in it.
- Agreements cannot deviate from state laws.

Personnel of the District are subject to various policies. Those pertinent to this engagement are presented in the table below:

**Table 2 - Policies/Bargaining Agreement/Employment & Salary Administration Handbook**

<b>Policy Number</b>	<b>Title</b>	<b>Date Last Amended</b>
4305	Retirement Compensation – Non-Bargaining Unit Employees	03/01/05
4400	Sick Leave	04/20/21
4409	Personal Leave	08/20/02
4480	Earned Annual Leave – Paid Vacation(s)	06/06/06
Article 15 - Leaves	BTU-TSP Collective Bargaining Agreement	04/07/20
N/A	Employment & Salary Handbook for Meet and Confer Employee Groups (ESMAB, BPAA, and COPA)	02/22/17

**Table 3 – Employee Group, Dates of Hire and Title When Separated**

<b>Employee</b>	<b>Hire Date</b>	<b>Employee Group</b>	<b>Title at the Time of Separation</b>
J. Moquin	09/10/1993	ESMAB	Chief of Staff
D. Watkins	02/11/1997	ESMAB	Director of Diversity & School Climate
R. Morgan	09/10/1991	BTU-TSP	Assistant Chief Building Official

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

Separation Agreement Sections Relating to this Report:

***Section I – The Parties***

Contained definitions for “Agreement”, “Effective Date”, “Employer” and “Employee”.

***Section II – Employment Status.***

This section identified each individual’s standing as to their employment status with the District at the time each negotiated agreement was executed.

J. Moquin – ceased the active performance of his duties as Chief of Staff effective September 9, 2022. The parties agreed that he would use his accrued sick leave for any, and all sick days from September 9, 2022 through December 2, 2022. The employee would continue to make contributions to the Florida Retirement System (“FRS”) for the time that accrued sick time was being utilized. The District paid all wages and withholdings through September 9, 2022 and the respective amounts would be reflected on the IRS Form W2. In Section IV of Mr. Moquin’s separation agreement, it was agreed that his benefits would continue until December 31, 2022.

D. Watkins – the parties to the agreement acknowledged that his last day of employment was September 9, 2022. The employer paid all payments through September 9, 2002 and all deductions were made and would be reported on the IRS Form W2.

R. Morgan – the parties acknowledged that his last day of employment was September 12, 2022, and all deductions were made and would be reported on the IRS Form W2. The parties agreed that he would separate from employment by retiring from the District and follow up with the FRS and that he would be entitled to all terminal payments and up to the limits provided by Article 15 of the BTU-TSP bargaining agreement.

***Section III – Separation (Payment)***

Separation in a Single Payment:

The amounts of the single payments were negotiated settlements between the District and each employee and/or their legal counsel. SDA inquired about how the amounts were derived, however no further details were provided as to how each individual amount was calculated and agreed upon. The settlements were in consideration for:

- (1) the waiver by the employees of present or future claims against SBBC;
- (2) their waiver of the right to seek reemployment;
- (3) their waiver of the right to disparage the SBBC;
- (4) their respective agreements to indemnify and release SBBC for any claims those employees may have against the SBBC; and
- (5) waiver of the right to attorney fees among other waivers and releases.

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

Mr. Moquin and Mr. Morgan:

Separation in a Single Payment – the employer agreed to make a single payment to each of these employees on a specified date. Payment per (1) Moquin’s agreement – delivery shall not take place before December 2, 2022, and (2) Morgan’s agreement – within 30 days of the effective date of the agreement (September 12, 2022). It also stated that the payments were in consideration for waiver of potential emotional harm.

Mr. Watkins:

Separation in a Single Payment - the employer agreed not to make a single payment to the employee until the effective date of the agreement (September 9, 2022). It also provided that the payment was subject to appropriate taxes for which the employee was responsible. It further included an indemnification and hold harmless clause.

The single payment portion of the agreements were submitted as a single claim against the District’s general liability insurance. The third party claims administrator processed the claim and submitted the checks to the RM for distribution. RM, prepared them for delivery via overnight mail delivery.

Other Separation (Payment)

J. Moquin – employer agreed to make a single payment for all unused and accrued vacation, up to the limits set forth in School Board Policy 4480, at the time of separation (December 2, 2022).

D. Watkins - employer agreed to make a single payment for all unused and accrued vacation, up to the limits set forth in School Board Policy 4480, at the time of separation (September 9, 2022).

R. Morgan - employer agreed to make payments for terminal payments of all unused and accrued vacation and sick times as described in Section I of the Agreement (prescribed in Article 15 of the BTU-TSP collective bargaining agreement).

SDA requested the leave balances (see Table 4 below) for each employee at the time the separation agreements were executed, from the HR Department. These were later validated by the PR Department with one difference. Mr. Moquin, during the period between September 10, 2022, and December 2, 2022, was accruing vacation leave.

A summary of recalculations performed are reflected in Tables 4 and 5.

In light of the reference to FS 215.425, we analyzed the payments made in relation to the percentage of time left for the District’s fiscal year and the approximate amount of pay to which each employee would have received had they completed the FY22-23 fiscal year.



**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

**Table 4 – Settlement Amount as a Percent of Annual Salary**

Employee	Salary	Settlement Amount	Percent of Annual Salary
J. Moquin	\$ 197,641.00	\$ 100,000.00	51.60%
D. Watkins	\$ 144,769.00	\$ 93,500.00	65.49%
R. Morgan	\$ 119,579.00	\$ 43,500.00	36.38%

Mr. Morgan was the only one of the three employees that were eligible to retire. Based on Article 15, accrued sick leave payouts are calculated based on the hourly rate for each year that a balance for sick leave was carried forward. Accrued sick leave remaining balances carried forward began as of June 30, 1999 at the hourly rate of \$31.54 through June 30, 2022 rate of \$65.34. The rate of \$65.34 was the rate of pay at the time of Mr. Morgan's separation. This rate was also used to calculate the hours paid from July 1, 2022 through September 9, 2022. The balance for each year was calculated and the totals were summed for a total of \$104,500.

**Table 5 – Accrued Sick Time Payout**

Employee	Hourly Rate	Accrued Sick Hours	Sick Hours Paid	Payment for Sick Hours	Payment for Sick Hours Recalculated	Variance
J. Moquin	108.00	420.84	-	-	-	NA
D. Watkins	79.10	1,306.37	-	-	-	NA
R. Morgan <sup>(1)</sup>	65.34	1,473.96	\$1,473.96 <sup>(2)</sup>	\$104,500.00	104,500.00	-

<sup>(1)</sup> Terminal pay due to retirement based on Article 15 of the BTU-TSP bargaining unit agreement

<sup>(2)</sup> Article 15 and Board Policy 4480 stipulates that the accrued sick leave pay out rate is based on the rate at the time it was earned

Payment of accrued, but unused vacation time is limited based on the fiscal year an employee was assigned to certain positions. Those hired or assigned prior to July 1, 1995 were limited to 62.5 days and those after July 1, 1995 was limited to 60 days. The 60 day limit equals 450 hours and the 62.5 days equaled 468.75 hours. Mr. Moquin and Mr. Morgan joined the District in 1993 and 1991 respectively. Mr. Watkins in 1997 (see Table 3 for actual hire dates).

**Table 6 – Accrued Vacation Time Payout**

Employee	Hourly Rate	Accrued Vacation Hours <sup>(1)</sup>	Additional Vacation Hours Earned	Number of Vacation Hours Paid	Payment of Vacation Hours	Payment for Vacation Hours Recalculated	Variance *
J. Moquin	\$108.00	418.41	34.44	452.85 <sup>(2)</sup>	\$48,908.07	\$48,907.80	\$ ( 0.27)
D. Watkins	\$ 79.10	466.6567	-	450.00 <sup>(3)</sup>	\$35,599.00	\$35,595.00	\$ ( 4.00)
R. Morgan	\$ 65.34	496.28	-	468.75 <sup>(3)</sup>	\$30,627.77	\$30,628.13	\$ 0.36

\* Variances is due to rounding. The District's systems round up to more than four decimal places. Amount determined to be immaterial.

