

July 8, 2010

Dr. Martin Karp, Board Member

SUBJECT: APPROVAL OF RESOLUTION AND AUTHORIZATION FOR SCHOOL BOARD TO PARTICIPATE AS PLAINTIFF IN LAWSUIT REGARDING THE CLASS SIZE AMENDMENT AND APPROVAL OF RETAINER AGREEMENT AND TO PAY NOMINAL FEE FOR PARTICIPATION } Revised

COMMITTEE: INSTRUCTIONAL EXCELLENCE AND COMMUNITY ENGAGEMENT

LINK TO STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY

In 2002, Florida voters amended Article IX, Section 1 of the Florida Constitution to include restrictions on class size that must be met by the beginning of the 2010 school year. The Class Size Amendment requires the state to make "adequate provision" to meet these requirements and specifically states that "payment of the costs associated with reducing class size to meet these requirements is the responsibility of the state and not of local school districts." The Florida Supreme Court affirmed the state's obligation when it reviewed the ballot initiative that ultimately led the Constitutional class-size limits. In *In Re Advisory Opinion to the Attorney General*, 816 So. 2d 580 (Fla. 2002), the Court determined that the amendment created a funding imperative on the state and specifically recognized that it is not an obligation imposed upon school districts, but rather "places the obligation to ensure compliance on the Legislature, not the local school boards."

Notwithstanding its judicially recognized constitutional mandate to fund class size limits, the Florida Legislature has consistently failed to fully fund the class-size limits and recently amended Section 1003.03, F.S., to require the Florida Department of Education(DOE) to impose severe penalties against school districts for failure to meet these requirements. These penalties, including withholding and reallocating funding from non-compliant school districts to districts that comply with the constitutional provision, are contrary to Articles III(19) and IX, Section 4(b), Florida Constitution, which prevent taxes levied by school districts from being reallocated to other school districts by an administrative agency. } Deleted

**Revised
H-13**

On June 16, 2010, the Florida School Boards Association (FSBA) authorized the Tallahassee law firm of Meyer, Brooks, Demma and Blohm, P.A., to file a lawsuit in Leon County Circuit Court seeking a judicial declaration that the Legislature has failed to make "adequate provision" to ensure that the class size goals could be achieved by school districts. The lawsuit may seek a temporary injunction to prevent the DOE from imposing the statutory penalties on school districts that are non-compliant. The FSBA is requesting that school boards participate in the lawsuit and pay an initial retainer of \$1,500 toward legal fees and costs. The FSBA Resolution and Retainer Agreement are attached.

This Item requests authorization for the School Board to participate as a plaintiff in the proposed litigation challenging the state's failure to make adequate provision for school districts to meet the class size obligations in Article IX, Section 1(A) of the Florida Constitution and seeking injunctive relief to prevent the imposition of penalties as a result of non-compliance. Authorization is also requested for the payment of an initial retainer of \$1,500 to join this lawsuit. Any additional fees that may be requested beyond \$10,000 will require Board approval. } Revised

**ACTION PROPOSED BY
DR. MARTIN S. KARP:**

That The School Board of Miami-Dade County, Florida approve the Resolution and Retainer Agreement authorizing its participation as a plaintiff in the proposed litigation on the Class Size Amendment and approve initial payment of \$1,500. Any additional fees that may be requested beyond \$10,000 will require Board approval. } Revised

RESOLUTION

By these presents, the undersigned District School Board, authorizes the Florida School Boards Association, Inc. and its contracted attorneys, Meyer, Brooks, Demma and Blohm, P.A., to include the School Board as a plaintiff in litigation challenging the constitutionality of Chapter 2010-154, Laws of Florida, which, among other things, imposes penalties upon school districts which are not in full compliance with class size requirements and provides for the redistribution of such a school district's funds to other school districts which are in compliance.

The School Board, by these presents, appropriates the sum of \$1,500.00 to be contributed toward the payment of legal fees and litigation costs associated with such challenge; such fees to be paid to "Meyer, Brooks, Demma and Blohm, P.A." (EIN 27-2320027).

APPROVED this ____ day of _____, 2010, by the District School Board at a duly convened meeting.

SCHOOL BOARD OF _____
COUNTY, FLORIDA

By: _____
Chairperson

ATTEST:

Superintendent

RETAINER AGREEMENT

1. The undersigned authorizes the law firm of Meyer, Brooks, Demma and Blohm P.A., and such other law firms and attorneys as it may from time to time designate (hereinafter collectively "Lawyers") to be our exclusive representatives as a plaintiff in litigation in the Florida courts challenging the constitutionality of Chapter 2010-154, Laws of Florida, establishing, *inter alia*, penalties on school districts which do not meet class size requirements for 2010-2011 and which redistributes funds of the District to other school districts which do comply with class size (hereinafter "Litigation").

2. We understand that the Board has an attorney/client relationship with the Lawyers, and all communications between the Board and the Lawyers that in any way relate to the Litigation are protected by the attorney/client privilege and will not be disclosed except as required by law.

3. It has been disclosed to the Board that the Lawyers will represent other plaintiffs in the Litigation. We understand that the course and scope of our representation in the Litigation will be determined in consultation with the Lawyers and all of the plaintiffs. In the event that there is now or in the future any conflict between our interests in the Litigation and the interests of any other plaintiff in the Litigation, the Lawyers promptly will disclose said conflict to the Board.

4. The Lawyers have disclosed that from time to time they provide representation to school employees and/or their local union in employment disputes which may be adverse to the Board. The Board, by these presents, waives any conflict of interest which could arise from such representation and agrees that the Lawyers shall not be disqualified from continuing such representation.

5. It is agreed that a payment of \$1,500, is required and that such payment will be applied to payment of legal fees and costs incurred in the Litigation. The Board understands that further payments toward the maintenance of the Litigation may be requested from time to time by the Florida School Boards Association (FSBA) to assist it in paying the fees and costs incurred.

6. Unless contrary instructions are given by the Board in writing to the Lawyers, we authorize the Lawyers to discuss and disclose information related to their representation of us in the Litigation with the other plaintiffs in the Litigation, as well as with FSBA and any other organization that may become involved in the Litigation. We understand that all such discussions and disclosures will be kept confidential to the extent permitted by law, and

Added

will be made for the purpose of furthering the common interests of the plaintiffs in the Litigation and the organizations that are involved in the Litigation.

7. Subject to the attorney/client privilege and such other confidentiality provisions as are contained in this Retainer Agreement, we authorize the Lawyers and FSBA to issue press releases and otherwise communicate with the media regarding the Litigation as they may, from time to time, deem appropriate.

We understand that this Retainer Agreement is subject to the attorney/client privilege to the extent permitted by law.

SCHOOL BOARD OF _____ COUNTY

DATE

By: _____
CHAIRPERSON

} Added

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