

IN THE SUPREME COURT OF FLORIDA

Case No. SC09-1910

**FINAL REPORT OF THE
NINETEENTH STATEWIDE GRAND JURY
IN THE SUPREME COURT OF THE STATE OF FLORIDA
Case No: SC09-1910**

I. Introduction

We, the Grand Jury, have been called upon to examine, among other matters, the functioning of the Broward County School Board and of the Broward County School District. We have done so and as result we make certain findings and recommendations.

At the outset we wish to commend the numerous District employees from all levels who appeared and provided information to FDLE investigators or directly to the Grand Jury. We also commend the Office of General Counsel for their prompt replies to our numerous requests for documentary evidence.

As part of our inquiry we have taken testimony and reviewed statements from FDLE investigators, project managers and building inspectors from the District, as well as past and present managers from the Facilities department, District Chief Building Officials, past and present Board Members, numerous District Budget and Finance officials, past and present employees of the District's boundaries department, Deputy Superintendents and other District employees from principals to secretaries. We have also reviewed hundreds of documents provided by the District to

investigators.

The evidence we have been presented concerning the malfeasance, misfeasance and nonfeasance of the Broward County School Board (Board) and of the senior management of the Broward County School District, (District) and of the gross mismanagement and apparent ineptitude of so many individuals at so many levels is so overwhelming that we cannot imagine any level of incompetence that would explain what we have seen. Therefore we are reluctantly compelled to conclude that at least some of this behavior can best be explained by corruption of our officials by contractors, vendors and their lobbyists. Moreover, many of the problems we identified in our inquiry are longstanding and have been pointed out by at least two previous Grand Juries. But for the Constitutional mandate that requires an elected School Board for each District, our first and foremost recommendation would have been to abolish the Broward County School Board altogether.

We have learned that the Board and District has taken steps to institute some of the changes we will propose here today, perhaps in anticipation of the Grand Jury's findings or in response to other events, including ongoing investigations and arrests. While it may seem redundant or unnecessary to some to propose changes already made, we are mindful that nothing is set in concrete. Bad habits and corrupt practices often return when the light of inquiry is turned off.

II. Summary of Findings

Our inquiry of the District focused on the non-instructional aspects of the District's functions, particularly the construction of schools. We have heard from some mid level managers that they can't discipline or fire lazy incompetent workers, thwarted by a timid personnel department and sometimes by protective Board members who must vote on every dismissal, yet we are aware of top level managers who openly talk of targeting whistle blowers, boat-rockers and other malcontents whose

primary sin appears to be exposing flaws in the system and lack of leadership among senior staff. Those employees find themselves transferred out of their positions to less desirable posts; transferred to the districts dumping ground, the book depository; or even outright fired for petty violations.

In short, we have a middle management staff that tolerates or is forced to tolerate incompetence, double-dealing, corruption and laziness but which in turn is always fearful of being targeted by upper management should they challenge interference by Board members or attempt to hold contractors accountable for their work.

Not that there aren't employees who work hard and do a good job, there are plenty of those. But the ones who point out problems and advocate change are quickly marginalized and punished. The culture of misfeasance and malfeasance at the school district is so deeply ingrained, so longstanding and so severe that we believe they will either be subsumed into the existing culture or drummed out of the District as soon as current attention is diverted from the Board and District.

As serious as the problems are at the District, the problems with the Board are even worse. The Board has demonstrated an appalling lack of both leadership and awareness. Rather than focusing on the big picture and looking to the challenges of the future, they have mired themselves in the day to day running of the District, a task for which they are singularly unqualified. Their lack of background or expertise does not deter them from intruding into decisions such as selecting building contractors, deciding contract methods, interfering with personnel decisions, directing contracts to friends and acquaintances for consulting work, pushing unnecessary building projects in direct opposition to the advice of district officials, lobbying for construction change orders to benefit contractors, and even things as petty as manipulating the process to get the children of friends and family into specific schools.

Some of the consequences of allowing themselves to be mired in the micro-managing of the District are their complete failure to focus on the big picture and their lack of awareness of critical issues facing the District.

As an example, the Board has authorized the spending of billions over the last 10 years and has saddled Broward taxpayers with \$2 billion in long term debt, and yet we have thousands of empty seats at under enrolled schools in the eastern portion of the county and critically overcrowded schools in the western part of the county and no concrete plans to address the problem. We find that the current situation is a direct result of the Board's lack of vision, foresight, planning and leadership as well as a deliberate attempt to withhold information in order to keep building unnecessary space.

A great deal of taxpayer money spent on this construction has been wasted as the direct result of the Board's interference and self dealing as well as a result of their failure to engage in any meaningful oversight of the District's building activities. For at least the last 15 years the District has operated a facilities and construction department with little regard for quality, accountability or fiscal responsibility, yet the Board has done nothing to address these issues.

Despite warnings from the rank and file, their own internal auditors and even previous Grand Jury reports the Board for years has acted in apparent blissful ignorance of these critical issues. To date, their strongest response has been to lash out at the auditors doing their jobs; attempting to kill the messengers, rather than deal with the issues they bring to their attention.

The Board's meddling into details that should be within the purview of the Superintendent has not helped the District deal with critical issues; instead it has worsened existing problems and created new ones. The Superintendent also bears responsibility for allowing the meddling and interference to continue. Broward County in particular needs a strong Superintendent to stand up to the Board and

remind them where the line is that separates the functions and responsibilities of the Board and Superintendent. Previous Superintendents have done so to one degree or another and have suffered the consequences; something the current Superintendent is apparently unwilling to risk.

III. Background

The Broward County School District is the 6th largest district in the country and the 2nd largest in the State despite declining enrollment over the last six years. According to this year's preliminary Twentieth Day Enrollment report, current enrollment is 233,598, a decrease of 1003 students over last year's numbers. Over those same six years the number of students opting to go to charter schools has increased from 15,136 to 23,274, including an increase of 2672 last year.

Over the last 5 years the annual budget has averaged \$4.65 billion, even larger than the county budget. In fact it is the biggest portion of the property tax for property owners in Broward.

Pursuant to Art IX, section 4 of the Florida Constitution, each county must have an elected School Board consisting of five or more members and either an appointed or an elected Superintendent. The members can be elected either district wide or from single-member districts. Broward has nine School Board members and an appointed Superintendent.

The only responsibility of the School Board articulated in the Constitution, other than a general one of "shall operate, control and supervise all free public schools", is setting the tax rate. More detail is set out in Chapters 1001 and 1003 of the Florida Statutes.

IV. Findings

A. Problems within the Facilities and Construction Management Division

1. The TCO debacle and Occupying Unfinished Schools

Pursuant to state and local building codes, no building, schools included, can be occupied without a valid Certificate of Occupancy (CO) also known as a Form 110B issued by the Chief Building Official (CBO). The exception is what's called a Temporary Certificate of Occupancy (TCO). Relying on a TCO has its limitations. As the name implies, it is supposed be temporary, generally issued with an expiration of 30 days to 90 days, and can only be issued when the unfinished items are minor, such as landscaping or aesthetic features. In no case can they be issued when life safety items are outstanding.

