

The School Board of Broward County, Florida
AUDIT COMMITTEE

MINUTES OF AUDIT COMMITTEE MEETING

January 28, 2010

Mr. Steve Hurst, Vice Chair, called the Audit Committee meeting to order at 12:30 p.m. at the Kathleen C. Wright Building in the 1st Floor Board Room. Members and guests were introduced.

Members Present:

Mr. Anthony De Meo, CPA
Mr. Joey Epstein, CPA
Ms. Charlotte Greenburg
Mr. John Herbst, CPA
Mr. Charles Howell, CPA
Mr. Roy Karlsen
Dr. Henry Mack
Mr. Neal Shapiro

Staff Present:

Mr. James Notter, Superintendent of Schools
Mr. Donnie Carter, Chief Operations Officer
Mr. Patrick Reilly, Chief Auditor, Office of the Chief Auditor (OCA)
Mr. Dave Rhodes, Director Facility Audits, OCA
Ms. Delores McKinley, Director, Internal Accounts, OCA
Ms. Vicki Hill, Facility Auditor, OCA
Mr. Mark Magli, Property Audit Supervisor, OCA
Ms. Patricia McLaughlin, Confidential Clerk Specialist C, OCA
Ms. Megan Gonzalez, Confidential Clerk Specialist B, OCA
Ms. Sharon Airaghi, North Area Superintendent
Dr. Leontine Butler, Central Area Superintendent
Dr. Joel Herbst, South Area Superintendent
Mr. Jeff Moquin, Support Operations

Guests Present:

Mr. Manuel Garcia, CPA, GLSC & Company, PLLC
Ms. Barbara Zembron, PTA
Ms. Patricia Mazzei, Miami Herald
Ms. Akilah Johnson, Sun Sentinel

Old Business

A motion was made to approve the minutes for the December 10, 2009 Audit Committee meeting. Motion carried.

An Orientation meeting, chaired by Ms. Charlotte Greenburg, was held for Audit Committee members from 11:30 – 12:30. Members present were as follows:

Mr. Steve Hurst, Vice Chair
Mr. Anthony De Meo, CPA
Ms. Charlotte Greenburg
Mr. John Herbst, CPA
Mr. Charles Howell, CPA
Dr. Henry Mack

Regular Meeting

Current Status Report – Follow-Up Items

Mr. Steve Hurst requested that the agenda be changed in order to present Item #3 first, since one of the Audit Committee members had to leave early.

Follow-Up Item #3 - Update on the Audit of the Ashbritt, Inc. and C&B Services Invoices for District Portable Repairs Related to Hurricane Wilma – July 23, 2009

Mr. Patrick Reilly gave an update on the Ashbritt Audit that was presented to the Committee on July 23, 2009 and stated that Mr. Ed Marko of the District's Office of General Counsel was handling the matter and he had recently hired a firm, Berkowitz Dick Pollack & Brant, Certified Public Accountants & Consultants, LLP, to review the Audit. "We have met with this firm once and they are performing their scope of services for Mr. Marko."

Mr. Hurst asked if there was any timeline for this review.

Mr. Dave Rhodes stated "When we met with this company last week, he said he had a timeline of two to three weeks."

Dr. Henry Mack asked "Regarding this morning's newspaper article, how can this firm perform an audit or verify your audit without looking at workpapers?"

Mr. Reilly responded "I'm not sure of the completeness of that statement. I have no idea what their next step is. They might possibly come to look at the workpapers. I haven't been notified yet; we did offer to provide them and at this point, they have not requested them, but that doesn't mean that they will not request them. I don't know their scope of service and I can't say what they are going to look at."

Ms. Charlotte Greenburg asked "Dave, did you offer to give them the workpapers?"

Mr. Rhodes replied "Yes."

Ms. Greenburg asked "What did they say?"

Mr. Rhodes answered “We met for about four hours; we went through some of the different questions that they had asked us, and when they were leaving, I asked them if they would like a copy and they said they would get back with us.”

Ms. Greenbarg addressed a question to the Superintendent, “I’ve got an e-mail from Stephanie Kraft stating that the Board was not aware that they (the District) were hiring these auditors. Was the Board aware?”

Mr. James Notter replied “I did not tell the Board that they were hiring. The Legal Counsel, if you remember the process that I gave you, that ultimately, the case would be turned over to Legal and that is exactly what occurred. Legal Counsel, as they reviewed it, I believe, felt that they needed to have an external auditor redo it like an expert witness would, but that’s really Legal Counsel, it’s not the Superintendent. Truly, it’s not the Board. He’s the one who has to prepare the case that ultimately goes to some type of trial, if in fact, we get that far. It wouldn’t be for me to say that the General Counsel of the School District, who may have to try this case, has to come to me to ask me or has to go to the School Board to say ‘we’re going to hire an external auditor, because we need them’, really to me, that’s within the purview of Legal Counsel, who represents the School District, who was given the Ashbritt case.”

Ms. Greenbarg stated “I asked that because I remember when we met on July 23, 2009, you stated that you would not spend a lot of money and it would probably be someone in-house, like Tom Cooney who would review the case, rather than spending a lot of money, but now, we’re spending \$400 an hour on these people; is that correct?”

Mr. Notter replied “Again, Charlotte, I’m going to repeat myself again for the newspapers that are here and for the rest of the Audit Committee members who are here. Legal Counsel took over the case. They are the ones that felt the need to go out and start to look at an expert witness, in the event that they go to court. They are pursuing it from the context of having to go to court. They need to have an expert witness if they have to go to court, and push the half million dollars that we think we need, or the auditors said we need. I think it’s quite simple, I really do.”

Ms. Greenbarg continued “So, you are anticipating that they, that someone will file a lawsuit in this case?”

Mr. Notter replied “I don’t have a crystal ball.”

Ms. Greenbarg added “What I meant was, if nobody files suit, then I guess I’m wondering why we would spend money.”

Mr. Notter replied “Because you can’t get to the point of whether or not you’re gonna file a suit, unless you know how strong your case is.”

