

Office of the Superintendent of Schools  
MONTGOMERY COUNTY PUBLIC SCHOOLS  
Rockville, Maryland

January 15, 2020

MEMORANDUM

To: Members of the Board of Education

From: Jack R. Smith, Superintendent of Schools

Subject: Board Approval for Outside Counsel Legal Fees and Services (11-12-19-03)

**Question**

During the Policy BOA, *Legal Services*, discussion, Ms. Dixon requested information regarding process for determining and obtaining Board approval for outside counsel legal fees and services.

**Response**

Board of Education Policy BOA, *Legal Services*, currently is under review. In particular, the revisions specify the roles and responsibilities of the Office of General Counsel, which was established in 2014, several years after the last revisions to Policy BOA in 2009. It is my view that the Office of General Counsel has provided exemplary support for the Board of Education and Montgomery County Public Schools (MCPS), as a whole, to achieve what the revisions to Policy BOA set forth as the overarching goals of our approach to legal services management: cost-effective, creative, and proactive legal problem solving of the highest quality to navigate legal requirements, evaluate and manage legal risk, align and conserve resources, promote collaborative dispute resolution and reduce avoidable litigation, if possible, and engage in strategic decision making to promote equity and academic excellence for all students.

When necessary to supplement the work of the Office of General Counsel, Policy BOA sets forth the circumstances in which the Board retains outside counsel, the factors to be considered in the selection and retention of such outside counsel, and the structures for oversight of such outside counsel, including maintenance of written agreements, standardization of billing practices, management of costs, and periodic appraisals of the quality of legal services. An important monitoring tool for outside counsel legal expenditures is the monthly report provided to the Board. This report also is made available to the public. The report disaggregates expenditures by category and tracks fees for those law firms that typically perform the largest amount of work for MCPS.

As reflected in the monthly report, one key area of outside counsel support is for special education proceedings, consistent with Board Policy BLC, *Procedures for Review and Resolution of Special Education Disputes*. In 2017, MCPS issued an updated Request for Proposals (RFP) for special

education legal services. After responses to the RFP were evaluated by staff, the Board awarded contracts to three law firms: Carney, Kelehan, Bresler, Bennett & Scherr, LLP; Miles & Stockbridge PC; and Pessin Katz Law, P.A. As provided in the RFP, these contracts have been extended on an annual basis—most recently, at the Board’s December 3, 2019, meeting.

For other legal services, there are three firms with which MCPS has had long-standing relationships: Carney, Kelehan, Bresler, Bennett & Scherr, LLP; Venable LLP; and Hogan Lovells LLP. In addition, for many years, DLA Piper LLP, has provided legal services related to pensions and employee benefits, and more recently, we have worked with several other firms that provide highly specialized services, on a limited basis, related to human resources matters and land use and construction under the Capital Improvements Program. Finally, in 2019, after consultation with the Board in Closed Session, we commissioned Wilmer Cutler Pickering Hale and Dorr LLP, for the limited purpose of conducting an external review of reporting protocols, structure of supervision, and training/education programs for athletic teams and other extracurricular activities at Damascus High School, in the context of such protocols, structures, and programs across MCPS and best practices nationwide.

As was the case with the external review, the Board has been informed, in advance, about any new outside counsel relationship and if the potential outside counsel expenditures are expected to exceed \$25,000, the full Board has been consulted, typically in Closed Session, so as to provide legal advice subject to the attorney client privilege. The contractual agreements with each of these law firms that provide outside counsel are reviewed on an annual basis by the Board president, Board staff, the superintendent of schools, and the general counsel, and are updated, if necessary.

Once revisions to Policy BOA are complete, we intend to issue an updated RFP for non-special-education legal services to ensure we are continuing to receive the most effective, efficient, and high-quality support from outside counsel—just as we did in 2017 for special education legal services. As we continue to monitor outside counsel consistent with Policy BOA, it is important to note that the total expenditure for legal services, both in-house and outside counsel, currently accounts for less than 0.15 percent of the operating budget, which is less than public and private entities of comparable size typically spend on legal services, according to existing benchmarking studies.

If you have any questions, please contact Mr. Joshua I. Civin, general counsel, at 240-740-5600.

JRS:JIC:km

Copy to:

|               |             |
|---------------|-------------|
| Dr. McKnight  | Dr. Johnson |
| Dr. Navarro   | Ms. Diamond |
| Dr. Statham   | Mr. Marella |
| Dr. Zuckerman | Mr. Turner  |
| Mr. Civin     | Ms. Webb    |