What we have found however, is that there is nothing temporary about TCOs in Broward and worse, despite assurances to the contrary, some are issued with blatant safety issues unresolved at the time of occupancy. Furthermore the record keeping of construction documents is so inadequate and incomplete that it is hard to tell just how many TCOs were really issued and what issues were unresolved at the schools when they were issued.

As far back as April of 2003 the Broward County Grand Jury pointed out in its report entitled **“Interim Report Of the 2002 Fall Term Grand Jury on School Board Construction”**, (2002 Report) that numerous schools were occupied by students without being finished and that the district failed to fix construction defects in recently opened schools. It's important to note that in doing so the 2002 Report was pointing out that *those problems were a continuation of the problems identified by the 1997 Broward County Grand Jury*. Referring to the previous 1997 report, the 2002 Report stated:

“The report of that Grand Jury named school after school where roofs leaked, windows leaked, and stucco fell off walls. In addition many of these schools were opened to students prior to completion. Punch lists; that is, the list of incomplete items compiled at the end of a project just before the time of occupation were inches thick and hundreds of pages long...”

“The School Board, much to the dismay of the Grand Jury, has once again begun to

occupy schools before they are completed. There are also schools where the punch list is still incomplete years after the schools have opened.”

As a result, the 2002 Report recommended that “The School Board should simply not open schools that are incomplete.” Unfortunately, the practice has not only continued unabated, but escalated to levels far worse than seen by the previous GJ. Like the previous Grand Jury, we find that schools have opened without addressing all safety items. In fact, many of these schools were opened over the objections of inspectors, project managers and their supervisors.

The excuse we heard from witness after witness was that there was pressure from individual members of the Board, some of whom had made promises to parents that the schools would be opened in time for the new school year. Coupled with that excuse was the refrain that the District was in a building boom, variously described as existing from as long as 2002-2009, to as short as 2005-2007.

Having read the 2002 Report, listening to these witnesses’ excuses gives us a strong sense of déjà vu. It’s the same excuses given by the Board and District almost eight years ago. Again quoting the 2002 Report, “Some of the old problems with school construction continue: the School Board remains under great pressure to open new schools and to enlarge and repair old schools.”

School starts the same time every year and it has for decades. Despite having 5 and 10 year student enrollment projections provided by both the state DOE and school board staff, despite completing hundreds of projects and spending billions of dollars on school construction over the last 20 years, the Board and District are still having problems opening schools in time for the new school year. As a result, pressure builds from Board members to open the schools on time no matter what. For the District, the solution is to issue a TCO regardless of whether or not it’s a good idea to do so.

There is an alternative that the Board has apparently never tried. We have been told that the Board's construction contracts contain provisions for liquidated damages for projects that come in late, yet despite chronic tardiness in the delivery of construction projects we know of no cases where the Board has attempted to enforce these provisions. The Board seems to be more comfortable with opening unfinished schools than angering the contractors that fund their campaigns through political contributions and fundraisers.

The building department has not confined itself to just using TCOs to open unfinished schools. They also invented and issued partial COs, "beneficial" TCOs, "conditional" TCOs, memos that purport to be COs or TCOs, memos that suggest a CO or TCO is forthcoming, and COs with "TCO" handwritten on them in tiny letters. (See Exhibit 1)

Contrary to the requirements of the Florida Building Code and general practice elsewhere, virtually none of the TCOs indicate how long they're good for. Part of the comfort that previous Chief Building Officials may have had in issuing these dubious documents no doubt stems from the fact that they are not required by law to be signed by the superintendent or filed with the State as COs are. (In fact there seems to be no centralized location for all construction related documents to be maintained. The documents that are maintained are woefully incomplete. [See section IV(A)(2)(e)]

Setting Broward apart from the rest of the state is the high number of buildings opened with TCOs or no paperwork at all, the extraordinary length of time TCOs are left open, and the seriousness of the issues that remain open.

a. **TCOs issued with safety issues outstanding**

One of the justifications given by several witnesses was that the TCOs were only issued for minor items such as cosmetic deficiencies, landscaping and the like.

A review of TCOs issued over the years belies that excuse. We have seen TCOs issued for schools that lacked emergency eyewash stations and sprinkler heads, or had outstanding issues with smoke detectors. (See Exhibit 2) These are life safety issues and we find it completely irresponsible to issue a TCO under such circumstances. More troubling is that the vast majority of the TCOs don't list what the deficiencies are. In fact in almost all cases they simply indicate that there are open issues and that a list *will be compiled* and that the structure may be occupied during completion of items on the *final inspection list*. This list of items is not attached to the TCO; it doesn't even *exist* at the time the TCO is issued making it impossible to judge the appropriateness of the TCO. (See typically, Exhibit 3, paragraphs 2-3)

b. Number of projects opened with a TCO or no documents at all

The number of projects occupied under TCOs or with no documents at all is nothing short of appalling. In June of 2010 we requested from the District all copies of TCOs issued during the previous five years and were provided with 13 TCOs or documents fairly characterized as TCOs. That number is a testament to the District's poor recordkeeping. Based on testimony from several witnesses as well as a review of Board minutes, the true number may be over 200.

Our inquiry determined that in early February of 2005, the School Board attorney contacted James R. Tucker, Inc, (Tucker) a construction consultant company, to review certain construction projects, to close out any existing TCOs, and to resolve any issues that would hold up the issuance of a CO and Certificate of Final Inspection (CFI) also known as a Form 209. The work proceeded from February to June of 2005.

In early 2009, the school Board attorney once again reached out to Tucker and asked that all current and historical construction projects be reviewed and to close out any existing TCOs and

resolve any issues that would hold up the issuance of a CO and CFI.

Between January through December of 2009 Tucker found approximately 200 construction projects for which either some form of TCO had been issued or, *no paperwork authorizing occupancy* could be found. Complicating Tucker's effort was the fact that there was no centralized location where one could go to find all construction related documentation, such as TCOs, COs, punch lists and inspection reports for each project. Much of the paperwork had to be tracked down by contacting project managers, inspectors, and even contractors.

Once these "open projects" were found, the issues that held up the granting of a CO had to be resolved. Many were minor, many more concerned failure to inspect or to pass inspections, some concerned unfinished life safety issues as mentioned above.

