

1 Related Entries: BOA-RA, BOA-EA, BLB, EIA-RA

2 Responsible Office: Superintendent of Schools

3 **General Counsel**

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6 Legal Services

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9 A. PURPOSE

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11 This policy reaffirms the right of the Board of Education
12 (Board) to retain attorneys for advice and representation in
13 legal matters and ~~directs the superintendent of schools to~~
14 ~~present to the Board for its approval~~ **sets forth a**
15 **comprehensive** plan for the **efficient and effective** management
16 of legal services. **The goals of this legal services management**
17 **plan shall be** ~~that will to~~ facilitate both ~~cost control and~~
18 ~~accountability and that will promote a high quality of~~
19 ~~service.~~ **cost-effective, creative, and proactive legal**
20 **problem solving of the highest quality to assist the Board,**
21 **the superintendent of schools, and other Montgomery County**
22 **Public Schools (MCPS) staff to navigate legal requirements,**
23 **evaluate and manage legal risk, align and conserve resources,**
24 **promote collaborative dispute resolution and reduce avoidable**
25 **litigation, if possible, and engage in strategic decision**
26 **making to promote equity and academic excellence for all**
27 **students.**

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B. ~~PROCESS AND CONTENT~~IMPLEMENTATION STRATEGIES

1. Management of Legal Services

~~i.~~a) In consultation and collaboration with the Board, the superintendent of schools, and other authorized administrators of the school district, the general counsel of MCPS shall be responsible for overall management of legal services, including:

(1) Providing timely advice and legal counsel on personnel issues, student matters, special education, policy development and implementation, real estate and land use, contracting and procurement, civil rights, and other legal issues that have implications for the operation of the school district.

~~ii.~~(2) Conducting and supervising all aspects of litigation and administrative agency proceedings in which the Board, superintendent of schools, or other staff acting in the course of their duties for MCPS are named as plaintiffs or defendants, including but not limited to legal support for special education proceedings, consistent with Board Policy BLC,

56 *Procedures for Review and Resolution of*
57 *Special Education Disputes.*

58
59 ~~(1)~~(3) Monitoring and evaluating all internal
60 and external providers of legal services,
61 including managing the process for selection
62 and oversight of outside counsel, as discussed
63 below, and coordinating with the Montgomery
64 County Attorney's Office, which provides
65 counsel to the Board through the Board's
66 participation in the Montgomery County Self-
67 Insurance Fund.

68
69 ———(4) Providing legal review and advice
70 regarding the drafting, negotiation,
71 execution, and implementation of contracts,
72 agreements, and other transactional documents
73 that structure the relationships with
74 government agencies, vendors, contractors,
75 and other parties in support of MCPS'
76 educational mission.

77
78 (5) Proactively anticipating and addressing legal
79 issues relevant to decision making by the
80 Board and MCPS staff, including the impact of
81 state and federal legislation and judicial
82 decisions; facilitating review of key MCPS
83 initiatives with significant legal

84 implications; and supporting the work of the
85 Board, in consultation with the superintendent
86 of schools, to review, update, and revise
87 Board policies.

88
89 b) The general counsel coordinates the management of all
90 legal services for the Board, the superintendent of
91 schools, and the school district, as a whole, except
92 in those limited circumstances where the Board may
93 require legal support in fulfillment of its
94 quasi-judicial responsibilities to adjudicate
95 appeals and hearings challenging actions by the
96 superintendent of schools, or regarding the
97 employment of the superintendent of schools.
98

99 1.2. ~~Retention and Selection~~, **Retention, and Oversight of**
100 **Outside Counsel**

101
102 a) **As necessary to supplement the work of the general**
103 **counsel, t**The Board retains **outside** counsel as
104 needed—to assist it and the superintendent of
105 schools in carrying out their duties. ~~Counsel~~
106 **Outside counsel** retained by the Board fulfill three
107 primary functions:

108
109 (1) Representation in litigation in which the
110 Board is a party
111

112 (2) Advise on general legal issues that arise in
113 the ongoing operation of the school
114 ~~system~~**district**, including Board policy or
115 action in which highly specialized legal
116 expertise is required.