<sup>(1)</sup> On the date of the resignation/retirement letters

<sup>(2)</sup> Employee negotiated the use of accrued sick leave in the separation agreement. The variance in hours is due to hours accrued while the employee was still on the payroll.

<sup>(3)</sup> Maximum number of hours that can be paid out based bargaining agreement, District policy or state law

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

**Finding:**

It was noted that some policies and the Employee & Salary Handbook for Meet and Confer Employee Groups have not been revised or amended for six years or more. It is our understanding that the District has a Policy Procedural Handbook project. The handbook's current edition is effective for the 2022-2025 period and outlines the District's strategy to discontinue, review, revise, replace or rewrite existing policies. There is also a Master Yearly List that accompanies this handbook.

The policy numbers, listed in the table below, are scheduled for revision by the Finance Department in the January to June 2024 time period. It does not appear that handbooks were considered in the project.

**Table 7 - Policies/Bargaining Agreement/Employment & Salary Administration Handbook**

<b>Policy Number/ Handbook</b>	<b>Title</b>	<b>Date Last Amended</b>	<b>Number of Years since last Revised/Amended</b>
4305	Retirement Compensation – Non-Bargaining Unit Employees	03/01/05	18
4409	Personal Leave	08/20/02	21
4480	Earned Annual Leave – Paid Vacation(s)	06/06/06	17
	Employment & Salary Handbook for Meet and Confer Employee Groups (ESMAB, BPAA, and COPA)	02/22/17	6

**Recommendation:**

The District should consider moving policy numbers 4305, 4409 and 4480 ahead to an earlier time period based on the number of years since they were last revised. Ultimately if there are no revisions, rewriting or replacements, the document should indicate the review date. Handbooks and similar documents should also be considered for discontinuation, review, revision, replacement or to be rewritten.

**Management Response:**

**From Human Resources and Equity**

The District is in the process of reviewing and revising district policies. The recommendations brought forth here in Task 4 will be discussed with the Office of the Chief of Staff for Broward County Public Schools. The Assistant Director, District Administrative Services as the leader of the Policy Procedural Handbook project will take the recommendations into account.

**Finding:**

It was noted that a non-disclosure clause was not included in the separation agreements.

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

**Recommendation:**

While it may not be necessary in this situation, the District should consider the use of a non-disclosure agreement along with the disparagement clause.

**Management Response:**

**From Human Resources and Equity Department:**

The District will take this recommendation into consideration moving forward. The recommendation will be shared with the Office of the Chief of Staff as well as the Office of the General Counsel.

**From Legal Department:**

A nondisclosure provision can be considered on a case-by-case basis, however, there is limited usefulness and/or viability for said provision within a separation agreement between a public agency and a public employee as such agreements are subject to public inspection and copying under Section 119.07, Florida Statutes.

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

**Task 5** Separation/Termination pay – determine if it was done timely in accordance with established rules.

**Observation:**

Separation agreement specified timelines for payment:

- J. Moquin – Per the agreement, payment was due to the employee on December 2, 2022.
- D. Watkins – Employer agreed to make the payment when the agreement became effective in accordance with Section 1 of the agreement. The agreement was entered into on September 9, 2022.
- R. Morgan – Separation payment was due to the employee within 30 days of the effective date of the agreement.

**Table 8 – Single Payment Issue Date**

Employee	Executed Separation Agreement Date	Single Payment/ Separation Payout Amount <sup>(1)</sup>	Single Payment Check Issue Date
J. Moquin	September 9, 2022 <sup>(2)</sup>	\$ 100,000.00	11/29/2022
D. Watkins	September 9, 2022	\$ 93,500.00	09/20/2022
R. Morgan	September 12, 2022	\$ 43,500.00	09/20/2022

<sup>(1)</sup> Negotiated by each employee.

<sup>(2)</sup> Date separation agreement was executed and the date employee ceased the active performance of his duties. Mr. Moquin utilized accrued sick time through December 2, 2022, prolonging the date of payment.

**Table 9 – Other Payment Issue Date**

Employee	Other Separation Amount Paid	Date Paid
J. Moquin	\$ 48,907.80	01/20/23
D. Watkins	\$ 35,595.00	11/29/22
R. Morgan	\$ 30,426.94	10/28/22

**Finding:**

It was noted that the check for the single payment to Mr. Moquin was issued on November 29, 2022. The agreement stated the payment “shall not be delivered to the employee until December 2, 2022”. In our discussion with the Risk Department, there was a request made to the third party administrator to submit the checks to the department after it was processed. RM, upon receipt, created a submittal letter that accompanied the checks when they were mailed. RM mailed the checks via overnight delivery and obtained a confirmation of delivery and the signature of the person who accepted the package.

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

In an abundance of caution on the part of RM, Mr. Moquin's check was mailed on November 30, 2022. Mr. Moquin received the payment on December 1, 2022, one day earlier than stipulated in the separation agreement.

**Recommendation:**

Communication between the General Counsel's office and the Risk Management Department should be very clear to avoid settlements of any kind being delivered prior to or after an established date in any type of settlement agreements.

**Management Response:**

**From Risk Management Department**

The Director of Risk Management gave specific directions to staff in reference to express mailing Mr. Moquin's check on December 1, 2022. Staff dropped off an express mail package after designated last Fed-Ex pick-up delivery times on November 30, 2022. Staff anticipated the express mail envelope would be picked up on December 1, 2022, due to the package being dropped off after the last Fed-Ex pick-up delivery time for that day (November 30, 2022). Staff did not anticipate this express package would be picked up on November 30, 2022, and delivered on December 1, 2022.

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

**Task 6** Investigate whether the use of sick time can be used to extend the last day of separation, in light of other documents, i.e., resignation, retirement, termination.

**Observation:**

Based on our research and initial discussion with the Florida Attorney General's office, there are no specific policies or legislation that addresses the use of accrued sick leave to extend the physical separation date. In the executed agreement, Mr. Moquin was to no longer perform his duties as Chief of Staff effective September 9, 2022. It was negotiated and agreed that Mr. Moquin would utilize his accrued sick leave for any and all workdays from September 9, 2022, to December 2, 2022. This, as a negotiated item, was necessary because a payout of accrued sick leave, under the existing circumstances, is not permissible under SBBC's policies. Further, despite not being subject to FS 215.425, a negotiated payment of sick leave, especially in excess of six weeks gave way to questions as to applicability, which was one of the initial reasons for the request to obtain an opinion.

Policy 4400 – Sick Leave states that sick leave for more than three consecutive days requires the attending physician's medical statement verifying the illness or situation of the individual involved. In the case of Mr. Moquin, a medical statement was not provided by a physician. The use of sick time after the resignation date, was a negotiated item that is a part of the Single Payment section of separation agreement.

**Finding:**

None.

**Recommendation:**

None.

**Management Response:**

None.

**BROWARD COUNTY PUBLIC SCHOOLS  
EMPLOYEE SEPARATION PAYMENTS  
RELATED TO THREE (3) EMPLOYEES REFERENCED  
IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC19-240**

**ADDITIONAL OBSERVATIONS AND RECOMMENDATIONS**

**Observation:**

The District's Administration, having to comply with the recommendations of the Report, which is a very rare occurrence, performed an activity that under regular circumstances would be a part of the normal day-to-day operations. This situation however, was a special circumstance. Based on the conditions, the Administration had to act expeditiously.

In hindsight, the District's Administration should have considered requesting an independent opinion from the Office of the Attorney General or special/outside counsel, as well as, notify the District's Board members prior to the execution of the agreements.

The District should consider revising existing policies or create one, in absence of any, to address similar occurrences in the future.