By December of 2009, for reasons never explained, Tucker was removed from the project by Deputy Superintendent Garretson, even though Tucker had not finished determining whether any more construction projects remained open. This action took place just before Garretson's resignation. Since Tucker's removal, no other construction projects have been added to the list, either because Tucker found them all, or because the district did not want to find any more. The task has now fallen to the building department to resolve. The same department that allowed schools to be occupied without COs, issued TCOs with open safety issues, and lost or never had paperwork documenting inspections. The issues left open as late as 2/21/2010, according to Tucker's examination, include failed electrical and mechanical inspections at Norcrest ES; failed building inspection at Plantation MS; failed mechanical inspections at Tamarac ES; failed building, electrical and mechanical inspections, no final plumbing or fire inspections at Royal Palm ES; failed building inspection, no final fire or plumbing inspections at Glades MS; failed fire inspection at Boyd Anderson HS; failed

fire and electric inspections and no final building inspection at Driftwood ES, Building 3; failed fire, mechanical and plumbing at Martin Luther King ES; failed fire inspection at North Lauderdale. There are many, many more examples. Again, the assurances from the building department that schools were not opened with life safety issues ring hollow.

c. **TCOs Stay Open for Years**

As we said, there is nothing temporary about TCOs in Broward, once issued they seem to be quickly forgotten. Only two of the TCOs provided to us by the district indicated how long they were good for contrary to the provisions of the building code. The vast majority of TCOs and even COs issued over the last five years are not even dated. Where TCOs were found, some were determined to be years old, the oldest being one for McNab ES that allegedly had been issued in 2003. (A CO was not issued for McNab until 12/09/2009). Many more dated back to 2005 -2007.

Apart from the obvious life safety issues, a TCO also creates potential financial problems for the district. For one, once a TCO is issued, the builder is no longer responsible for providing insurance for the structure; the risk immediately passes to the taxpayers. Furthermore, the TCO also starts the clock running on the one year warranty, as pointed out by the 2002 Report. Issuing a TCO also gives the contractor a stronger leg to stand on to argue for a reduction of the retainage below 5%.

d. **Retainage**

Pursuant to F.S. 255.078, public entities may retain no more than 10% of the contract payments up to 50% of the project's completion, and 5% thereafter. Public entities are free to withhold less. The Board implements this statute through Policy 7005. That policy states that there is to be no *reduction* in retainage below 5% until the following criteria are met.

- 1) The project has reached substantial completion

- 2) The Certificate of Occupancy has been fully executed
- 3) The Superintendent or the Deputy Superintendent for Facilities and Construction recommends the reduction
- 4) The Board formally approves the reduction.

We note that there is no mention in the policy of a *Temporary* Certificate of Occupancy.

In order to release the *final* payment of retainage the following criteria must be met pursuant to Policy 7005.

- 1) The School Board accepts the facility via an executed Form 110B (Certificate of Occupancy)
- 2) All contractual obligations have been completed
- 3) There is an executed Form 209 (Certificate of Final Inspection) or a Certification of Completion by the architect or engineer of record.

This is a good policy but it's routinely ignored in its entirety by the Board and District.

The purpose of retainage is to have something over the contractors to force them to finish the project completely and to return and finish the punch lists. Every inspector and project manager that testified stated that contractors were regularly let off the hook by the District which led to dozens of schools opened with unfinished items. Some of those items took years to resolve. Virtually all the unfinished items were resolved by maintenance at additional cost to the taxpayer. Meanwhile, contractors, who had very little left in retainage, walked away from their obligations in order to start on, or work on more lucrative contracts. More déjà vu from the 2002 Report,

“A fourth concern with school construction is the apparently premature release of retainage on some projects. The decision to release retainage usually rests with the project manager and the architect. In at least two instances, Falcon Cove and Lyons

Creek Middle Schools, retainage was released even though the electrical punch list had not been completed.”

“...punch list items were not completed until two years after the school opened. Their completion required the direct involvement of the Deputy Superintendent of Facilities and Construction Management.”

The records we have reviewed substantiate what we heard from the witnesses. In addition to the mess that Tucker uncovered, we also reviewed a couple of Board agendas at random to see how retainage reduction was being handled by the District and Board. We reviewed four examples, two each from the July 22, 2008 (South Plantation HS and Fort Lauderdale HS) and December 16, 2008 (Apollo MS and Boulevard Heights ES) Consent Agendas. (See Exhibit 4)

On the July 22, 2008 Board consent agenda (approved 8-0) we found:

Reduction of retainage on the Fort Lauderdale High School project, #0951-99-01 from \$489,241 to \$100.

First we note that this item is listed as a reduction, not a final payment. A \$100 retainage is unacceptable and no retainage at all which means the criteria should have been the stricter standard for *final payment* of retainage.

The agenda item noted the project was substantially complete; however it refers to a TCO being issued, not a *fully executed Certificate of Occupancy* as required by policy. Furthermore the agenda item says the request came from the Facilities and Construction *Division* but there’s no mention of the Superintendent or Deputy Superintendent or whether they put anything in writing.

A review of the documents attached to the item failed to turn up either the TCO or any request from either the Superintendent or a Deputy. We don’t know if a TCO actually existed. While several COs were eventually issued for different projects relating to Ft. Lauderdale High, it appears that as

late as the middle of 2010 when these documents were provided to us, that there was no TCO, CO, CFI or even a Certificate of Completion in existence that related to the retainage released by the District and Board.

On the same agenda the Board approved a reduction of retainage on the South Plantation HS project from \$466,341 to \$93,268 (8/10 of 1%) Once again the justification was that the project had reached substantial completion, that there was a TCO issued and that it was recommended by the Facilities and Construction Management Division. The Board once again ignored their own policy of requiring a CO and a recommendation from the Superintendent or his Deputy.

On the December 16th, 2008 Consent Agenda (approved 6-0) we found a reduction for retainage on the Apollo MS project from \$427,890 to \$25,000 (or 3/10ths of 1%). To determine what percentage of retainage that figure represented, we had to rely on the contractor's certificate as the CFI provided to us by the District for this project left off the cost of the project. (See Exhibit 5)

The justification listed for the reduction was the same; substantial completion and a TCO. The TCO was dated August 9, 2008 and the CO and CFI were not issued until 12/2/09, *over a year later*.

Finally the same agenda contained a reduction in retainage for Boulevard Heights ES, from \$313,009 to \$25,000 (2/10ths of 1%) with the same justification - substantial completion and a TCO. The attached TCO was dated August 15, 2008, but again there was nothing from the Superintendent or Deputy recommending the reduction.

The documents bear out what we heard from the witnesses that TCOs are used to allow retainage to be reduced to ridiculously low levels well before projects are completed. It also shows how little the Board bothers with decisions to release millions in funds to contractors. The Board violated its policy in all four random instances we checked resulting in over \$1.5 million prematurely

released to contractors. There was zero justification on which to base any reduction at all, let alone to the levels we observed. In all cases there was no CO and no recommendation from the Superintendent or the Deputy. Furthermore the Board relies on a retainage reduction certificate executed by the *contractor* to determine how much retainage they are voting on. In essence, they were voting blind. By placing the items on the consent agenda they also avoid any discussion of the justification for, or the amount of, the retainage being released. This is a glaring example of the Board's misfeasance.