Dr. Mack asked “Is there a timeline for this to happen? In our experience over the last ten years, if you want something to die and not move, you give it to your School Board’s Counsel. We are waiting right now on a report that the Auditors did over four years ago and I don’t know who we

should be talking to to get that man to move, but if that is handled like things have been happening in the past, we will be here for a while. Do you understand what I am getting at?"

Mr. Notter answered "Absolutely."

Dr. Mack added "We've asked him, for example, to attend Audit Committee meetings and when I was the Chair, he was either here or I personally excused him. I'm no longer Chair. Do I need to say anything else?"

Mr. Notter replied "No."

Mr. Hurst asked "So, if I was to summarize, we may see him in the future?"

Ms. Greenberg asked "Did the District ever send these people a demand letter asking for the money?"

Mr. Reilly stated "No."

Dr. Mack stated "I heard someone down here say "No". The demand letter would have come from the attorney, so how do we have the answer to that?"

Mr. Reilly replied "Because I know he hasn't, based on my conversations with him."

Mr. Neal Shapiro stated "I'd like to get our specific due dates from our Legal Counsel's office of when this will be due. Also, is there a budget of how much they are going to allow this firm, if they're charging \$400 per hour; how much are they allocating to spend on this? We're going to spend more money on a finding. Whether or not they decide to go to trial is up to the School Board and Legal Counsel to decide. That, I understand, but I'm wondering how much they're spending. They told you, first I heard two weeks; then I heard that this happened a few weeks ago, I'm not hearing any sort of definitive date. I also wanted to clarify, Mr. Notter, I'm assuming that this is in the scope of the General Counsel to hire outside expert witnesses and that they are allowed to do that without getting Board approval."

Mr. Notter replied "It is my understanding, I will certainly confirm that with you, but clearly, that is my understanding. Let's take a look at it. Frankly, folks, from a logic standpoint, it is Legal Counsel who in fact, determines whether or not they need it and to what depth. When we look at the answer to your question of how much we are going to spend, there certainly is a target number, but nobody really knows right now. If you take the information that you have right now, and even Mr. Reilly just said, they may come back to talk with him. The trigger point of their coming back to talk to him is going to be what they find in their initial review or what the attorney needs to have."

Mr. Shapiro stated "Going back to what Dr. Mack had indicated, I'd like to make sure that we're not going to run in this endless circle in which the School Board is basically footing the bill. I don't have the benefit of having been here for years, but since you're telling me that there's a history that this thing just keeps on going; the Auditor did their report; they feel very strongly

that there is a specific amount that they (the District) overpaid; they've asked for the support, and General Counsel has an obligation to say what they are going to do, how they're going to handle this, they're seeking outside support, we need a timeline so we can resolve and finalize this issue."

Mr. Hurst asked "Would it be unrealistic to ask for a timeline?"

Mr. Reilly answered "I think at this point we need to ask our Legal Department."

Mr. Shapiro added "Another thing, can we ask for a motion to request that the General Counsel be present at the Audit Committee meetings? Can we make that request?"

Ms. Greenberg stated "We have (made that request), many times."

Mr. Shapiro asked "What would we need to do to make that a requirement?"

Dr. Mack said "The Chairman of the Committee can answer that."

Mr. Hurst stated he would be more than happy to call him.

Mr. Notter stated "Just a point of clarification, if you didn't hear the answer, I'm going to try to be as clear as I can. The Superintendent of Schools, Mr. Notter, will in fact, go to the General Counsel to request how much we project to spend on the external auditors and ask if he has a definitive timeline, knowing all the complexities of the world of law, but at least a preliminary timeline for the audit to be completed and the General Counsel to move to the next step."

Mr. Hurst said "Great, thank you."

Mr. Notter added "Those of you who know me well, knew I would make it clear for the record."

Mr. John Herbst stated "I'm new here, so I'll ask what may be a stupid question, but I'm not certain that I entirely understand why the General Counsel is hiring somebody to come in and question the validity of the report of the School Board's Auditor. The Auditor is the person who the General Counsel ought to be defending, not challenging. It seems to me the expert is Mr. Reilly and if there is an expert witness who wants to challenge the validity and integrity of the report, it ought to be the opposing side's auditor. Why are we auditing our own auditor? That almost strikes me as we're shopping for another opinion. That would be, if I turned that around, like saying 'I don't like the opinion of the General Counsel; let me go hire another attorney to validate the legal opinion of the General Counsel'. It seems to me that the Auditor is the one who we should all be getting behind. What am I missing?"

Mr. Notter stated "I will answer part of your question. The Superintendent of Schools and the School Board, clearly, are not shopping for an opinion different than our Auditor, OK? Second part, in terms of the validity of who, what, why, it's got to be the General Counsel answering it. He's the one who has to prepare to go to court; so the General Counsel will have to answer that.

Again, I'll put that in there with the other two questions that I will pose to the General Counsel. That's fundamentally what I can tell you."

Mr. Herbst continued "I know you don't speak for the General Counsel, but I'll ask the question again, because I'm just not clear on it. If the firm that the General Counsel has retained looks at this and comes back with a different conclusion than our Auditor came up with, which one is the right one? Is it our guy or the external guy that we hired to look at our guy's recommendations? Again, I know you don't speak for the General Counsel, but I pose the question."

Mr. Notter replied "The General Counsel will have to make the determination. The General Counsel is the one who represents this Corporation in a court of law. He's the one that's going to have to make some type of decision in terms of the next steps. If Auditor A comes in and says 'Auditor B, I can't validate Auditor B, so if you put me on the stand, I can't support it, that sends a whole different set of circumstances for the General Counsel to rule on."

Mr. Herbst answered "And that's absolutely my point, because by having retained Auditor B, we can no longer just stand here with Auditor A's conclusion, in and of itself, which right now, to me, stands perfectly well. If our Auditor has done a good job, and presumably he has, then we don't need to question the quality of the audit that our Auditor has done and now create doubt in anyone's mind as to how good an audit report it is. It seems to me that that's the job, again, of the opposing counsel, not our own counsel, but maybe I'm just on the wrong track here."