117
118 (3) Provide advice and assistance to the Board as
119 it carries out its quasi-judicial
120 responsibilities in appeals and hearings
121

122 b) The factors to be considered in the selection or
123 retention of an attorney **as outside counsel** include
124 the quality of ~~his or her~~**the attorney's** work,
125 background and relevant experience, legal skills,
126 commitment to diversity **and equity**, responsiveness
127 and sensitivity to the client's needs, style and
128 presence, freedom from conflict of interest, and
129 management skills.

130
131 c) With the advice of the superintendent of schools
132 **and the general counsel**, the Board will identify
133 attorneys or firms that meet its criteria and will
134 invite them to express their interest in providing
135 services to the Board **as outside counsel**.

136
137 d) The Board will contract with the attorneys or firms
138 selected **to serve as outside counsel**, subject to
139 renewal.

140
141 ~~d)~~**e) The general counsel shall work closely with outside**
142 **counsel to review strategy and supervise resources**
143 **applied to legal matters, ensure consistency of**
144 **legal position, avoid duplication of cost and**
145 **effort, and otherwise coordinate the efficient**
146 **management of their legal services through:**

147
148 ~~3. Management of Legal Services~~

149
150 ~~a) The Board directs the superintendent of~~
151 ~~schools to implement the Board approved legal~~
152 ~~services management plan for the purpose of~~
153 ~~coordinating and controlling the school~~
154 ~~system's **district's** use of legal services.~~

155
156 ~~b) A legal services management plan should~~
157 ~~provide at least the following elements:~~

158
159 (1) Maintenance of written agreements with **outside**
160 **counsel**

161
162 (2) Standardization of billing practices **for**
163 **outside counsel**

164
165 (3) Management of costs and staff access to
166 **attorneys, including the development and**

167 **implementation of project plans for management**
168 **of cases and other significant legal matters**

169
170 ~~(3)~~ **(4) Monitoring and developing appropriate**
171 **responses to any legal ethics issues that may**
172 **arise regarding the provision of legal**
173 **services by outside counsel**

174
175 ~~(4)~~ **(5) A periodic appraisal of the quality of**
176 **legal services, for use by the Board and the**
177 **superintendent of schools**

178
179 **3. The superintendent of schools will develop regulations**
180 **for implementing this policy.**

181
182 C. REVIEW AND REPORTING

183
184 1. The superintendent of schools will provide monthly
185 reports to the Board ~~of Education on the costs~~ **funds**
186 **expended for outside counsel and other** ~~of~~ legal
187 services. The Board will receive evaluative reports on
188 legal services **of outside counsel** on a cycle aligned
189 with contract reconsideration.

190
191 2. **The general counsel, in collaboration with the**
192 **superintendent of schools and other MCPS staff, shall**
193 **provide legal advice and updates on significant legal**
194 **matters, including pending or potential litigation,**

195 **consistent with Section 3-305(b) of the General**
196 **Provisions Article of the Maryland Code, and shall**
197 **consult with the Board regarding settlement of legal**
198 **claims with significant budgetary or programmatic**
199 **implications.**

200
201 ~~2-3.~~ This policy will be reviewed in accordance with the Board
202 of Education policy review process.

203
204 **Related Sources: Annotated Code of Maryland, Education Articles**
205 **§4-104, §4-204, §4-205, and General Provisions Article §3-305(b).**

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207 *Policy History:* Adopted by Resolution No. 282-85, June 12, 1985;
208 reformatted in accordance with Resolution No. 458-86, August 12,
209 1986, and accepted by Resolution No. 550-88, October 24, 1988;
210 amended by Resolution No. 210-04, April 15, 2004; amended by
211 Resolution No. 451-09, October 26, 2009; **amended by Resolution No.**
212 **_____ , 2019.**