**Recommendation:**

The Board should contemplate establishing a policy or policies for the Administration to create and implement procedures to address occurrences similar to Florida Supreme Court Case No. SC19-240 now that the District has had this experience. The policy should require the Administration to create a process memo to document, in general terms, the methodology and rationale used in the negotiation of settlement terms.

**INDEPENDENT AUDITOR’S REPORT ON INTERNAL CONTROL OVER  
THE SEPARATION PROCESS AND PAYMENTS TO THREE EMPLOYEES  
AND ON COMPLIANCE AND OTHER MATTERS BASED ON A  
PERFORMANCE AUDIT CONDUCTED IN ACCORDANCE WITH  
GOVERNMENT AUDITING STANDARDS**

Honorable Chairperson and Board Members of  
the School Board of Broward County, Florida  
Audit Committee  
Superintendent of Schools

We have conducted a performance audit of payments made to three employees of the School Board of Broward County, Florida (“the District”) based on the Twentieth Grand Jury No. 19-240 Report (“Report”). Management is responsible for the separation process, including but not limited to separation agreements and calculation of payments due to employees.

**Report on Internal Control Over The Separation Process**

The payments made to three employees of the School Board of Broward County, Florida (“the District”) performance audit was not specifically designed to provide assurance on internal control of the separation process or to identify all significant deficiencies or material weaknesses. However, for this performance audit, we designed and performed procedures to obtain sufficient, appropriate evidence to support our findings and conclusions on the design, implementation and operating effectiveness of internal control that were significant within the context of the audit objectives described in identified in Scope of Services identified in Attachment A, but not for the purpose of expressing an opinion on the effectiveness of internal controls. Accordingly, we do not express any assurance on internal control.

*A deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements, on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity’s financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or, significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.



**Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

A handwritten signature in blue ink that reads "J. Davis & Associates, P.A." The signature is written in a cursive style and is located on a light blue rectangular background.

Hollywood, Florida  
May 9, 2023

# **EXHIBITS**

# EXHIBIT I

**SICK LEAVE**

A PERMANENT EMPLOYEE OF THE BOARD, WHO IS UNABLE TO PERFORM HIS/HER DUTY ON ACCOUNT OF PERSONAL SICKNESS, ACCIDENT DISABILITY, OR EXTENDED PERSONAL ILLNESS OR DEATH OF FATHER, MOTHER, BROTHER, SISTER, HUSBAND, WIFE, CHILD, OR OTHER CLOSE RELATIVE MEMBER OF HIS/HER OWN HOUSEHOLD SHALL BE GRANTED LEAVE OF ABSENCE FOR SICKNESS.

SUBSTITUTES AND OTHER TEMPORARY EMPLOYEES SHALL NOT BE ENTITLED TO SICK LEAVE.

THIS POLICY SHALL BE SUPERSEDED BY ANY SIMILAR SICK LEAVE PROVISIONS CONTAINED IN COLLECTIVE BARGAINING AGREEMENTS BETWEEN THE BOARD AND ITS UNIONS.

AUTHORITY: F.S. 230.22 (1) (2); F.S. 231.40  
 POLICY ADOPTED: 2/27/69  
 POLICY READOPTED: 9/5/74; 11/20/86  
 AMENDED: 3/6/90; 11/13/01; 2/23/21; 4/20/21

**RULES**

1. An employee absent on Sick Leave, which has been approved by the appropriate administrator, shall receive full compensation for the duration of the leave granted, provided claim for such compensation, on forms to be supplied by the Superintendent (designee) shall have been filed by the end of the work week in which the absence occurs. Any employee who finds it necessary to be absent from his/her duties because of illness shall notify his/her immediate supervisor, if possible, before the beginning of the workday on which he/she must be absent, or during that day except for emergency reasons recognized by the School Board as valid. When requested by the Superintendent, or his/her designee, the employee will be required to submit a certificate of illness from a licensed health care provider.
  2. The computation of Sick Leave for employees who have been transferred from temporary to permanent status shall begin at the date of permanent employment.
  3. Each permanent, full-time employee of the Board shall be entitled to four (4) days of Sick Leave as of the first day of employment of each current fiscal year and shall thereafter earn one (1) day of Sick Leave. The total shall not exceed the number of months of the employee's assigned work calendar, which shall be credited to the employee at the end of each month of employment and which shall not be used prior to the time it is earned and credited to the member. If the employee terminates his/her employment and has not accrued the four (4) sick days available to him/her, the School Board shall withhold the average daily amount for the sick days utilized but unearned by the employee.
- Permanent, part-time employees shall earn Sick Leave on a pro-rata basis, depending on their employment start date. However, each eligible employee shall be entitled to earn no more than one (1) day of sick leave times the number of months of employment in the affected employee's assigned work calendar.
4. Upon proper application, a noninstructional employee, who has been employed continuously for three (3) or more years, may be granted temporary leave of absence for extended illness, without pay, such leave not to exceed one (1) year. Upon return to duty following such absence, the employee shall be employed in the same or similar position. The Board assumes no obligation for reassignment at times other than the beginning of a school or fiscal year, depending on the position previously held.
  5. Illness in the Line-of-Duty (formerly Disability Leave in Operating Procedure 4.4) shall be precedent to Sick Leave, when an absence is related to a compensable workers' compensation injury, with a substantiating statement by a District authorized workers' compensation physician.
  6. Sick Leave granted for extended illness requires a medical statement, after three (3) consecutive days of absence, verifying the illness or situation of the individual involved.
  7. Donation of sick leave: An employee may donate earned and accrued sick leave to a qualified district employee in accordance with the following procedures.
    - A. Qualified district employee is defined as a benefits eligible employee who holds a position, which is eligible for sick leave accrual.

- B. Days/time may not be donated until such time as the recipient has depleted his/her own sick leave accrual. However, the recipient is not required to utilize days available from a sick leave bank in which they may participate prior to receiving a donation from a district employee.
- C. With the exception of pay for the purpose sick leave, donated days/time shall have no value for the recipient for the purposes of terminal pay or any other program and/or provision that provides pay for accrued sick leave.
- D. Donated days/time may not be utilized for the purpose of personal reasons leave.
- E. At the time of an employee's donation to a qualified district employee, the donated sick leave day shall be converted to a monetary sum by multiplying the day donated times the donor's daily base rate of pay at the time of the donation. The resulting value shall be credited to the recipient for use as sick leave.
- F. The recipient employee must notify his/her supervisor within five (5) days of his/her absence from work that he/she is eligible to be compensated for such sick leave as a result of a donation from an employee. An employee may notify his/her supervisor that he/she is eligible for a donation of sick leave in advance of the depletion of his/her sick leave and that a donation will be utilized upon depletion of his/her sick leave.
- G. The donor employee must notify his/her supervisor within five days of a recipient employee's illness that he/she will authorize the donation of sick leave time to recipient employee. The donor employee shall sign the Sick Leave Donation Authorization form and submit the completed form to his/her supervisor within the above time frame. A donor employee may notify his/her supervisor that he/she will authorize a donation of sick leave in advance of the recipient's depletion of his/her sick leave and that a donation will be authorized upon depletion of the recipient's sick leave.
- H. Day(s) will be deducted from the donor employee's sick leave accrual, in accordance with existing School Board practice, and credited to the recipient employee's sick leave accrual in accordance with the conversion specified in paragraph 5 above. Said time shall be paid to the recipient at his/her current rate of pay.
- I. All sick leave compensated by the use of donated days may require a certificate of illness from a licensed physician or from the county health officer.
- J. The donation of days to a qualified district employee shall not disqualify the donor employee from eligibility for attendance award(s) contained in Collective Bargaining Agreements and/or Board Policy.