2. Management problems

a. Lack of Accountability

The problems with TCOs did not start under the previous CBO, but it definitely ballooned under his watch. According to one witness CBO Lee Martin was reluctant to issue TCOs and initially doubted his authority to do so. Some time in 2003 he delegated the responsibility to prepare those TCOs to a supervisor of trades inspectors. According to a staff member at the building department at the time, once word got out that TCOs were being issued, PMs started flooding the building department with requests for TCOs. The witness estimated that 30-50 TCOs were issued in 2005 alone. That year, the supervisor of trades inspectors was promoted to interim CBO to replace Lee Martin with the proviso that he secure an academic degree and upgrade his provisional CBO license to keep his job.

In May of 2009 the CBO was removed from his position when it was determined that he not only failed to secure his degree, but had continued to sign off on COs and TCOs after his provisional CBO license had lapsed in March of 2008. As a result he was charged with a misdemeanor and ultimately pled and received a probationary sentence. That led of course to having to review and reissue all the documents he had signed while his license was invalid. However, neither the fact of his

conviction, nor his failure to secure his degree led to his dismissal from the District. Ironically, the former CBO is now the Assistant CBO, running the day to day operations of the department, while the current CBO is tasked with cleaning up the mess of the TCO debacle for which he was largely responsible.

This was not the first time the Department had to devote time to redo paperwork. Previously the interim CBO had been responsible for hiring an outside consultant to provide inspection services for the Department costing hundreds of thousands of dollars. Unfortunately the consultant provided unlicensed inspectors to do the work, a fact that the interim CBO failed to notice. Ultimately the issue was exposed by the press and the consultant repaid their fee, though the department had to go back and re-do hundreds of inspections. Allowing unlicensed inspectors to do inspections for an extended period of time was not all that surprising to us given that the interim CBO did not do a single evaluation of any employee the entire time he was in charge.

How a department can be run in this manner for so long without any repercussions for the person in charge is hard to understand but it fits in with what we heard regarding the next topic.

b. Lack of Disciplinary Authority

One issue brought up by witness after witness is the perception that no one ever gets fired for incompetence at the district. The main reason appears to be lack of support from senior management who must get the firing past the union and the personnel department and finally seek approval from the Board. According to witnesses, senior management finds it easier to just say no and let middle managers deal with problem employees. The solution for many departments is to simply add more staff, give the critical work to the new employees and move the incompetent and lazy to another less desirable job or location, or left at the job but given little or nothing to do.

Meanwhile, employees who do their job too well and draw the ire of either contractors or Board members by demanding quality products and adherence to rules and procedures receive the same treatment or worse. Managers unprotected by Union membership are on even thinner ice.

One example can be found in the Facilities and Construction Management Division. At one point in the last few years there were as many as seventy PMs employed by the Division. According to several witnesses, including two high level managers, there was only need for 25-35. One manager went so far as to say he could have gotten by with as little as twelve PMs. The managers complained of the near impossibility of having anyone fired no matter how egregious their behavior. One PM brazenly ran a side business from his cell phone during office hours. Managers testified they followed employees and saw them taking off early or running errands for hours and then lying about where they were during the workday. Attempts to fire staff were routinely turned down by Garretson, who in any case would need the concurrence of the Superintendent and a majority vote of the Board. Even more PMs were added at Garretson's behest despite protests from the PM supervisors. It was the opinion of management that many of these positions were created for cronies of either Garretson or Board members. PMs are paid between \$80,000 and \$100,000 depending on experience. Even taking the most conservative figure from the witnesses, reducing the number of PMs to 35 could have saved as much as \$3.5 million a year in salaries.

The number of PMs has now been slashed but due only to the aforementioned budget cuts and the end of the building boom, not some new found management initiative. On the other hand a senior staffer in the Department, with a reputation for resisting pressure to sign off on shoddy or incomplete work or approving unnecessary change orders, was let go after his "box" was removed from the organizational chart. True to form, when he asked for an explanation, no one in the District would

take responsibility for that decision.

c. Infighting

For years, witnesses say, inspectors and project managers have been fiercely butting heads, each blaming the other for delays and wasted money. The inspectors claim PMs allow contractors to run roughshod, cutting corners, violating codes and getting change orders charged to the district. The PMs claim many inspectors are hyper-technical nitpickers, often misinterpreting code and unnecessarily holding up projects, ultimately costing taxpayers more money.

We don't choose sides here nor do we need to. The fault clearly is with upper management. The problem according to witnesses has existed for years yet management has failed to resolve it. Despite years of accusations and recriminations by both sides, management with one glaring exception,¹ has not fired anyone, disciplined anyone, reassigned anyone, offered additional training, or in any way proposed solutions. This is not the first time this issue has been brought to the attention of district officials. The 2002 Report had this to say about it.

“School inspectors are supposed to work independently of the Facilities Division. Their supervisor is the Building Official; his supervisor reports directly to the Superintendent and not to the Facilities Division.

¹ In 2005 the District first reassigned then later fired Charlene Blackwood, at that time Senior Supervisor of Inspectors, for allegedly being insubordinate. She in turn filed suit claiming in essence the District was retaliating for blowing the whistle on numerous suspect practices at the Facilities Division. After years of litigation she received a settlement from the District which was widely publicized.

To the extent this was the District's effort to resolve the animosity between the inspectors and the project managers; it apparently had little to no effect; the issues continued unabated according to witnesses.

We have received testimony that tremendous animosity exists between some members of the inspection team and the Facilities Department, these inspectors and their colleagues, and these inspectors and their supervisors.

Both sides seem to view each other with suspicion and dislike, and each side seems to regard the other as ignorant, intransigent, and motivated by bad faith. We have also heard testimony which supports both sides' arguments.

Without somebody looking out for the best interest of the taxpayers, schools may continue to be built as poorly as they were ten to fifteen years ago.”

d. Lack of Training and Standardization for Inspectors

Disciplining or firing inspectors would be a problem since the previous CBO, in violation of school board policy *did not do any evaluations of staff for 5 years*. It is incomprehensible how any manager can get away with that in an organization of this size. How this could have been missed, or ignored, by his supervisor is beyond belief. The new CBO, only on the job for about a year, has been unable to do any evaluations because he is swamped trying to fix the aforementioned TCO debacle. Meanwhile the former CBO is now the *Asst. CBO* and runs the day to day operations of the office.

To complicate matters further, there appears to be no standard manual and no standardized training for inspectors. Even if any evaluations had been done, we don't know how any employee can be called to task when there are no clear standards on how to do those tasks.

The lack of standardized training is even more problematic today because of the District's budget cuts. Due to union seniority rules, employees let go in the PM department have “bumped” or replaced less senior inspectors, even though they are not trained or licensed inspectors themselves. They have ninety days under state statute (sixty days pursuant to the union contract) to apply for a license but without a standardized program in place their training consists of simply riding around with other inspectors and learning by watching.

e. Use of Untrained Inspectors

Which brings us to the next problem; the use of unlicensed, untrained or undertrained inspectors. Many District employees have protection against layoffs through their Union contract. If they are laid off they have the option of “bumping” a less senior employee out of their position even if they are not qualified for the job they have moved into. Under the contract they have a year to demonstrate proficiency in their new position. Like a row of dominoes, the employees they’ve bumped can similarly bump less senior people until finally somebody is out of a job and one or more employees have settled into new jobs that they may or may not be qualified for. We don’t have the time to delve into the wisdom of this practice and we understand management’s hands are tied somewhat by this provision of the union contract.