Dr. Mack stated "I think we all share your feelings. What troubles me more than anything, the gentleman over there, Mr. Manuel Garcia (GLSC & Company, PLLC) represents our external auditors. In order for that firm or his group to become external auditors for the District, they were interviewed by the Audit Committee to determine their qualifications to be our external auditors for the School Board. That process is not taking place in the model that we're dealing with right now. I have to share the Superintendent's position that we just don't know and just do a lot of praying, because this could potentially be embarrassing for the District or we could come out smelling like a rose. Right now, I don't really think we know the outcome, do you, Jim?"

Mr. Notter replied "Absolutely not, if I had a crystal ball . . ."

Mr. Hurst asked Mr. Joey Epstein, who would be leaving early, if he had any comments.

Mr. Epstein stated "I was a Partner with Berkowitz Dick Pollack & Brant for some time. In terms of the quality of a forensic firm, you can be very comfortable. They are one of the better companies in that arena. I'm saying that having worked there, not being there now. I personally have no problem that the attorney had to hire a consultant expert witness at this point in time, because that's how these types of matters work. Whether we like it or don't like it, other than I hope their fee will be within reason, my question that probably also can't be answered would be this. Our firm does forensic accounting and we couldn't do the work here, but when it comes to construction contracts and consulting and litigation that could arise, we have full time construction and expert witnesses that do that kind of work. I wasn't familiar that Berkowitz Dick Pollack & Brant (BDP&B) had those types of experts. I'm hoping that they gave some type of references that they do that type of work. The litigation arena is so large; you can't be an

expert at everything. Again, I have no problem with any of those things or that firm, as long as somebody was made comfortable since this is such a very specific niche within the litigation arena, that they had that type of experience. I would have liked to know who their references were and I know that's not something you can answer here, but that's my comments on that."

Mr. Shapiro stated "That's General Counsel."

Mr. Anthony De Meo stated "It's important to know if they're being hired as expert witnesses or consultants. If they're consultants, that's privileged information. If they're expert witnesses, I think some very good points have been made. I might need to ask this question directly to General Counsel."

Mr. Hurst clarified "Your question is whether they are acting in the capacity of a consultant or expert witness?"

Mr. De Meo stated "an expert witness is different."

Mr. Hurst stated "I won't give my opinion having worked in the arbitration arena, as to what expert witnesses can disclose. This is a different venue. I'll just say that I'm familiar with working with expert witnesses."

Ms. Greenbarg asked "What would be privileged if they were consultants?"

Mr. Hurst commented "I think we just need some direction. Usually what you are looking for is the opposing counsel asking questions. What is it that the expert will testify to? That's what they're looking for."

Dr. Mack asked "If they're consultants engaged by the School Board, they lose their independence. If they're expert witnesses, they retain that. It would make no sense, legally, for them to hire a consultant to come in, because that consultant is under contract with the School Board, and the School Board is his boss. I don't know what they're doing, but to me, it just sounds funny, and that's because Counsel is not here to advise us."

Ms. Greenbarg asked "Has this ever happened before on an audit?"

Mr. Hurst asked for a clarification as to whom the question was directed.

Ms. Greenbarg replied "To anyone who can answer it".

Mr. Reilly stated "I can't say if Mr. Marko ever had to hire a consultant. We have had cases that have gone on and we've recovered monies through our attorney. In most cases, our audits present what we think is the amount we should ask for. Normally, I think he decides whether he can or cannot pursue it. For example, the South Broward audit, where the school recovered \$500,000; I'm not aware that he used any of his cadre attorneys."

Ms. Greenberg stated “I don’t mean his attorneys. Did this District ever hire an audit company to audit our auditor’s work?”

Mr. Reilly replied “Not that I’m aware of, no.”

Ms. Greenberg asked “Did I hear from Pat in one of our conversations that Mr. Marko mentioned that Ashbritt was very upset that they are losing business or did I misunderstand that?”

Mr. Reilly stated “When we first met, he (Marko) had mentioned that, but I think that was pretty well stated in the media. He did mention that they had told him that they were concerned that their company name was being tarnished.”

Ms. Greenberg replied “It happens sometimes.”

Mr. Reilly stated “My status on this is, we did the audit, diligently looked at the documentation, performed our process of auditing confirmation, contacting all relevant people; we produced our report. Once completed, as always, we turned it over for our General Counsel to take action. In this case, we feel confident that we were overbilled by the contractor. Normally, in the past, there were times where we had issued a demand letter to the contractor and we would go from there. Sometimes in many cases, it ended up with a settlement. Sometimes it ended up in court. I haven’t seen that lately. As Ms. Fertig said at the last meeting, she thought that rather than an accounting firm looking at the report, a legal team that specializes in litigation should look at it. They may have used a firm to assist them, but I think we’re at a point now of deciding what portion or what they feel they can pursue against the Ashbritt company based on our findings in our report, which are made up of 4 or 5 specific items which make up the \$765,000. We shouldn’t be speaking for Mr. Marko. We need to ask Mr. Marko what the scope of that firm’s (BDP&B) services are right now and his plan and timeline. I think that’s the right approach to ask those specific questions.”

Mr. Hurst stated “I don’t see any motion at this point, other than the general discussion that we’ve had, other than to put this item back on the next meeting, with a follow-up. It was mentioned that there would be a response back.”

Mr. Rhodes stated “Regarding the response back from the firm, it was not specifically, ‘we will get back to you’, it was, ‘we’ll get back to you if we need to’, if I’m understanding your question correctly.”

Mr. Hurst stated “My question is, I would imagine that if you hadn’t heard from someone in a while, you would kind of nudge them.”

Mr. Rhodes stated “I’ve done that, I sent him an email memorializing our original meeting and stated that ‘we’ve offered you the comprehensive set of workpapers and they are still available, as are we, to help you with any questions you may have to continue your review’. We told them, ‘please feel free to call us anytime.’”

Mr. Hurst stated “What I would like is to have you make a phone call, send him an email, approximately two weeks from now, just to memorialize that you are following up, ask them what their status is, etc.”

Mr. John Herbst asked “Just curious, how do we get the General Counsel here to discuss this?”