AUTHORITY: F.S. 230.22 (1) (2); F.S. 231.40

POLICY ADOPTED: 2/27/69

POLICY READOPTED: 9/5/74; 11/20/86

Amended: 3/6/90; 11/13/01; 2/23/21; 4/20/21

## EXHIBIT II

**EARNED ANNUAL LEAVE - PAID VACATION(S)**

PERMANENT EMPLOYEES ON BOARD ASSIGNED VACATION-EARNING CALENDARS SHALL BE ENTITLED TO PAID VACATION(S) BASED ON THE APPROPRIATE SCHEDULES CONTAINED IN THE RULES BELOW. EARNED ANNUAL LEAVE PROVISIONS CONTAINED IN COLLECTIVE BARGAINING AGREEMENTS BETWEEN THE BOARD AND ITS UNION MAY SUPERSEDE THE PROVISIONS OF THIS POLICY.

**RULES**

1. Employees on a temporary or per diem basis shall not be eligible to receive any remuneration for Paid Vacation days earned or holidays.
2. Permanent part-time employees shall earn a pro rata share of Paid Vacation(s) of a full-time employee.
3. With the exception of authorized Professional Leave, time taken off from the job must be charged to a Board-approved leave as listed in a School Board's Policy, or a leave contained in a Board-approved collective bargaining agreement.
4. All permanent employees on Board assigned vacation earning calendars (244 days or more) shall be eligible to receive a vacation with pay subject to the following provisions:
  - (a) Vacation requests, properly signed by the employee and the appropriate division head and/or department head, shall be completed prior to the first day of vacation.
  - (b) The affected employee's supervisor may reject a vacation request for a specific date if he/she feels that the employee's absence may disrupt the work of the department/school.
  - (c) An individual employed prior to the 15th of the month shall be given credit for earned vacation time for that month. Any individual employed for one (1) day more than half of the Board approved vacation earning calendar, shall receive a year of service toward vacation credit for that calendar year. Vacation may be used as earned. At the end of each fiscal year unused vacation not to exceed 62.5 days shall be carried forward to the following year.
  - (d) Employees transferring to a twelve-month position from other contract calendar positions shall be given credit for the number of full time continuous years of service. They will start earning vacation the first month of twelve-month employment.
  - (e) No employee may take in excess of fifteen (15) vacation days in any given month without the express written authorization of the Superintendent or his designee.
  - (f) Each employee on a vacation-earning calendar must take a minimum of five (5) consecutive vacation days per year providing the employee has accrued five (5) days. This provision may be waived by the Superintendent or his/her designee in unusual circumstances.
  - (g) Effective July 1, 1986, employees assigned to the ASPTS, BTU/TSP and principals vacation-earning calendars shall earn paid vacation based on the following formula:
    - (1) Five (5) complete years of service or less - 1-1/4 days per month
    - (2) More than five (5) complete years of service but less than ten (10) complete years of service - 1-1/2 days per month
    - (3) Ten (10) complete years of service or more - 2 days per month
    - (4) Total accrued vacation may not exceed sixty-two and one-half (62.5) days carry-over from one (1) fiscal year to the next.

- (h) All other eligible employees not covered in subsection g. above shall earn paid vacation based on the following formula:
  - (1) Five (5) complete years of service or less - 1 day per month
  - (2) More than five (5) complete years of service but less than ten (10) complete years of service - 1-1/4 days per month
  - (3) Ten (10) complete years of service or more - 1-1/2 days per month
  - (4) After 15 years of service or more in the district, clerical employees earn 2 days per month
  - (5) Total accrued vacation may not exceed fifty (50) days carry-over from one (1) fiscal year to the next.
  
- 5. Payment of accrued, but unused, vacation time up to the limits contained in subsection (a) and (b) below, shall be made upon separation from employment provided notice of intention to take a leave of absence or retirement has been filed with the designated county level unit administrator. If filing intention to take a leave of absence is clearly impossible, it will be paid subsequent to the date that the School Board approved such separation. Further, such payment already earned may not amount to a sum larger than that provided in the affected employee's annual contract. Exceptions may be made in cases of dismissal or when a change in the individual's work year shall be imposed by the Board. Payment shall be made based on the affected employee's daily pay rate at the time of separation.
  - (a) Employees assigned prior to July 1, 1995 to the Administrative, Supervisory, Professional and Technical Salary Schedule (ASPT) and principals assigned to a vacation-earning calendar may receive payment for up to sixty-two point five (62.5) days of vacation under section (4) above. Effective July 1, 1995, terminal pay for accrued vacation leave may not exceed a maximum of 60 days for employees hired on or after said date.
  - (b) All other eligible employees not mentioned in subsection (a) above may receive payment for up to fifty (50) days of vacation pursuant to the criterion in this policy.
  
- 6. For purposes of computing vacation accrual only, employees assigned to the ASPTS, BTU/TSP positions may be credited with up to ten (10) years of work experience, from any school district in any state or other employer provided that said experience is directly related to the job duties performed by the affected employee at the time he/she was hired by the Board.

AUTHORITY: F.S. 1001.41  
 RULES ADOPTED: 5/8/69  
 RULES AMENDED: 1/22/70; 9/5/74;  
                   1/6/77, EFFECTIVE 1/30/77;  
                   12/4/86; 3/5/87; 3/14/89  
 AMENDED RULES APPROVED: 01/21/97; 6/06/06



# EXHIBIT III

# **COLLECTIVE BARGAINING AGREEMENT**

**Between**

**The Broward Teachers Union-  
Technical Support Professionals  
(BTU-TSP)**

**and**

**The School Board of Broward County,  
Florida**

**~~2020-2021~~ 2021-2022  
School Year**

**June 30, 2021 – June 29, 2024**

constitute willful neglect of duty which shall subject the employee to termination.

- N. **Sick Leave:** A full-time employee who is unable to perform his/her duty because of illness, or because of illness or death of father, mother, sister, brother, husband, wife, child, other close relative, or member of his/her own household and consequently has to be absent from his/her work, shall be granted leave of absence for sickness by the Superintendent/designee in writing by him/her to do so. The following provisions shall govern sick leave:

1. **Accrual:** Each employee on a full-time basis shall be entitled to four (4) days of sick leave as of the first day of employment of each contract year, and shall thereafter earn one (1) day of sick leave for each month of employment, which shall be credited to the employee at the end of that month, and which shall not be used prior to the time it is earned and credited to the employee. However, the employee shall be entitled to earn no more than one (1) day of sick leave times the number of months of employment during the year of employment. When an employee uses a sick leave day, it shall be paid at the affected employee's daily rate of pay at the time the day is utilized. Also, when an employee uses a sick leave day, those days are earned at a lower rate of pay and shall be deducted before sick days having a higher value. Such leave shall be taken only when necessary because of sickness as herein prescribed. Such sick leave shall be cumulative from year to year. There shall be no limit on the number of days of sick leave an employee may accrue, except that at least one-half (1/2) of this cumulative leave must be established within the District.
2. **Sick leave accumulated in another Florida district or districts:** Sick leave that is accumulated in other Florida school district(s) by an employee shall be accrued to the employee at a rate equal to the number of sick leave days allowed the employee during each year of employment in this District until such time as all sick leave accumulated in other Florida school district(s) has been transferred to the District.

Such transferred sick leave days shall be in addition to sick leave days to which the employee is entitled from this school district.

- a. An employee absent on sick leave, which has been approved by the appropriate administrator, shall receive full compensation for the duration of the leave granted, provided claim for such compensation, on forms to be supplied by the

Superintendent/designee shall have been filed by the end of the work month in which the absence occurs. Any employee who finds it necessary to be absent from his/her duties because of illness shall notify his/her immediate supervisor, if possible, before the beginning of the workday on which he/she must be absent, or during that day except for emergency reasons recognized by the School Board as valid. When requested by the Superintendent/designee, the employee will be required to submit a certificate of illness from a licensed physician or from the county health officer.