The way it’s been handled at the Building Department, however has been discouraging. Four PMs with no inspectors’ licenses were transferred there in July 2010. According to testimony we received these new employees were assigned by the Asst CBO shortly after arriving to do their own inspections with no oversight or supervision. This was after a brief period of no more than 2-3 weeks of riding around with licensed inspectors. Furthermore, their reports were given no special scrutiny by the Asst CBO upon their return to the office from the field.

Even more disappointing was hearing there were licensed inspectors available to do the job that sat idle at the office. We determined that at least one of those inspectors sitting idle had a history, not surprisingly, of failing inspections despite pressure from the contractors and management to let things slide. Another inspector was reassigned to do fire inspections because of the union bumping process which left the Department shorthanded of qualified inspectors. Unfortunately, fire inspections were not her expertise.

It's not easy being an inspector or a PM for the District. We have heard testimony that both groups routinely have to tolerate verbal abuse from contractors and vendors whenever disagreements arise. Being angrily berated and bullied, both in the field and even at meetings in the presence of management, is not uncommon. Sometimes the abuse can get physical. One roofing inspector claims to have been chased around by a hammer wielding foreman of a roofing subcontractor that had failed inspection. We know of at least one PM that actually got into a fistfight with a contractor. The women employed by the District may have it worse. One testified about a contractor that put his hand inside her belt and pulled her close to make his point during a discussion. At least two female inspectors felt the need to ask for male coworkers to accompany them to inspections. These incidents have never led to any consequences for the contractors.

In fact whenever disputes arise with "difficult" PMs or inspectors we have been told that the routine is, the contractor complains to the Board member, the Board member calls the Deputy Superintendent, the Deputy Superintendent sends the word down, and the PM or inspector is removed from the project. This message has been sent repeatedly over the years and by and large most workers from top to bottom have received it. Only the most stubborn continue to butt their heads against the wall by going against contractors and Board members.

f. Inadequate Record Keeping

Our review of the District's building practices was hampered by the challenge of securing complete and accurate records. It was difficult to have confidence in the numbers and documents provided to us knowing there was no definitive place where all COs, TCOs, Certificates of Completion and Certificates of Inspection must be maintained, especially in light of the testimony regarding the issues encountered by Tucker.

In order to determine how many buildings were actually occupied without either a CO or TCO being issued, as opposed to simply having lost or misfiled the documents, we requested records from the Florida Department of Education's Office of Educational Facilities (OEF). Specifically we asked for every Certificate of Occupancy (Form 110B), every Certificate of Final Inspection (Form 209) and every Project Implementation Form (Form 110A) filed by the District over the last five years.

The results were shocking. In the last 5 years OEF has not received a single Form 110A. They have received a total of just *two* Form 209s and *one* Form 110B. These documents are required to be filed with OEF by F.S. 1013.37(2)(c). Unfortunately the statute imposes no penalty for failure to comply.

The documents that the District *did* create and keep locally are generally incomplete and inadequately done. See for example our review of documents in Part IV(A)(1). It's as if no one at the District is concerned with doing anything the right way.

For example, of over 140 COs issued by the Building Department over the last five years only 28 were signed by the Superintendent and only 6 were dated. (See typically Exhibit 6)

We also reviewed slightly more than 200 Certificates of Final Inspection issued over the last 5 years provided to us by the District. Less than 20 were signed by the Superintendent indicating the project had been accepted by the Board. Over a third (67) did not have the figures for the Adjusted Final Contract amount. (See typically Exhibit 6)

We are not the only ones to have issues with the record keeping at Facilities. Recently, the U.S. Department of Homeland Security conducted an audit of public assistance funds awarded to the Broward County School Board by FEMA for repairs necessitated by Hurricane Wilma and Katrina. (See Exhibit 8 @ paragraph c) The audit covered \$15.7 million of the \$45 million received through

September 2009. Of that amount the audit questioned almost \$15 million as unreasonable, unsupported, unnecessary, or excessive. The bulk of that amount, \$14.7 million, was found to be unsupported in that the Board was unable to "...provide source documentation such as cancelled checks, paid bills, payroll, time and attendance records, contracts and subcontracts award documents, etc..."

This is both embarrassing and unacceptable. Unless the District can come up with paperwork to satisfy FEMA, Broward taxpayers may ultimately have to eat this bill. Furthermore the federal government may very well audit the other \$30 million provided by FEMA and we see no reason why the District will fare any better under that audit.

We also note that a recent news article in the Sun-Sentinel, dated 9/13/2010, focusing on Broward school construction issues had this to say about the District's record keeping "...precisely who built how much, when and at what cost could not easily be tracked. The school system has no central, historical depository from which to draw such basic information." "Because the school system's records were incomplete, incompatible and riddled with errors, the newspaper ultimately relied heavily on cost of construction reports filed with the state."

Frankly, we are astonished that this Board can micromanage the construction program as it does and still be so blind to the longstanding problems that have plagued the District and led to so much waste, fraud and abuse. The biggest problem is that the Board is made up of nine politicians making decisions on how to spend *other people's money*. Unfortunately they have demonstrated time and again that their loyalties lie with the contractors, not the taxpayers when deciding how to spend it.

The Board's failure to oversee the district and take or demand corrective action isn't the worst of it. When it does take action, things often get worse.

B. Failures of the Board
1. Micromanaging and Lack of Accountability

The way the Board carries out its day to day business is set up to allow wasteful and dubious spending on ill conceived ideas, and to direct that spending towards friends, acquaintances or supporters of Board members without any accountability. One way they do that is by making informal decisions at Board workshops and retreats or even during training sessions, and then ratifying their decisions by use of a consent agenda.

The Board agenda is set by the Superintendent and his Executive Leadership Team (ELT). Anyone who wants to have an item placed on the Board agenda needs to fill out an agenda item request form which is then routed to the Superintendent's office. There the item is discussed by the Superintendent and the ELT. If there is no need for District staff to further review or analyze the proposed item it is placed on either the regular or the consent agenda. The agenda is typically set approximately two weeks before the Board meeting. However some agenda items, referred to as late items can be added as late as the Friday before the Tuesday Board meeting. These items are not announced until the beginning of the Board meeting.

The consent agenda at Board meetings contains supposedly non-controversial items; items which are not discussed or debated in public but are simply lumped together to be voted on by simple voice vote. Remarkably, spending items up to \$1 million are *automatically* included on the consent agenda pursuant to Board policy. They wind up side by side with innocuous resolutions in support of "National Magnet Schools of America Month" and the like.

The only items that are *required* to appear on the regular agenda are items over \$1 million,

policy decisions and personnel decisions. Items on the consent agenda can be pulled for discussion by the public or any Board member. Given the lack of meaningful notice or information about the items, it's a small wonder they are rarely if ever pulled by any member of the public, nor should it be their burden to do so.