Mr. Hurst said “I will call him personally. If I can meet with him or if he’s willing to come up with a solution, I’ll let you know in the next few days.”

Ms. Greenberg added “I’m looking at this as something that has never happened before. I don’t want this to set a precedent.”

Mr. Hurst replied “It’s not so much as a precedent, I’m saying is to have the General Counsel here on an ongoing basis, either himself, or a representative to answer questions regarding all issues currently before the Audit Committee.”

Ms. Greenberg continued “I understand that, but in this particular matter, no one seems to know, except the General Counsel what the answers are.”

Mr. Hurst replied “I’ve had to deal with that in other issues, I don’t want to make it sound like it’s clandestine or anything, but if it’s a large corporation and compliance and legal issues on lawsuits, no you’re not going to get much information, just their request for documentation and what they need from you. I’ll see what I can do.

Ms. Greenberg added “I just have to register my opinion that this is a first and it’s an insult to the Auditors.”

Mr. Hurst stated “Let’s see what the outcomes are before making that statement.”

Follow-Up Item #1 - Internal Fund Audits

Mr. Hurst asked for an update on the Internal Funds outstanding debts to the General Fund.

Mr. Reilly began “During our review of Internal Funds at the last meeting, the Committee requested a list. I was able to obtain a list, which we handed out today. It shows the balances due from each school and basically, these loans could be for band equipment, transportation expenses, or various other items. I noticed that a couple of schools showed a credit balance, which can be requested back to the school. This list shows the amount due for all the schools in the District.”

Mr. Charles Howell asked if there was a timeline for these debts to be paid back to the General Fund from the schools.

Mr. Reilly replied “Most do, typically many of the larger amounts were for band uniform purchases and there would be an item that would have gone to the Board on an agenda item and

it would have a repayment plan. The schools and booster clubs perform fundraisers to repay these debts. The smaller amounts would not require contracts or Board approval.”

Mr. Hurst asked “What’s considered a small amount?”

Mr. Reilly answered “I noted the ones that exceed \$100,000 are ones that definitely have a large debt to be repaid. The smaller ones of approximately \$6,000 or \$7,000 or less are most likely for transportation services that were provided to the school that are reimbursable to the General Fund.”

Discussion followed. Mr. Reilly asked Ms. Delores McKinley if there were other items she had noted in this account.

Ms. McKinley stated that Athletic Payroll was another reimbursable item that could be charged to this account.

Mr. Hurst asked “In other words, most of these are on some type of payment schedule, but we’re not sure if they’re up to date or not?”

Mr. Shapiro stated “I think basically everyone wants to know what the plan is for repayment of these items.”

Mr. Reilly answered that each debt would have to be reviewed on a case-by-case basis regarding the status of each school.

Mr. Shapiro stated that he would like to see any schools over a certain threshold be assigned a specific due date and request the plan for repayment. “Is there a policy in place on when you need to repay internal funds?”

Mr. Reilly stated that he would check to see if there was a policy in place requiring that each school repay these funds by year end. “There are certain items that must be remitted to the General Fund, but I believe they are supposed to clear these items by the end of each year.”

Mr. Hurst asked if a footnote could be added showing which schools are current and which ones are not.

Mr. Reilly stated “Yes”.

Mr. De Meo asked “Are the controls over this area designed properly and are they operating effectively? Were all of these advances made in accordance with policy and approved by the appropriate persons? Lastly, are any of these in default?”

Mr. Reilly responded “Our last audit showed that the ones that are set up with repayment plans had not made any payments in a significant amount of time; there was an agreement to set up a payment plan, but there was no follow-up on that. There are procedures, for example, with transportation; they provide the service and then bill the schools. As far as the collection, I will

check to see what the timelines are and what the controls are, etc. It appears that there are controls and mechanisms to bill and request payment, but there seems to be some problems in the collection area.”

Mr. Reilly agreed to furnish an update during the May 2010 Audit Committee meeting.

Dr. Mack asked who was responsible for collecting these funds.

Mr. Reilly replied “That will be a part of my update.”

Mr. Notter added that the Area Superintendents would be responsible for ensuring that the Principals are following up on these items.

Dr. Joel Herbst replied “None of the schools are delinquent because the Budget office takes it (funds) out of the schools’ budgets every year. If there is a delinquent loan listed, it’s either inaccurate or the Budget office has not pulled the money out of the schools’ budgets. The schools do not control that; the Budget office controls the taking of that money out of the schools’ budgets.”

Mr. Howell asked “Is there a method that you can keep schools from incurring further debt until caught up if the debt is over a certain amount?” Can the schools’ budgets handle those amounts of \$24,000 and above?”

Mr. Reilly stated that could be an issue where the schools’ budgets do not have enough funds to take these monies out.

Mr. Roy Karlsen asked “Schools have committees that collect money, such as band and color guard committees. As a parent, I paid for some of these buses and bought my daughter’s band uniform. You stated that these monies are used to pay for uniforms and transportation, so I’m questioning how.”

Mr. Reilly stated “My understanding is that the schools pay back the vendor the initial large amount of money and then the schools pay back the budget through fundraising.”

Mr. Hurst asked that an update be presented at the next meeting. He then asked for self introductions by those people who entered the room after the meeting began.

Dr. Leontine Butler, Dr. Joel Herbst and Ed Marko introduced themselves.

Mr. Hurst asked Mr. Marko to have a seat at the table since there were some unanswered questions from the previous discussion.

Mr. Hurst began “Within the scope of what you can tell us, with the Ashbritt situation, there was an external auditor/expert witness that was hired. Were they hired as an expert or as a consultant?”

Mr. Marko answered “They were hired to review the documentation that would be then, they would be presented as a witness in a trial, if necessary, to support the amount of money for which they could testify to as being the accurate sum, whatever that is between the School Board and Ashbritt.”

Mr. Hurst asked “And that’s as an expert, then?”

Mr. Marko stated “That’s correct. They are not auditing the Auditor; they are preparing for my ability to take this matter forward, and the only way to do that is to be able to have someone who can testify in a court of law as to the facts and circumstances and be cross examined and have the documentation, etc., and that’s what we’re doing.”