- b. The computation of sick leave for employees who have been transferred from temporary to permanent status shall begin at the date of permanent employment.
- c. Permanent, part-time employees shall earn sick leave on a pro-rata basis. In order to receive a full day of sick leave credit for the month, the employment period must have begun on or before the 15th of the month. Employees who commence work after the 15th of the month shall earn a prorated share of sick leave for the month. However, each eligible employee shall be entitled to earn no more than one (1) day of sick leave times the number of months of employment in the affected employee's assigned work calendar. If the employee terminates his/her employment and has not accrued the four (4) sick days available to him/her, the School Board shall withhold the average daily amount for the sick days utilized but unearned by the employee.
- d. Upon proper application, an employee, who has been employed continuously for three (3) or more years, may be granted temporary leave of absence for extended illness, without pay, such leave not to exceed one (1) year. Upon return to duty following such absence, the employee shall be employed in the same or similar position. The Board assumes no obligation for reassignment at times other than the beginning of a school or fiscal year, depending on the position previously held.
- e. Leave granted for extended illness requires semi-annual medical statements (July and January) verifying the illness or situation of the individual involved.

3. **Use of Sick Leave:** An employee shall have the right to use sick leave in hourly increments, for the purpose of medical or dental appointments.

If an immediate supervisor suspects an abuse of sick leave, he or she shall first investigate the matter and discuss the findings with the affected employee.

An abuse of sick leave is defined as a pattern or series of absences, which occur over an extended period of time, and on a regular and predictable basis and without adequate justification. For example a regular and predictable basis would be: sick leave being used as soon as earned; absence on only Mondays or Fridays; absences occurring on the days before or after a holiday period; absences occurring on the day after a payday on a regular basis.

If the investigation sustains that a documented pattern of abuse does exist the employee may be subject to disciplinary action.

- O. **Personal Reasons Leave:** Employees shall be granted up to six (6) days in each fiscal year for personal reasons. When used, these days shall be charged to available sick leave. Leave for personal reasons shall not be cumulative. Employees shall not be required to give reasons for these days, except that the leave is for “personal reasons”. Such leave must be requested in writing twenty-four (24) hours in advance of the day the employee wishes to take off, except in unusual circumstances.
- P. **Continuing Insurance Coverage While on Leave:** Any employee granted a Board-approved leave of absence with or without pay as provided in this Article shall be given the opportunity, unless otherwise provided, to continue insurance coverage in school programs and, with the approval of the retirement system, continue participation in the retirement system during the leave, provided that the premiums for such insurance programs shall be paid by the employee on a monthly basis in advance of the month due. Any such employee may serve as a substitute teacher in the District while on leave.
- Q. **Sick Leave Bank:** Employees shall continue to be eligible to participate in the Board’s sick leave bank for non-bargaining unit employees under the rules established by the Board.
- R. **Donation of Sick Leave to a Qualified Family Member:** An employee may donate earned and accrued sick leave to a qualified member of his/her family who is also a District employee in accordance with the following procedures:

1. Qualified family member is defined as a spouse, child, parent or sibling.
2. Days/time may not be donated until such time as the recipient has depleted his/her own sick leave and vacation accrual, excluding sick leave from a sick leave pool in which he/she is a participant.
3. Employees shall comply with procedures contained in Board policy for the donation of sick leave to a family member regarding the exchange of sick leave, the uses and purposes of the leave, the calculation of payments, notification requirements, and other matters not covered in this section.
4. This section shall not continue in force if the authority under Florida Statutes is repealed or expires.

S. **Terminal Pay:** Any employee at normal retirement or his/her beneficiary if service is terminated by death, shall be provided terminal pay. Such terminal pay shall not exceed an amount determined as follows:

1. During the first three (3) years of service:
  - a. The affected employee's daily rate of pay on July 1, 1994, multiplied by 35 percent multiplied by the number of unused sick leave days held on July 1, 1994.
  - b. The affected employee's daily rate of pay at the time sick leave is earned times 35 percent times the number of days of accumulated sick leave earned after July 1, 1994.
2. During the fourth (4<sup>th</sup>) through sixth (6<sup>th</sup>) years of service:
  - a. The affected employee's daily rate of pay on July 1, 1994, multiplied by 40 percent multiplied by the number of unused sick leave days held on July 1, 1994.
  - b. The affected employee's daily rate of pay at the time sick leave is earned times 40 percent times the number of days of accumulated sick leave earned after July 1, 1994.
3. During the seventh (7<sup>th</sup>) through ninth (9<sup>th</sup>) years of service:

- a. The affected employee's daily rate of pay on July 1, 1994, multiplied by 45 percent multiplied by the number of unused sick leave days held on July 1, 1994.
  - b. The affected employee's daily rate of pay at the time sick leave is earned times 45 percent times the number of days of accumulated sick leave earned after July 1, 1994.
4. During the tenth (10<sup>th</sup>) through the twelfth (12<sup>th</sup>) year of service:
  - a. The affected employee's daily rate of pay on July 1, 1994, multiplied by 50 percent multiplied by the number of unused sick leave days held on July 1, 1994.
  - b. The affected employee's daily rate of pay at the time sick leave is earned times 50 percent times the number of days of accumulated sick leave earned after July 1, 1994.
5. During and after the thirteenth (13<sup>th</sup>) year of service:
  - a. The affected employee's daily rate of pay on July 1, 1994, multiplied by the number of unused sick leave days held on July 1, 1994.
  - b. The affected employee's daily rate of pay at the time sick leave is earned\* multiplied by the number of days of accumulated sick leave earned.
6. No employee who meets the eligibility requirements listed above may receive any compensation for sick leave payments unless they sign and execute the Payment of Sick Leave Upon Retirement Agreement provided by the Superintendent. This Agreement requires the retiring Board employee to seek, accept, and cash the first retirement benefit check issued by the Florida Retirement System.

The employee must qualify for "normal retirement" which under this policy shall mean retirement under plan A, B, C, D, E under the Florida Retirement System or any other plan established by the Legislature with either full or reduced benefits as provided by law. Normal retirement shall not be interpreted to include disability retirement.

\*Note: "At the time sick leave is earned" shall be interpreted to mean the value of sick leave at the end of each school year or at the time the affected employee retires, whichever comes first.

**T. Declared Emergency Paid Leave:**

1. A declared emergency is defined as one declared by federal, state, or local officials.
2. Employees may receive Declared Emergency Paid Leave when one or more of the following conditions exist:
  - a. The Superintendent or designee is authorized to declare that an emergency event exists for which said leave is available.
  - b. The employee is unable to return to work due to required evacuation.
  - c. The employee sustains personal injury or significant damage to their personal residence.
  - d. The employee is needed to assist a family member with a storm related health emergency.
  - e. The employee is required to participate in relief efforts.
  - f. The employee's personal involvement is required for other emergency related circumstances.
3. Requests for leave must be recommended by the authorized supervisor for approval by the Superintendent or designee.
4. The employee is required to provide documentation of the condition(s) in subsection 1 above for which leave is requested.
5. Declared Emergency Paid Leave shall not exceed ten (10) days per declared emergency event unless authorized by the Superintendent.
6. Declared Emergency Paid Leave shall not be deducted from the employee's accrued leave.



# EXHIBIT IV

**Office of the Chief Auditor**

**Joris Jabouin, Chief Auditor**

600 Southeast Third Avenue

Fort Lauderdale, Florida 33301

phone: 754-321-2400 • fax: 754-321-2719

[joris.jabouin@browardschools.com](mailto:joris.jabouin@browardschools.com)

[www.browardschools.com/audit](http://www.browardschools.com/audit)

**The School Board of  
Broward County, Florida**

Lori Alhadeff, Chair  
Debra Hixon, Vice Chair

Torey Alston  
Brenda Fam, Esq.  
Daniel P. Foganholi  
Dr. Jeff Holness  
Sarah Leonardi  
Nora Rupert  
Dr. Allen Zeman

Dr. Vickie L. Cartwright  
Superintendent of Schools

January 11, 2023

Ashley Moody, Attorney General  
Department of Legal Affairs  
The Capitol PL01  
Tallahassee, FL 32399-1050

**RE: *Request for Advisory Opinion from The School Board of Broward County, Florida***

Dear Attorney General Moody:

I have been authorized and directed by The School Board of Broward County, Florida (“SBBC”) to respectfully request an advisory opinion from the Attorney General upon the questions of state law presented in this letter.

