

MEMORANDUM

To: Honorable Members of the Clay County School Board
Mr. Addison Davis, Superintendent of Schools

From: David J. D'Agata, School Board Attorney 

Date: August 25, 2017

Re: Update No. 2, Anticipated HB 7069 lawsuit

At the Board's request, I provide the following update on anticipated collective legal action ("collective action") by several Florida school boards calculated to challenge the constitutionality of certain newly-enacted laws arising from House Bill 7069 ("the Legislation"). This memorandum supplements my earlier memoranda on the matter dated July 28, 2017, and August 18, 2017.

STATUS OF PARTICIPATING DISTRICTS

Since my last memorandum, I have learned that the School Boards of Polk and Orange Counties ~~have decided to invest and participate in the collective action – each committing \$25,000 to the cause.~~ They join the School Boards of Bay, Broward, Hamilton, Lee, Miami-Dade, Palm Beach, St. Lucie, and Volusia Counties. I refer to these 10 school boards hereinafter as "Participant Districts." I believe that the pooled sum of committed funds is now in the vicinity of \$200,000.

STATUS OF COLLECTIVE ACTION

The Participant Districts generally embrace a two-fold approach to promote changes to the Legislation: file a lawsuit, but simultaneously lobby Tallahassee lawmakers to address the ills of the Legislation such that the continuation of court action may be avoided. In any event, I believe that a complaint will be finalized and filed in state or federal court within the next 45 days.

It is my understanding that the Participant Districts have decided to engage the national law firm of Husch Blackwell ("HB") to provide collective representation. John W. Borkowski, a partner with the firm, is expected to serve as lead counsel. Mr. Borkowski is a well-respected litigator and advisor who has represented public school districts and universities for nearly 30 years. I do not know with certainty the final terms and conditions of the contract for legal services negotiated by the parties, but it is my strong impression that Mr. Borkowski and HB offered the most competitive (and significantly reduced) rates among the law firms under consideration.

I am advised that the one-time "up front" payment for which each Participant District will be responsible has dropped from \$5,000 to \$2,500. Thereafter, each board will be

responsible for payment of legal fees on a pro-rata basis. As explained in my earlier memorandum, the pro-rata share/percentage of payment will be based on each board's total student enrollment figures as compared to the total student enrollment figures of all other participating school boards.

ANTICIPATED CLAIMS

A complaint has not been finalized to date. I remain convinced that those school boards intent to join and fund the collective action before it is filed should do so by mid-September. School boards which have authorized and committed funding by then will have an opportunity to weigh in on the claims to be advanced in the lawsuit. My views on anticipated claims (as outlined in my previous memoranda) are also unchanged.

CONCLUSION

In light of the foregoing, the Board may decide to join the collective action. If it is so inclined, the Board should authorize a financial commitment (I would suggest \$25,000) before mid-September. Alternatively, the Board may decide against the pursuit of legal action or take a "wait and see" approach.

Please contact me at your convenience should you have any questions or concerns regarding this matter.