In our opinion if an item on the agenda is too trivial or inconsequential to require any debate or discussion then the item probably shouldn't be on the agenda and the Board should not be wasting its time on it. Delegate the decision to the district and be done with it. At least that way there will be one person that can be held responsible rather than a group of nine politicians. Placing items on a consent agenda is just a way to keep control while dodging responsibility.

We believe the Board's desire to have these financial items on the agenda is tied to the natural desire of some politicians to be standing nearby whenever the taxpayer's cash register is opened.

We have already seen how the Board and District can shirk their duty by using the consent agenda in relation to decreasing retainage in Part IV(A)(1)(d). Here are some more examples.

a. The Consultant

A series of contracts for consulting services between 2007 and 2010, while far from the biggest waste of money, is an apt example of how the consent agenda can be used to hide both wasteful spending and micro-managing by the Board.

In 2005 the District and Board underwent an accreditation review by the Southern Association of Colleges and Schools (SACS). Numerous witnesses testified that SACS determined that Board members were not acting in a collegial, cohesive manner, and in fact the Board was dysfunctional and prone to petty infighting. The impetus behind hiring a consultant to provide leadership training and team building for the Board was SACS' recommendation that Board members engage in "professional

development”

As a result, it was determined that an outside consultant would be hired to provide training to the Board. Before the deputy superintendent who was tasked with finding/screening candidates could finish, she met with the former Board chair who told her “we found someone we like”. While the deputy assumed the “we” meant the Board as a whole, in fact the Board chair was simply passing on a name given to her by another Board member who in turn had met the consultant at dinner with her lobbyist husband. The consultant, we were told, had previously worked with the Board member’s husband on a similar project. Neither the deputy, nor the superintendent questioned why a Board member would be hand picking a consultant; in fact this was just another example of a Board member butting into the day to day operations of the District, a practice that District officials were accustomed to at the time and a practice that would worsen dramatically in the coming years.

After meeting with the Board chair, the deputy superintendent requested that the proposal to hire the consultant be placed on the Board agenda. Because the contract was under \$1million, it went on the consent agenda and without public discussion or debate the contract was approved. At no time was there any disclosure of any relationship between the consultant and any Board member nor did the Board member who initially recommended the consultant abstain from voting. This lack of disclosure continued over the next several years despite what we determined to be a social relationship between the Board member and her husband and the consultant and his wife based on testimony we received as well as a review of e-mails between the parties.

The contract paid the consultant \$325 per hour, \$160 per hour for his associate (his wife) to take notes, \$85 per hour for travel time to and from California. In addition he was driven to and from the hotel, meetings and the airport by a District employee and provided with complimentary luxury

skybox seats to a Dolphin football game. A series of contract renewals were placed on the consent agenda over the next three years, ultimately paying the consultant \$331,000. The first two agenda items dated February 20, 2007 and May 22, 2007, were for contracts with caps of \$75,000 and \$100,000. Neither Board item mentioned the SACS recommendation as justification. The first consent agenda item to mention the SACS recommendation was dated October 21, 2008. That agenda item also added the “facilitation” of the Superintendent’s evaluation to the scope of the consultant’s work, though using a consultant to assist the Board in evaluating the Superintendent was never mentioned in the SACS audit recommendations. Previously that had been done for free by District staff. Later the scope of his work was expanded again to include transitioning the current Board attorney to an emeritus position, and helping to hire a new Board attorney.

These decisions to expand the scope of the consultant’s work were not made at regular Board meetings nor even workshops, but instead during the Board training sessions with the consultant. These decisions were then ratified without debate or public discussion by using the consent agenda.

As the Board would soon find out, they could have hired similarly qualified local consultants for far less. In 2009, the District sought out alternatives and was quoted \$100 per hour, not the combined \$485 charged by the previous consultant. In fact, just for the “facilitation” of the superintendent’s evaluation, the quotes were \$6,000, \$10,000 and \$33,000.

When it comes to spending taxpayer’s money the Board is reckless. When presented with the proposals at the workshop in October of 2009, they “informally” directed the Superintendent to continue with the same consultant at \$33,000. Not only that, they also bought into a two day training seminar from the same consultant for \$13,000.

Local consultants were not the only options for the Board to consider. In July 2008 the Board

voted to pay dues to the Florida School Boards Association in the amount of \$23,649 for the year. One of the perks of belonging to that organization (besides free life insurance for Board members) is leadership training for Board members, leading to certifications such as Certified Board Member, Advanced Boardmanship Certification, Master Board and Certified Board Distinction. So far as we know the Board never considered this or any other option.

This process raises a whole host of questions, none of which were answered to our satisfaction. Why should taxpayers have to pay to train elected officials on how to behave appropriately and professionally on a board? Why do nine elected officials need anyone to help them evaluate the Superintendent they work with on a weekly, if not daily basis? Why are individual Board members directing the District on who to hire? Why are decisions to expand the scope of the consultant's work being made at training sessions with the consultant himself, rather than at a Board workshop or regular meeting in view of the public?

We believe these are all valid questions but by having this "non-controversial" item on the agenda these questions were never asked let alone answered.

This is not the biggest waste of money. Some might even say that this a mere drop in the bucket compared to the overall District budget. But to quote the late Senator Everett Dirksen "A million here, a million there, pretty soon you're talking about real money"

We have been made aware of many examples of wasteful spending caused by Board members' interference and micromanaging; the following one concerns a little more money. Here we see how an individual Board member, acting behind the scenes and off the record can push through an entire school with little discussion and virtually no accountability with the help of the consent agenda.

b. Beachside Boondoggle

The building of what is now known as Beachside Montessori, (initially designated Elementary G-1, then Elementary C-1) is a microcosm of everything that is wrong with the Board and District: interference by the Board in the building of projects, favoritism in the selecting or keeping of contractors, rushing projects to contract without complete plans, cost overruns, wasting tax dollars on unnecessary and unjustified projects, unilateral decision making by individual Board members, strong arming local neighborhoods, failure to have any meaningful oversight or discussion as a Board regarding the need for the school, complete lack of accountability, and failure to adhere to Board policy. The issue with Beachside is neither the Montessori nor the K-8 concept but rather whether it was fiscally responsible to build a new school in an area of under enrolled schools particularly in light of overcrowding in other areas of the county. The process was not open and transparent and the Board engaged in underhanded tactics to build this and other schools at a time when it knew the District had an excess of capacity.

Beachside cost the taxpayers over \$25 million, including over \$6 million in land acquisition, displaced dozens of residents, razed almost all of a local community park, and built in an area and a time where there was an abundance of empty elementary and middle school seats. Meanwhile, many schools out west have been critically overcrowded for years, with Falcon Cove Middle being a prime example. Furthermore the project was prematurely rushed to contract without final plans in place in order to avoid a looming building moratorium by the State DOE, which led to millions of dollars in change orders and months of delay. This practice of starting schools before plans are finalized was condemned by the 2002 Grand Jury.