Persons to Whom Opinions May Be Issued

Section 16.01(3), Florida Statutes, states in pertinent part as follows:

**16.01 Residence, office, and duties of Attorney General.**—The Attorney General:

\* \* \*

(3) Notwithstanding any other provision of law, shall, on the written requisition of the... political subdivision, give an official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer.

\* \* \*

Pursuant to Section 1.01(8), Florida Statutes, The School Board of Broward County, Florida (“SBBC”) is among the political subdivisions of the State of Florida to whom the Attorney General may issue advisory opinions on questions of interpretation of state law. On December 13, 2022, all eight (8) of the School Board Members who had taken the oath of office approved Agenda Item BB-1 [copy attached hereto as Exhibit A]. The agenda item directed me as SBBC’s Chief Auditor to request an outside opinion from the Florida Attorney General or the Florida Auditor General regarding whether separation agreements approved by the school district administration regarding three (3) school district employees were precluded under state laws governing severance.

### Question of State Law Presented for Opinion

Question: Whether the separation payment(s) made as part of Separation Agreements between SBBC and three employees were permitted by Section 215.425, Florida Statutes, which governs severance pay.

### Description of Facts and Circumstances

Recently, three (3) school district employees resigned from their employment with SBBC after they were named in the *Final Report of the Twentieth Statewide Grand Jury*, Case No. SC19-240, before the Florida Supreme Court [copy attached hereto as Exhibit B]. The grand jury report was issued April 16, 2021 - but was not publicly released by the Florida Supreme Court until August 19, 2022. The school district administration gave each of those employees the option to resign, or each would face investigation regarding the findings in the grand jury report pertaining to that specific employee. Prior to resigning, each of the employees executed a "Separation Agreement" in which each employee waived certain rights they possessed to assert certain legal claims against SBBC. In return for and in consideration of the employees' waiver of such rights, SBBC paid those employees the following sums of money under the Separation Agreements:

Employee 1: His annual salary was \$144,769. He resigned from the District and received compensation under his Separation Agreement in the amount of \$93,500 in exchange for his waiver of rights to assert claims against SBBC. A copy of Employee 1's Separation Agreement is attached hereto as Exhibit C.

Employee 2: His annual salary was \$197,641. He resigned from the District and received compensation under his Separation Agreement in the amount of \$100,000 in exchange for his waiver of rights to assert claims against SBBC. A copy of Employee 2's Separation Agreement is attached hereto as Exhibit D.

Employee 3: His annual salary was \$119,579. He retired from the District and received compensation under his Separation Agreement in the amount of \$43,500 in exchange for his waiver of rights to assert claims against SBBC. A copy of Employee 3's Separation Agreement is attached hereto as Exhibit E.

### Memorandum of Law Upon Question Presented

Questions have been raised as to whether SBBC's payments to the three (3) employees under their respective Separation Agreements were permitted by Section 215.425, Florida Statutes, which states in pertinent part as follows:

#### **215.425 Extra compensation claims prohibited; bonuses; severance pay.—**

\* \* \*

(4)(b) On or after July 1, 2011, an officer, agent, employee, or contractor may receive severance pay that is not provided for in a contract or employment agreement if the severance pay represents the settlement of an employment dispute. Such severance pay may not exceed an amount greater than 6 weeks of compensation....

\* \* \*

(d) As used in this subsection, the term “severance pay” means the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated....

\* \* \*

Pursuant to Section 215.425(4)(d), Florida Statutes, a public employee, whose contract does not provide for severance, may receive severance of an amount not to exceed six (6) weeks of pay - if the severance represents the settlement of an employment dispute. For purposes of the Section 215.425(4)(d), Florida Statutes, “severance” is defined as “...the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated.” When applying the foregoing definition of severance, the most operative language for construction of the statute is “*compensation... for employment services yet to be rendered...*”. (emphasis added).

When determining whether a payment is “*severance*”, *the analysis turns on the purpose for the payment*. Under SBBC’s Separation Agreements, the payment was not for services yet to be rendered by the respective employees, but rather, was paid in consideration for (1) the waiver by the employees of present or future claims against SBBC; (2) their waiver of the right to seek reemployment; (3) their waiver of the right to disparage the SBBC; (4), their respective agreements to indemnify and release SBBC for any claims those employees may have against the SBBC; (5) and waiver of the right to attorney fees, among other waivers and releases. In return for and in consideration of their respective comprehensive and robust waiver of rights and acceptance of risk, each of the three (3) employees received *separate payment therefore*, which is the most typical consideration given when parties agree to the settlement of future claims and an assignment of risk.

Section 215.425, Florida Statutes, contains no limitations on a government agency’s ability to settle claims or manage risk, including the risk of costly and protracted litigation. Any suggested imposition of such unspecified limitations would be contrary to public policy and would be in derogation of a district school board’s rights under Section 1001.32(2), Florida Statutes, to “exercise any power except as expressly prohibited by the State Constitution or general law.”

As it has been narrowly defined by Section 215.425, Florida Statutes, the term “severance” is limited to sums paid in the settlement of an employment dispute, *related to employment services yet to be rendered*, and limits payment for that employment dispute to the equivalent of 6 weeks of pay. However, the payments made to the three (3) employees under the Separation Agreements were not for employment services yet to be rendered as “severance” is defined by Section 215.425 and did not constitute severance as that term is narrowly defined by law. Accordingly, since the payments under the Separation Agreements did not constitute *severance* for the purposes of Section 215.425, Florida Statutes, the payments made under the Separation Agreements is beyond the scope of that law and the SBBC had no limitation upon the consideration that it could pay to the employees for their waiver of rights thereunder.

While these Separation Agreements were provided to the employees around the approximate time that they agreed to resign or retire from the SBBC, the contemporaneous timing of the payment of consideration to them for waiver of claims other than those “for employment services yet to be performed” does not cause payments for the waiver of such rights and other claims to become “severance” payments. Although the timing of the payments may be a factor to consider, the legislature did not prescribe it as the determinative factor. But it wisely included the requirement of intent for the payment, i.e., that the payment be “for employment services yet to be rendered.” If the legislature had failed to include the intent requirement within Section 215.425’s definition of “severance,” a government agency’s ability to manage risk would have been significantly and adversely impacted. Moreover, the timing of the payment is in line with the purpose behind it, i.e., the respective employees’ waiver of rights, waiver of claims, acceptance of risk, covenant not to disparage, and provision of further assurance to SBBC that the agency would not thereafter have to engage in costly and protracted litigation with these individuals.

In conclusion, the payments made to the three (3) employees under the Separation Agreements do not meet the statutory definition of severance and are not precluded by Section 215.425, Florida Statutes. The payments made by SBBC under the Separation Agreements were not made “for employment services yet to be rendered,” but rather were consideration for the employees’ comprehensive and robust waiver of rights, waiver of claims, and acceptance of liability.

Note: SBBC’s Interim General Counsel did not issue a written memorandum of law to its governing board regarding the questions presented in this request for an advisory opinion. Her verbal opinion provided to SBBC upon those matters is set forth in the foregoing legal analysis.

#### Certification of Completion of Requirements

The undersigned person making this request for advisory opinion on behalf of and at the direction of The School Board of Broward County, Florida (“SBBC”) hereby certifies that the requirements of Section 16.01(3), Florida Statutes, and of the policies of the Attorney General regarding request of an advisory opinion have been complied with and satisfied.