Mr. Hurst added “If I could just elaborate on that for a moment, when you are saying that someone can testify as an expert; that means they’ve already been declared an expert in previous courts of law?”

Mr. Marko replied “These people are more than well qualified; in fact, which is interesting, not really based on their qualifications, but they represent the trustee, who is in the Rothstein case. The trustee has hired this particular firm. I’ve known of this firm for some time; they have more than the credibility that is needed to substantiate that they are an expert and they are going to come in and testify. The process I had explained to the School Board in an open meeting during a workshop and I indicated that it doesn’t make any difference if it is Ed Marko, in-house counsel or if we went to outside counsel. It doesn’t make any difference if it’s a construction case unrelated to Ashbritt or the other one or whatever it is; you would go out and have someone go through the process with the understanding that they will be put to the test on cross examination of the presentation of their evidence. Once they give me that information, I had indicated to the Board that I would then go to the party that I’m seeking remuneration from and share with them that this is the demand that we are making and we would hope that the matter would then be closed. If they turned and said to me, ‘Sorry, we’re not interested’, then that would leave us no other alternative but to file a lawsuit, which we would then do and we would proceed accordingly.”

Mr. Hurst asked “If somebody was being brought in, not to testify as an expert, who hasn’t been previously used as an expert, they can be disqualified and not allowed to testify?”

Mr. Marko replied “No, the law of experts is whether or not you look at the rule, if that’s the case, then nobody could be a new expert.”

Mr. Hurst stated “I understand.”

Mr. Marko stated “So the answer is no. If a person comes in who has all the qualifications, and has not had an accounting background and you wanted to bring him in to testify, you may have difficulty, because they could not substantiate what they utilized, unless that person had been involved in some accounting process in the last 20 years and so, the court determines the extent of which the person presents the qualifications and the question is, whether or not that person can

add to the facts and circumstances and assist the court. If the answer to that is yes, then the court will certify that person as an expert.”

Mr. Hurst stated “And the difficulty in using someone such as the internal auditors, the difficulty in using them, it may seem that they are biased in such a court case?”

Mr. Marko replied “It may, for one thing, and secondly, I have spoken with Mr. Reilly, I don’t recall I’ve spoken about this case, but I’ve spoken to Mr. Reilly on several matters on other issues of which the answer is, that he does the audit for the School Board as an Auditor; he’s not doing an audit for the purpose of proceeding through litigation. That’s my clear understanding and so when we need that, we do that.”

Dr. Mack stated “You answered probably the most important question, and that is ‘Are they coming on as consultants or expert witnesses?’ What is the estimated budget and how long and what are the anticipated completion dates of the engagement?”

Mr. Marko stated “The budget was somewhere around \$30,000 to \$35,000; however, that depends upon what they believe is out there and what they need. We are having a conference in the near future. They will then report to me where they are; they will then report to me as to what they think they need in the future to the extent of that. We will then discuss whether or not it is warranted or appropriate and or whether or not it is cost efficient, etc. That all goes into the blend.”

Dr. Mack asked “This money; is it coming out of your budget for external legal services or is it required to get money from the general fund?”

Mr. Marko replied “I don’t know; I’ll have to look at my budget, but the answer is, eventually the School District is concerned with what budget, and I understand budgetary constraints and requirements; however, the deed to have someone be able to testify to and support their position under those circumstances, that’s a question of where it will come from. Will it come from the General Fund? Will some of it come from my office? My office would not be able to generate at all; however, on occasion when we’ve had a problem like a 21 day administrative hearing, and you’ve got \$17,000 in a transcript for an ESE case. Under those circumstances, we just send the bill to Mr. Leong and ask him to handle this because it’s not in my budget. He will then transfer or add it to the budget of the School Board Attorney’s office, and then we would remit.”

Mr. Hurst stated “Hopefully, we recover in the hearing as you prevail.”

Mr. Marko said “In that case, the answer is no. You’re not allowed to bring any claim of action against a parent in an ESE case.”

Dr. Mack stated “I think I heard you say in terms of a completion date, that will be based upon when they come back to you and give you an assessment.”

Mr. Marko said “Yes. When I met with them initially, their instructions were to proceed with the review of the necessary documents, so that when you’re finished, you’ll be able to get on the

witness stand and testify as to how much the school District is due. If the other party were to refuse to pay what we believe it is. Like any other claim, you make an analysis, a determination, a demand, if the person says no or absolutely not, then of course, you file a lawsuit and they would do discovery, I would do discovery, then we would eventually go to hearing.”

Ms. Greenberg said “You stated that you told the School Board in a workshop that you were going to hire this audit firm.”

Mr. Marko replied “No, I did not tell you that I’d hire this audit firm. I indicated to the School Board that I was going to go out and get an independent analysis so that I could support in a court of law, and I believe that meeting was a workshop. I believe Ms. Dinnen said to the Board members ‘I would hope that I don’t want to go into a court proceeding unless I thought I could win’. There was a discussion about that kind of . . .what is my office going to be doing in reference to the Ashbritt issue?”

Mr. John Herbst stated “I’d like to go back to that same point, because I’m not clear. You just said you wanted an independent analysis, someone that you would then put on the stand to defend the conclusion and I’m trying to understand why the expert would not be the Auditor’s office, who has what I would deem to be substantial training and expertise in this particular area.”

Mr. Marko replied “Unfortunately, they don’t. I don’t think that everybody in Mr. Reilly’s office that was involved has the similar credentials that I believe are necessary to put this case on and let me share with you, I don’t want to argue the point. Every lawyer and I assume accountants, and I’m the world’s worst in that area, but any professional, doctors, lawyers, even painters; they have a way of doing something; somebody may prepare to paint a wall that you believe is more than what you think is necessary but if he or she thinks it’s necessary, then that’s what they do. So doctors do what they do and they’re not all the same; neither are lawyers the same in their preparation. I would share with you the amount of money involved, the demand may be the full amount; if it is the full amount that’s involved, warranted to make sure that I had someone who could say ‘I was asked by the School Board to look at this and in my professional opinion, this is what it is’. That’s the way I’ve been and have been preparing this case and the way I’ve prepared every case that I’ve ever used an expert in since I’ve been working for this District.”