“The School Board, in its haste to begin projects, did not always insist on complete, approved architectural plans prior to the commencement of construction” “The School Board Facilities Division's decision to begin construction without complete architectural plans has created glaring problems for the School Board inspectors.”

If one were to simply look at the official Board and District records for Beachside Montessori, there would be no definitive way to tell why it was built, who decided it should be built, who decided it should initially be a kindergarten through 5th grade school, who decided to change it to kindergarten through 8th grade school and finally, who decided it should be a Montessori school. Again to quote the 2002 Report:

“Our inquiry has determined that there is little or no accountability for disastrous school projects”

Before a school can be planned and built it must be on the Plant Survey. A Plant Survey is required to be filed with the State Department of Education (DOE) at least every five years; Districts are free to update the Plant Survey sooner. The Plant survey is a comprehensive listing of all school facilities, permanent and non permanent in the district, including their age and condition. Also included is the enrollment and capacity numbers for each facility.

Every year the State DOE publishes its student enrollment projections for each district for the following five years. These projections are referred to as the COFTE (Capital Outlay Full Time Equivalent) numbers.

Comparing the two numbers lets the District know how much renovation and new construction they need to plan for over the next five years. Districts are not allowed by DOE to build more capacity than the projected enrollment predicts will be needed. DOE also requires the Plant

survey to include the various projects, such as new schools or classroom additions, the District plans to build to meet its needs. If during the life of the Plant survey, the District feels circumstances warrant a modification to the survey, they may file a request with DOE to amend the survey.

The District Educational Facilities Plan, also known as the Five Year Plan, is a District document used to plan and prioritize the building and renovation of school facilities listed in the Plant survey. Though it's a five year plan it actually changes every year to accommodate changes in the budget and priorities.

Beachside was not originally in the 2001-2006 building plan. The authority to build Beachside came from a spot survey done by the former Director of Capital Planning and Programming sometime in 2003. However, we have heard no evidence as to who directed him to do so or why. We have heard conflicting testimony as to whether he did or would do such a thing on his own. The site for this new school was selected in November of 2003. In July and December of 2004 the Board authorized the acquisition of property on which to build the new school, at that time justified by overcrowding at Hollywood Central. All of these items were on the consent agenda and generated scant discussion.

Whatever justification existed for building what was then known as Elementary G-1 was fleeting. The area where it was planned to be built was over capacity long before its groundbreaking in March of 2009. In fact we have heard testimony that District officials were opposed to building Beachside believing it to be unjustified, a position articulated to the Board on multiple occasions. The District's School Boundaries department gave specific figures to the Board on October 23, 2007 at a boundary workshop showing that building a new school was not justified for the projected enrollment in the area. The figures showed a consistent enrollment decline in the area including a

drop of over 800 students in surrounding schools. They also pointed out the impact of five new charter schools in the last eight years. Nonetheless one Board member at that meeting stated she preferred to use her own projections though nothing in the record demonstrated what her qualifications for predicting enrollment or population growth are. Despite the information provided by the boundaries department there was no decision by the Board one way or another, just some informal feedback at the workshop to continue developing boundaries for the school. As there appears to be no formal process for stopping unnecessary projects, Elementary G-1, now Elementary “C” continued to roll along like a snowball headed downhill.

Ultimately one Board member realized building an elementary school in that area was too blatant a mistake, and suggested Elementary “C” become a K-8. At the same time another Board member decided the school would have a Montessori curriculum and become a magnet school for the south side of the county. The first public announcement of these decisions came at the ground breaking ceremony for the school on March 5th, 2009. That was the first time the South Area Superintendent learned of these plans. Not until November of 2009 is there a mention in the school board minutes of the intention to make Elementary C a Montessori school. All of the decisions concerning Beachside are on the Consent Agenda, except for the awarding of the construction contract. None of these decisions merited any public discussion of any significance. At no time did any Board member disclose that staff had warned them the enrollment numbers did not justify building the school, that the consultant had warned them the plans were not final and that there would likely be significant cost overruns, or that the Board members were stalling the new Plant Survey out of fear the state would stop them from building Beachside and every other project not under contract. That is the public record behind the building of Beachside.

The reality of what happened, as told to us by a myriad of witnesses, is that after 2006 Beachside became a particular Board member's "baby". According to witnesses it is well known to virtually all District employees that most, if not all, Board members have pet projects that it's best not to interfere with, no matter how wasteful or unjustifiable the project may appear to be.

This particular Board member argued the case for Beachside against the number crunchers in the Boundaries department. When former Deputy Superintendent Michael Garretson tried to cancel the project in June of 2008, it was this same Board member who, in the presence of Mr. Garretson and the PM, stated emphatically that the school would be built and it would be built with that contractor. It was the same Board member who decreed that the school would be changed to a K-8, necessitating delays, design changes, and driving up the costs. It was this Board member who decided unilaterally that it would be a Montessori school. As the process neared completion, it was this same Board member who attended a meeting of parents interested in sending their children to Beachside, a meeting held not at a school building or other public building, but rather at a private residence, a meeting she attended in her official capacity even though it was not publicized and attendance was by invitation only.

Beachside was slated to be built partly on a City of Hollywood park, an extremely controversial decision amongst some Hollywood residents. The city contributed the land based on Board plans for an elementary school. The change to a K-8 caught both the city and residents off guard. This change required the City to ratify changes to the existing contract between the City and Board. When opposition to the change arose in Hollywood, due to the impact on park operating hours, it was this Board member who attended the city commission meeting and made a thinly veiled threat to have the park closed even longer if the city did not agree to the changes.

According to the witnesses and documents provided to us, as early as 2006 virtually everyone in Facilities up to and including the Deputy Superintendent recognized that it was a waste of money to pay for a new school building in that area. We question where the senior leadership of the district was during this process. Why was there no effort by the District to seize back control of the construction program, or to at least insist that the decision be made by the Board as a whole? Had there been a full public debate perhaps all of the issues could have been addressed. One thing that might have been done was to explore the option of changing the boundaries. Another might be emptying out one of the existing schools and renovating it to accommodate the Montessori concept. That would have avoided destroying a local park, displacing residents, saved millions in land acquisition and millions more in construction. Perhaps the school could have been located in an area of overcrowding out west. Apparently the people behind Beachside weren't interested in other ideas or public debate.

In our view the inaction of both the Board and the District leadership allowing an individual Board member to unilaterally shove through a "pet project" was a gross dereliction of duty on their parts. This "process" doesn't sit well with us and we doubt it will sit well with the taxpayers who in the end had to pay over \$25 million for an unnecessary school building.