---

JORIS M. JABOUIN, Chief Auditor  
The School Board of Broward  
County, Florida

DATED: January 11, 2023

C: Lori Alhadeff, Chair  
All School Board Members  
Dr. Vickie L. Cartwright, Superintendent of Schools  
Marylin C. Batista, Interim General Counsel  
Robert Paul Vignola, Deputy General Counsel  
Judith M. Marte, Deputy Superintendent – Operations

Enclosures:

Exhibit A: Agenda Item BB-1 – RSBM 12/13/22  
Exhibit B: *Final Report of the Twentieth Statewide Grand Jury*, Case No. SC19-240  
Exhibit C: Employee 1's Separation Agreement [redacted]  
Exhibit D: Employee 2's Separation Agreement [redacted]  
Exhibit E: Employee 3's Separation Agreement [redacted]

fritz/allwork/grandjury/separationagreement/moody-requestadvisoryopinion1-10-2023



Status: SPECIAL ORDER

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

2022-12-13	Regular School Board Meeting
<b>CATEGORY:</b>	BB. Board Members
<b>DEPARTMENT:</b>	Board Member - District 2

Agenda Item Number:	BB-1.
Consent or Open Item:	Open
Special Order:	YES
Time for Special Order:	1:00 PM

<b>TITLE:</b>	<b>Motion to Direct the Chief Auditor to Seek an Outside Opinion</b>
<b>REQUESTED ACTION:</b>	<b>Motion to Direct the Chief Auditor to Seek an Outside Opinion from either the Florida Auditor General or The Florida Attorney General on Recent Administrative Action on Employee Separation Agreements. District 2.</b>

**STRATEGIC ALIGNMENT**

Which strategic goal(s) best aligns to this item?

N/A	
-----	--

Is approval of this agenda item required to implement a tactic included within an initiative of the Interim Goals? **NO**Will the implementation of this item have a direct impact on one of the 2027 Interim Guardrails? **NO***If YES, identify the primary metric and include the corresponding figures in the table below.**If NO, outline below how staff intends to evaluate the success/impact of this item/initiative.***Primary Goal & Metric:**

N/A	Corrective Actions
-----	--------------------

Level	Baseline	2027 Target	Most Current
District Total			

*Also identify any secondary metrics utilized to evaluate the success of this item/initiative.*

Metric	Baseline	Target

An outside opinion on a recent action will provide clarity that funds are handled appropriately.

**BACKGROUND, SUMMARY EXPLANATION, AND HISTORY OF ITEM**Was this item previously presented to the School Board? **NO**

School Board Member is seeking an independent opinion on recent action taken by the Administration to determine if the three separation agreements collectively are compliant with state law totaling approximately \$237,000. Furthermore, the outside opinion should opine on if the separation agreements are considered severance under state law. While the School Board of Broward County, Florida unanimously supported immediate, comprehensive action based on findings/recommendations from the Grand Jury report, the outside opinion will provide additional clarity on an operational action by the Administration, ensuring funds were handled appropriately.

**RELATED ITEMS**


**EXHIBITS**




**DEPENDENCIES:**

*Outline critical dependencies that are associated with successful implementation of this item/initiative.*

1.
2.

**RESOURCES REQUIRED****Budget**

Are additional funds required in relation to the approval of this item?

NO
----

*If YES, How much additional funding is necessary to implement this item?*

*If NO, How much existing funding will be spent to implement this item?*

SOURCE OF FUNDS:

**Spending Authority**

Is additional spend authority required for this item?

NO
----

*If YES, How much additional spending authority is necessary to implement this item?*

**Staffing**

Is additional staff required in relation to the implementation of this item?

NO
----

*If YES, identify the number of additional positions and the estimated costs for the additional staff.*

No.	Cost
<input type="text"/>	<input type="text"/>

**BOARD ACTION:**

(For Official School Board Records Only)

**APPROVED**

**SOURCE OF ADDITIONAL INFORMATION**

Name:

Phone:

Name:

Phone:

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

Senior Leader & Title

Signature

Electronic Signature

Form \$4189 Revised 10/22

VLC/EL

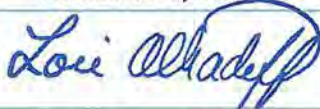
Approved in

Open Board

Meeting On:

November 22, 2022

By:



School Board Chair



# EXHIBIT V



ASHLEY MOODY  
ATTORNEY GENERAL  
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL

PL-01 The Capitol  
Tallahassee, FL 32399-1050  
Phone (850) 245-0140  
Fax (850) 922-3969  
<http://www.myfloridalegal.com>

February 27, 2023

Mr. Joris M. Jabouin  
Chief Auditor  
Broward County School Board  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

Ms. Marilyn Batista  
Interim General Counsel  
Broward County School Board  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

Dear Mr. Jabouin and Ms. Batista,

Our office has received the opinion request dated January 12, 2023, which Mr. Jabouin submitted on behalf of the Broward County School Board ("SBBC"). It appears from the request that "separation payment(s)" have already been "made as part of Separation Agreements between SBBC and three employees."<sup>1</sup> The SBBC now seeks a determination of whether such payments were "permitted by Section 215.425, Florida Statutes."<sup>2</sup>

Pursuant to the Office of the Attorney General Policy for requesting an opinion from the Attorney General, this office declines to answer "questions an official or agency has already acted on and is seeking to justify (such as the expenditure of public funds or the adoption of an ordinance)."<sup>3</sup> Because SBBC has already authorized the "separation payment(s)" and now seeks a determination about them, we will not comment further. Please contact me should you seek additional information about this office's policy applicable to requesting Attorney General Opinions.

Sincerely,

Teresa L. Mussetto  
Senior Assistant Attorney General

<sup>1</sup> See letter from Joris M. Jabouin to Attorney General Moody dated January 12, 2023 at 2 (on file with the office of the Florida Attorney General).

<sup>2</sup> *Id.*

<sup>3</sup> See Requesting an Attorney General Opinion, <http://myfloridalegal.com/pages.nsf/Main/DD177569F8FB0F1A85256CC6007B70AD> (last visited February 29, 2023).

# EXHIBIT VI



## Requesting an Attorney General Opinion

### I. General Nature and Purpose of Opinions

**Advisory:** Issuing legal opinions to governmental agencies has long been a function of the Office of the Attorney General. Attorney General Opinions serve to provide legal advice on questions of statutory interpretation and can provide guidance to public bodies as an alternative to costly litigation. Opinions of the Attorney General, however, are not law. They are advisory only and are not binding in a court of law.

**Questions of Law:** Attorney General Opinions are intended to address only questions of state law, not questions of federal law, questions of fact, mixed questions of fact and law, or questions of executive, legislative, or administrative policy. An Attorney General Opinion is not a substitute for the advice and counsel of the attorneys who represent governmental agencies and officials on a day to day basis.

**Declaratory Judgment:** Particularly difficult or momentous questions of law should be submitted to the courts for resolution by declaratory judgment. When deemed appropriate, this office will recommend this course of action. Similarly, there may be instances when securing a declaratory statement under the Administrative Procedure Act will be appropriate and will be recommended.

### II. Types of Opinions Issued

There are several types of opinions issued by the Attorney General's Office. All legal opinions issued by this office, whether formal or informal, are persuasive authority and not binding.

**Formal:** Formal numbered opinions are signed by the Attorney General and published in the Report of the Attorney General. These opinions address questions of law that are of statewide concern.

**Informal:** This office also issues a large body of informal opinions. Generally, these opinions address questions of more limited application. Informal opinions may be signed by the Attorney General or by the drafting assistant attorney general. Those signed by the Attorney General are generally issued to public officials to whom the Attorney General is required to respond. While an official or agency may request that an opinion be issued as a formal or informal, the determination of the type of opinion issued rests with this office.