Mr. John Herbst continued “My response to that would be two-fold. I would absolutely agree with you that not every staff member in every audit department has the same level of training and expertise, but that is why you have a Chief Auditor, who reviews all the workpapers and who is the final signatory on the workpapers and on the report before it goes out. As you may have in your legal department, junior attorneys, when anything gets done, it has your approval when it goes out the door. Therefore, it (an audit report) carries the authority of the Chief Auditor, not of the staff auditor who may have done the work. Secondly, auditing standards require that auditors have sufficient competent evidential matter to support the opinion that is reached. Evidential matter, because the presumption is, at some point, that all audit opinions will wind up in court. That’s the basis for sufficient competent evidential matter. I guess I’m not clear why the judgment of the Chief Auditor, based on sufficient competent evidential matter, as documented in the workpapers, is not sufficient.”

Mr. Marko replied “I have made a determination that I wanted to protect the interest of this School Board and the integrity of that case, if we go forward, to have someone who is absolutely independent. Unfortunately, if you elude to Mr. Reilly’s audit, he does in fact, in his audit, elude to some impropriety on the part of the vendor and indicates recommendations to either report to the (I don’t know whether or not it’s the Internal Revenue or whatever). My point is, that’s not what I’m about. I’m about the dollar amount and to support that dollar amount and I don’t want any other excess baggage other than to present my case in a clear and concise manner, ‘Your Honor, Jury, this is what is owed to the School Board of Broward County, Florida’ and put it up there so that everybody can see it.”

Mr. John Herbst stated “I guess my concern is one that Ms. Greenbarg brought up earlier. I think it’s critical. I’m afraid that we’re establishing a precedent here that says that the opinion of our auditor is not expert.”

Mr. Marko replied “Unfortunately, that’s not so. I’m sorry that you feel that way. If I go out of here and get an expert, based on any kind of other case that we have; a construction case. I don’t know how many people we have down in the Construction Department, Mr. Notter, maybe 100 people or more. I’m sure there is somebody that may be an engineer or an architect, and we go down and we talk to our staff and then we proceed to independently evaluate that claim and we spend a lot of money on evaluations of claims by outside persons to support the position of the School Board. This is nothing more than what we do and we have been doing it. I have been doing it for over 40 years, in-house and outside counsel, and my cadre continues to do that, and that is, the obtaining of independent people, even though there may be someone in the School District that could possibly assist and do whatever they need to do, but we’re not doing an independent audit. Our auditor, and I don’t call him an auditor, I call him an expert forensic accountant, the guy who’s going to come and assist, I believe has met with Mr. Reilly, sought his information, etc. He went down to talk to the Facilities Department and got their documentation. He’s doing an analysis to support a claim. I don’t know how else to explain it to you. I’ve done this in Civil Rights cases, I’ve done it in the immigration case of the School Board of Broward County, Florida on two occasions and one ran for about 15 years. Another case ran about 5. We had independent people making an analysis, so if we needed to go forward, we could do that and have that credibility.”

Mr. Hurst added “So, in other words, expert witnesses are independent. It’s not meant as an independent audit, it’s an expert witness.”

Mr. Marko replied “That’s absolutely correct.”

Mr. John Herbst asked “Typically, on a collections matter, or where there’s a default, if you have the facts, you present them; you might not need an expert witness. In this case, it was your decision to use an expert witness, based on the lack of evidence.”

Mr. Marko stated “It was the complexity of the evidence.”

Mr. John Herbst continued “Or was it because you couldn’t use the School Board Auditor’s report because it didn’t have the information you need or it was somehow deficient?”

Mr. Marko replied “I didn’t make a determination as to the sufficiency of the audit because I’m a lawyer, not an auditor, just like Mr. Reilly could not tell you the sufficiency of a legal right versus an auditor’s analysis, so the answer is due to the complexity of it, due to the high profiling of it, due to the fact that it’s been getting a lot of press, it’s gotten a lot of press, and I’m sure in the future, will get a lot of press, it was my determination, that in the best interest of this School Board, was to go in that direction. I wouldn’t tell you that it was any one item over another; it was a culmination of the package that I felt was the best way to go”.

Ms. Greenberg asked “We heard, and I just want to make sure I’ve got this correct, that this has never been done before on an audit.”

Mr. Marko replied “No, absolutely not. It’s been done on several occasions. I can tell you one was the \$800,000 wall at South Broward. Mr. Reilly proceeded to make an audit that we were owed this money. I went out and appointed one of the cadre lawyers and he then went out and got an independent person to analyze. We didn’t rely upon the audit to do that; we relied upon the outside testimony of contractors to determine whether or not Mr. Reilly may have come to the same conclusion. We went out independently and had somebody ready, willing and able to testify, if that were necessary.”

Ms. Greenberg stated “I know you hired an attorney, an outside cadre. The cadre hired an expert like an auditing firm?”

Mr. Marko replied “It’s not an auditing firm, it’s an expert witness. The auditor had to rely upon the issue of there was no need to build this actual wall because somebody had made a mistake, which is a construction determination, really. That was the audit subject matter. I made sure that we had an expert to assist the cadre attorney in case we had to go to court. The good news was that we didn’t.”

Ms. Greenberg added “You said that this expert would have to have, for court, sufficient and competent evidential data to testify. I would hope that they would come back and look at the entire set of workpapers, so they could testify.”

Mr. Marko asked “Why would you say that you had hoped? I would say, why not? Who said that they wouldn’t?”

Ms. Greenberg continued “They haven’t yet.”

Mr. Marko answered “I don’t know whether or not that’s true.”

Ms. Greenberg added “Dave Rhodes said they (Berkowitz Dick Pollack & Brant) told him they would come back and get with him if they needed the entire set of workpapers.”

Mr. Marko asked “Who’s them?”

Ms. Greenbarg answered “Berkowitz Dick Pollack & Brant. They (BDPB) did not look at the entire set of workpapers, nor did they take them. They will have to, eventually, in order so that they can justify to what the work product was. They haven’t.”