### III. Persons to Whom Opinions May Be Issued

**Public Officials:** The responsibility of the Attorney General to provide legal opinions is specified in section 16.01(3), Florida Statutes, which provides that the Attorney General:

Notwithstanding any other provision of law, shall, on the written requisition of the Governor, a member of the Cabinet, the head of a department in the executive branch of state government, the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, or the Minority Leader of the Senate, and may, upon the written requisition of a member of the Legislature, other state officer, or officer of a county, municipality, other unit of local government, or political subdivision, give an official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer.

**Executive & Legislative Branch:** The statute thus requires the Attorney General to render opinions to the Governor, a Cabinet member, the head of a department in the executive branch, the Speaker of the House, the President of the Senate, the Minority Leader of the House, or the Minority Leader of the Senate.

**State & Local Government:** The Attorney General may issue opinions to a Legislator, another state officer, or an officer of a county, municipality, other unit of local government, or political subdivision. If an Attorney General Opinion is being requested by a member of the Legislature, the member must certify on the Certification form (below) that the member has attempted to obtain an opinion on the issue from the general counsel of the member's chamber, provide a copy of any written opinion obtained, and submit a copy of the opinion request to the presiding officer of his or her chamber at the time the request is provided to this office. In addition, the Attorney General is authorized to provide legal advice to state attorneys pursuant to section 16.08, Florida Statutes, and to the representatives from Florida in Congress regarding matters within the scope of section 16.52(1), Florida Statutes.

**Boards and Commissions:** Questions relating to the powers and duties of officials who sit on a public board or commission (or other collegial public body) should be requested by a majority of the members of that body and not merely by a dissenting member or faction. A request from a board should, therefore, clearly indicate that the opinion is being sought by a majority of its members. An opinion request on behalf of a board or commission should be accompanied by a resolution, minutes, or transcript reflecting a vote to seek the opinion. If the board or commission is represented by counsel, the board or commission must obtain a written opinion of counsel and include that opinion with the request.

#### IV. When Opinions Will Not Be Issued

Private Citizens: Section 16.01(3), Florida Statutes, does not authorize the Attorney General to render opinions to private individuals or entities, whether their requests are submitted directly or through governmental officials. An Attorney General Opinion will not, therefore, be issued when the requesting party is not among the officers specified in section 16.01(3), Florida Statutes.

Non-Official Duties: An opinion request must relate to the requesting officer's own official duties. An Attorney General Opinion will not, therefore, be issued when an officer falling within section 16.01(3) asks a question that does not relate to his or her own official duties.

Disputes: Opinions should not be sought to arbitrate a political dispute between agencies or between factions within an agency or merely to buttress the opinions of an agency's own legal counsel. Nor should an opinion be sought as a weapon by one side in a dispute between agencies.

Court Matters: In order not to intrude upon the constitutional prerogative of the judicial branch, opinions generally are not rendered on questions pending before the courts or on questions requiring a determination of the constitutionality of an existing statute or ordinance.

Local Codes, Ordinances, or Charters: Opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances, or charters rather than the provisions of state law. Instead such requests will usually be referred to the attorney for the local government in question.

Other Agencies: In addition, when an opinion request is received on a question falling within the statutory jurisdiction of some other state agency, the Attorney General may, in the exercise of discretion, transfer the request to that agency or advise the requesting party to contact the other agency. For example, questions concerning:

- the Code of Ethics for Public Officers and Employees may be referred to the Florida Commission on Ethics;
- the Florida Election Code may be directed to the Division of Elections in the Department of State; or
- the interpretation of any agency's rules may be referred to the agency

Discretion: As quoted above, section 16.01(3), Florida Statutes, provides for the Attorney General's authority to issue opinions "[n]otwithstanding any other provision of law," thus recognizing the Attorney General's discretion to issue opinions in such instances.

The following are examples of the kinds of questions the Attorney General may decline to address:

- questions of a speculative nature;
- questions from private individuals or entities;
- questions requiring factual determinations;
- questions which cannot be resolved due to an irreconcilable conflict in the laws (although the Attorney General may attempt to provide general assistance);
- questions of executive, legislative, or administrative policy;
- questions on matters that are addressed in proposed legislation currently before the Legislature;
- matters involving intergovernmental disputes unless all governmental agencies concerned have joined in the request;
- moot questions;
- questions pending before a court or administrative forum;
- questions involving an interpretation only of local codes, charters, ordinances, or regulations; or
- questions the official or agency has already acted on and is seeking to justify (such as the expenditure of public funds or the adoption of an ordinance).

#### V. Form In Which Request Should Be Submitted

Before submitting an opinion request, it is important that you read all of the information in Parts I through VI of this web page, explaining how to comply with the relevant statutes and the policies of the Attorney General.

Requests for opinions must be submitted in writing on official agency letterhead or by the attorney representing the agency. Requests should be addressed to:

Attorney General  
Department of Legal Affairs  
The Capitol PL01  
Tallahassee, Florida 32399-1050

Questions of Law: The request should clearly and concisely state the question of law to be answered. Sufficient elaboration should be provided so that it is not necessary to infer any aspect of the question or the situation on which it is based.

Description of Facts and Circumstances: If the question is predicated on a particular set of facts or circumstances, all material facts should be set out. If there is existing litigation before the courts involving the requesting party concerning the same subject matter, the nature of the litigation should be fully discussed. If litigation has been threatened, any documents evidencing the threat should be disclosed. If litigation develops during the pendency of the opinion request, staff in this office should be advised and all material documents disclosed with the opinion request.

Memorandum of Law: In order to facilitate a timely response to opinion requests, this office requires that the attorneys for government and other public entities requesting an opinion provide this office with a memorandum of law to accompany the request. The memorandum should include or attach the opinion of the requesting party's legal counsel, a discussion of the legal issues involved, and references and citations to relevant constitutional provisions, statutes, charters, administrative rules, judicial decisions, Attorney General Opinions, etc. Copies of any court decisions unavailable from online legal research databases should be attached to the memorandum of law. When counsel has previously provided a written legal opinion on the issue(s) to the party requesting the opinion or the board, commission, agency, or public body of which the requesting party is a member, a copy of the opinion must be included with the opinion request.

Interested Parties: Input from other public officials, organizations, or associations representing public officials may be requested by this office prior to issuing an opinion. Interested parties may also submit a memorandum of law and other written material or statements for consideration. Any such material will be attached to and made a part of the permanent file of the opinion request to which it relates.

Certification: For any request other than from the Governor, a Cabinet member, the head of a department in the executive branch, the Speaker of the House, the President of the Senate, the Minority Leader of the House, or the Minority Leader of the Senate, this office requires that an opinion request be accompanied by a

certification that he or she has complied with the requirements of section 16.01(3) and the policies of the Attorney General as stated herein. The Certification shall be completed, signed, and submitted with the opinion request.

## **VI. Miscellaneous**

Formal Opinions Database: This office provides access to formal Attorney General Opinions through a searchable database from the Attorney General's website. Opinions issued between 1895 and 1981 may be found in the Attorney General Opinion Indexes - 1895 to 1981.

Informal Opinions: Copies of informal opinions may be obtained from the Opinions Division of the Attorney General's Office at 850-245-0140.

Updating Opinions: The Attorney General's Office does not routinely update previously issued opinions. Thus, older opinions of the Attorney General may not reflect current statutes or case law. Before relying on an opinion from the Attorney General's Office, a search should be undertaken for changes in the law upon which the opinion is based.

Dual Officeholding: As an alternative to requesting an opinion, officials may wish to use the informational pamphlet prepared by this office on dual officeholding for public officials.

Sunshine Manual: The Attorney General prepares the Government in the Sunshine Manual, which explains the laws under which Florida ensures public access to the meetings and records of state and local government. The manual is available here or through the First Amendment Foundation.

Attorney General Reports may be ordered here.

Additional information may be obtained by contacting the Opinions Section of the Attorney General's Office at 850-245-0140.

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### Florida Toll Free Numbers:

- Fraud Hotline 1-866-966-7226
- Lemon Law 1-800-321-5366