Mr. Marko asked “So, the question is, Ma’am?”

Ms. Greenbarg replied “When are they going to come back and get these workpapers?”

Mr. Marko stated “I don’t know. Maybe that’s part of their discussion when we have our next meeting with them.”

Ms. Greenbarg replied “That would be a good question to ask them, because they are going to need to look at that if they’re going to be testifying.”

Mr. Marko stated “Rest assured that this company is not going to put its reputation at stake to go to a case that they have been reading about, by the way, they’re not going to treat this as a light matter, I can assure you.”

Ms. Greenbarg asked “How did you choose them? Did you know them before?”

Mr. Marko replied, “Yes, I did some research on determining somebody that had the qualifications.”

Ms. Greenbarg added “I hope we will be getting an update. I’m sure we are, right?”

Mr. Marko stated “I’m not too sure, this is a legal issue, and I have no problem, I usually update my client on where we’re going and I will be doing that when we get there. In other words, I will be talking to the Superintendent; I’ll be sharing that information with the Board. I’m not sure, I’m pleased to give you an update, I will let you know how it is progressing as we go.”

Ms. Greenbarg added “We are interested in a timeline and how much money we’re spending and when we think this will be finalized, not the details of what they will say.”

Mr. Marko stated “You need to spend to get, in this economy, in this arena of law, you cannot proceed without making an investment, and those investments, the question is, whether or not there is a return on those investments. If any lawyer can tell you that I guarantee a return on your investment, I would be very concerned because as everybody knows in this room, the law is the law and what you believe you hope to be the outcome may not be the outcome. I believe that we are wisely spending the School District’s money in this regard.”

Ms. Greenbarg stated “I’m asking what we are going to pay these outside experts, not how much we expect to get back.”

Mr. Hurst answered “He’s already mentioned that.”

Ms. Greenberg added “That’s the update I was talking about; I wasn’t talking about details of the case.”

Mr. Hurst thanked Mr. Marko for his input and asked “Is it correct that you receive copies of the items on the Audit Committee agendas?”

Mr. Marko replied “Yes”.

Mr. Hurst asked “Could we have someone in the future, either yourself or someone who is versed on anything that appears to be a legal item, to step in and address those items?”

I had a working relationship with your Chairman Emeritus and that was that I would call about a week before, once I got the agenda, and he had the agenda to find out if there was anything on it that he felt I needed to come down and address. I did not feel that it was warranted of my time to sit here while they’re talking about an internal audit of South Broward or band uniforms. I’ll be happy to communicate with you in the future to see what issues need to be addressed.”

Mr. Hurst said that either he or Mr. Wolter would contact him in the future.

Follow Up Item #2 – Other Comments

Mr. Marko stated he had one more item to speak about.” You asked about cadre attorneys and their areas of the law they practice.”

Ms. Greenberg explained “We received the list of the cadre; we got the list of their expertise; we got the list of the money that was spent on them for a two year period. My question was how much did each of those people recover for the District.”

Mr. Marko answered “You’re talking about construction, I assume. There are cadre attorneys that do the construction. You’re talking about the errors and omissions I’m presenting, I believe, Mr. Notter, March 3. Somewhere in the first week of March, I’ll be making a presentation to the School Board that will explain the cases, where we have been, the cost, what’s been in the pipeline, and where we will be going in the future.”

Ms. Greenberg stated “That’s what I want.”

Mr. Marko stated “I’ll see to it that Mr. Reilly receives a copy of it and when it gets on the agenda for a workshop at that time.”

Mr. Reilly added “I spoke to Mr. Marko last week. As one of the items on the Audit Plan, there’s a request to do a review of the previous audit and also to look at a sample of legal expenditures. I’m sure the outside auditor will create a schedule as they did during the last audit.”

Mr. Marko stated “I don’t keep those bills. I keep a running tab, which we didn’t do in the past, so I know who is getting what and we’ve divided it, which we didn’t do before, between attorneys’ fees and costs, cause sometimes you end up with \$5,000 in attorneys’ fees and you

could end up with \$20,000 worth of costs. As a result of that, we were showing it that the lawyer received \$25,000, when in reality, his compensation was only \$5,000 and the rest was for court reporters and other expenses. Under the circumstances, we have divided that. I have that information and will give you what I can.”

Mr. Reilly added “Regarding the Ashbritt audit, there are claims for dollars that we feel we should seek reimbursement for and other parts that deal with internal control procedures that are in-house issues. There are responsibilities as the Chief Auditor to report certain instances. I know that is separate from the request for reimbursement, but I want it to be clear that when there are issues of suspected fraud and abuse, it is our responsibility to go forward.”

Mr. Marko replied “I’m not too sure, but if the answer is, I think the press asked me if I delivered the 6,000 pieces of paper that we delivered to the Federal Government in an investigation. They asked for everything, e-mails, etc. We delivered I don’t know how many boxes. When I met with my expert, my question was ‘only look at those sections of the audit pertaining to the dollar amount’. I’m not asking them to determine whether or not internal procedures were met or not met or should be met or what they are. That’s part of Mr. Reilly’s appropriate audit, and belongs there. All I’m doing is trying to make sure that if I have to go to court, I’m not embarrassed in the sense of saying ‘I just think they owe it to me’ and sit down. I want to be able to put a professional on the stand to be independent, prove my case. How it comes out, I don’t know, but I will share with you that it will be well prepared and well presented.”

Mr. Hurst thanked Mr. Marko and said he or Mr. Wolter would be calling him before the next Audit Committee meeting.

Mr. Marko said that he would initiate the call and stated he would be happy to be there when needed.

Follow-Up Item #4 - Internal Desk Review of Overtime Expenditures

Mr. Reilly stated “I spoke with the Brite Committee members involved with reviewing the overtime expenditures and what action would be taken related to any changes to the SAP system and actually, they are meeting tomorrow and they said they would give me an update, which I will forward to you before the next meeting.”

Regular Agenda

Internal Audit Report – Audit of the Internal Funds of Selected Schools in the North, Central and South Areas

Mr. Reilly stated “This report has audits from the North, Central and South areas, in which there were 33 schools audited. There were 28 schools that complied with the prescribed policies and procedures. There were 5 schools that contained some audit exceptions and included management responses. Some of the audit findings identified in the reports related to Athletic ticket sales, merchandising activities, internal advance transactions, and vending commissions.”

Dr. Mack stated “It shows that they made a donation for \$1,000 to an outside organization. Shouldn’t that be the reverse? They should be making a donation to us (the schools).”

Dr. Butler stated that the \$1,000 was given back to the school.

Dr. Mack asked if it was correct that the school made a profit of over \$18,000 for the Senior Prom. “Was that money given back to the students?”

Dr. Butler stated “That money was not given back. The Principal will be retiring and they are currently monitoring the internal funds at the school to avoid these situations in the future.”

Dr. Mack stated he had a comment regarding the lack of accountability at Stoneman Douglas, Cypress Bay and Boyd Anderson, concerning the athletic ticket sales. “If tickets are not sold and used as admission and only cash is collected, there is no accountability for tickets. These are small amounts of money, but people could go to jail for that. I know there are policies and procedures for handling athletic ticket sales and I think it’s up to the Area Superintendents to enforce those procedures.”

Ms. Greenbarg agreed. “The ticket situation is much too easy, but all in all, this is a much better report.”

Mr. John Herbst asked if we had actual missing revenues or incorrect reporting at Stoneman Douglas.

Ms. Delores McKinley replied “The monies were deposited into the bank; however, the financial statements understated the revenue collected and deposited.”

Mr. Roy Karlsen asked a question concerning use of credit cards by staff and who was responsible for improper purchases.

Mr. Reilly replied that staff was responsible for personal use of credit cards. “Any receipt being presented for reimbursement would have to have pre-approval in order to be reimbursed. We do have controls over the P-Card, but this would not apply for those using personal credit cards.” Discussion followed related to the process for reimbursement and issues related to sales tax.

Mr. Hurst recommended that congratulatory letters be sent to those schools having no exceptions.

Motion was made to transmit. Motion carried.

Internal Audit Report – Property and Inventory Audits of Selected Locations

The Committee discussed the audit report which contained twenty-one locations; nineteen locations complied with the prescribed policies and procedures. There were two locations that

contained audit exceptions consisting of unaccounted for property and the failure to follow some prescribed policies and procedures.”

Ms. Greenberg asked “Which two property audits are we talking about on the cover letter and how long do you wait for responses, thirty days?”

Mr. Mark Magli stated “One was a school and one was a department.” He continued “Our process is that we do a physical inventory audit of the location and then give the location’s administrator thirty days to locate or provide information on the remaining unaccounted for items. I then review the responses to finalize the audit.”

Ms. Greenberg asked which locations we were referring to that did not make it into this report.

Mr. Magli stated “Attucks Middle School and Instructional Technology, and I did receive Instructional Technology’s response after the response deadline.”

Ms. Greenberg asked “How long do we wait for responses?”

Mr. Magli stated “I believe they will be in the next report.”

Ms. Greenberg stated “Good procedural steps on South Broward High and Facilities and Construction Management should have an explanation.”

Mr. Magli stated “The only comment on these two locations is that we are getting better. There have been steps taken in both cases, as well as the other nineteen. There are still some areas of concern that should be trackable and caught in regard to the audits. We are still doing a lot of corrections at the time of each audit. I think if you actually witnessed some of the things, it would be clear. I work with some of their staff to help create their quarterly recording system that asks the right questions. I think some of these reports indicate a problem developing a situation. In some cases, they resolve them and in some cases, they don’t. In some cases, they don’t get accurate reporting. There is a mechanism in place for quarterly reports and review of their records. At this time, we are talking about processes for eliminating difficulties and irregularities, which can lead to audit exceptions.”

Ms. Greenberg stated “I will look for improvement. It is not your fault.”

Mr. Magli stated “A follow-up was done that indicated that they did take some steps to work on things. When we can’t get back to the schools, we look to the location’s administration to perform follow-ups. We noted that some of the steps proposed in the last audit have not been implemented and there was potential for difficulties in the formal audit process.”

Mr. John Herbst stated “Only missing forty-nine items out of \$14 million worth of items is amazing. My hat goes off to the staff!”

Mr. Hurst asked for a motion to transmit. Motion carried.

Review of Charter Schools for the Fiscal Year Ended June 30, 2009

Mr. Reilly stated “Most of the Charter Schools annual audit reports were presented at the December Audit Committee meeting. I brought four Charter schools; City of Coral Springs Charter School, City of Pembroke Pines Charter Schools, Paragon Academy of Technology and Sunshine Elementary Charter School. These Charter schools were in good financial condition. Sunshine Elementary Charter School did have a financial emergency condition reported in their audit. We will be meeting with this school’s administration to go over the financial recovery plan in February. Their annual audit was turned in after the due date.”

Mr. Hurst asked if there were any concerns.

Mr. Reilly replied “The Charter Schools with financial emergencies must provide a financial recovery plan as required by new Florida statutes.”

Other Discussions

Ms Greenbarg asked for an update on the delays obtaining documents on the kitchen/cafeteria renovation projects audit. She stated “Auditors are being stonewalled; I would like a follow-up.”

Mr. Hurst asked “Mr. Reilly, do you understand what she is asking?”

Mr. Reilly stated “Yes.”

Ms. Greenbarg asked “On the Triple L prototypes, why are there extra fees, other than site adaptation fees, since they already have done two? Also, on Margate Elementary cafeteria, which is a reuse of Peters Elementary; the hard bid was \$5.2 million, with a reuse fee of \$7.8 million. I would like a follow-up on this item. Lastly, regarding health insurance, I’d like to know if there is anything new. The first three years involved \$645 million and the next three years, there was \$1.6 billion cost for insurance. I would like an update on health insurance.”

The Committee chose to continue receiving hard copies of audit reports instead of electronic reports, which will now be available on the Office of the Chief Auditor’s website.

Meeting adjourned at 2:30 p.m.