These are far from the only examples of Board members crossing the line and micromanaging the District. Of all the bad decisions the Board has made the worst may be to personally insert themselves in the decisions to select contractors and vendors. Board members do this through their appearance on several committees, specifically the Financial Advisory Committee which selects banks and other financial institutions that manage the District's money including investments and the issuance of construction bonds), the Insurance Committee (which selects the companies providing health and other insurance to the district), and QSEC (which prequalifies and selects the contractors

that build the school infrastructure). Time and space constraints limit us to a discussion of just QSEC in this Report.

c. Construction Manager at Risk, QSEC, and Campaign Contributions

Construction Manager at Risk (CM@Risk) is the name of a delivery method by which a building project can be delivered by a contractor. The way it's supposed to work is that the owner, (here the District) selects a Construction Manager (CM) and pays him a fee to manage the construction project for the District. The fee is a percentage of the approximate price the District expects the project to cost. The CM then hires the contractors to do the work and when he receives all the bids from the contractors he lets the District know how much it will cost him to build the project and what the guaranteed maximum price (GMP) the District would have to pay. If the cost of the project exceeds the GMP for any reason the CM must make it up, i.e. he is at risk for it. The District will not pay for any change orders unless the District changes the scope of the project. If the project comes in under budget the money saved is shared between the CM and the District providing the CM with incentive to bring the project in on time and under budget. Using this method should typically result in paying about 20% - 30% more than if the project had simply gone to the lowest bidder through a hard bid process. The justification for paying such a premium is that all risk is borne by the CM and is ordinarily limited to complex jobs that have a higher than normal risk. This is how it should work in theory.

In reality it is an abomination that has wasted millions of taxpayer dollars that wind up as excess profits in the hands of contractors "lucky" enough to snare one of these lucrative contracts.

Virtually everything about the way CM@ Risk is used in Broward is wrong. For one thing

Broward allows General Contractors (GC) to act as CMs which immediately puts the fox in charge of the henhouse. There is little incentive for the CM to put pressure on the GC to cut costs when he *is* the GC. CM@Risk is also used inappropriately and indiscriminately by the District. Because it costs more it is supposed to be limited to those complex high risk projects where cost overruns due to unforeseen circumstances are a real possibility. Instead CM@Risk has become the overwhelming favorite as a delivery method and used for the simplest box projects any contractor can handle. CM@Risk is a misnomer in any case, at least in Broward. Rather than being at risk for cost overruns CM@Risk projects appear to have as many change orders as any other type of delivery, in short there is little risk for contractors in these CM@Risk projects.

The responsibility for this enormous waste of money lies squarely on the shoulders of the Board and the Superintendents that have given in to them. The District is the entity that recommends to the Board the type of delivery to be used; however the Board has the final say. Furthermore we have received testimony that individual Board members frequently pressure the District to change the recommended delivery from a hard bid to CM@Risk. One senior official in the Facilities Division testified that over the last few years about half of the Board members have called the Deputy Superintendent to change projects to CM@Risk.

Board members will also intervene to keep projects as CM@ Risk when the District tries to save money by changing a project to a hard bid. For example we reviewed an April 16th, 2009 e-mail from a PM to her supervisor regarding a Coral Springs Gym project projected to cost approximately \$6 million. The PM pointed out that using a CM@Risk could cost as much as 20% more on what was a simple straightforward project. The answer back down the chain was clear and emphatic, the Board member wanted the project to stay as a CM@Risk and that was the end of the discussion.

Why are Board members so fiercely loyal to the concept of CM@Risk? According to witnesses, projects that are slated for hard bid go to the lowest bidder with no input from the Board. Projects that will use a CM go to a selection committee on which two Board members sit, which gives them tremendous influence in the decision to award lucrative CM@Risk contracts.

QSEC stands for Qualifications Selection Evaluation Committee. This committee, made up primarily of District personnel, also includes one at large Board member and another Board member in whose district the construction project will take place. Why Board members think they have any qualifications to determine who is or isn't qualified to do well on complex construction jobs is a mystery. Nonetheless, the committee reviews the applicants and scores them on a variety of factors, *but not price*. While the Board members are a minority of the committee and the scoring is anonymous, Board members engage in open discussions and make it clear who they favor and who they don't. It is not surprising to find that the Board members' favorite is invariably the top scoring applicant.

Why Board members are so keen on selecting contractors is obvious. The ability to steer, or even to seem to have the ability to influence where millions of dollars in contracts go, is lifeblood to politicians. One long time Board member stated openly that he would never support a hard bid for a project again. Not surprisingly the most generous supporters to Board campaigns are contractors and their subcontractors, as well as their lobbyists, friends and families. We agree with witnesses that testified that the Board is in many respects a training ground for newbie politicians, where unfortunately bad habits are learned.

Now that the well is dry (in terms of any significant spending on construction in the near future) the Board has finally acknowledged the obvious and recently removed Board members from

service on the QSEC. Of course that is not set in stone, the change was nothing more than an amendment to School Board Policy 7003 which has been amended in the past and can be amended tomorrow or whenever the board feels the coast is clear.

Another easy fix to this sort of corrupting influence is for Board members to simply refuse to accept contributions from anyone that does business with the District.

2. Ethical Blind Spots

We heard testimony that the Board has not had any ethics training until this year. Many of the examples of the Board's shortcomings we have discussed are also good examples of what we see as ethical blind spots. There are unfortunately many more examples big and small. The recent arrests of two Board members would certainly count as big. But some Board members appear to have difficulty understanding or following what would be considered small, simple rules like the ones concerning the receipt of gifts.

a. Failure to report gifts

For example, at the semi-annual FSBA meetings, corporate sponsors treat guests to free cocktails and dinners at expensive restaurants. Several sponsors combine to host the dinner and disclose on the invitation itself that the meal need not be reported because each sponsor contributed less than \$25.00. This of course pertains to the sponsor's reporting requirement not the Board members. Board members must report all gifts valued at over \$100.00, regardless of how many donors contributed. Unfortunately it appears some Board members may have misinterpreted this footnote on the invitation as applying to them, either out of ignorance or convenience. One Board member even testified that she believed this was the opinion of the General Counsel's Office.

Board members could have of course contacted the General Counsel's Office, the Florida

Commission on Ethics or even visited the Commission's website at www.ethics.state.fl.us where they would have read this:

34-13.510 Valuation of Gifts Provided by Multiple Donors.

(1) For purposes of any gift disclosure to be made by a reporting individual or procurement employee, the value of a gift provided by multiple donors is determined by the valuation principles of Section 112.3148(7), F.S, and Rule 34-13.500 *applied to the gift as a whole, rather than by any pro rata share.* (emphasis added)

Instead it appears that every Board member who has attended these dinners for at least the last five years has bought into this convenient interpretation. According to witnesses and records we reviewed, numerous Board members have attended these dinners yet our investigation reveals only one Florida Quarterly Gift Disclosure Form has been filed with the Florida Commission on Ethics by any Board member in the last five years, a remarkable record. Of course it is possible that the Board members subsequently reimbursed the sponsors for the event, which points out one of the difficulties of the current law, i.e. investigators not only have to prove the acceptance of the gift they have to prove a negative, that the value of the gift was not returned. Still, testimony from one of the recent event organizers was that he had no recollection of any Board member paying for their meal and drinks.

b. Breaches of confidentiality

Sometimes ethical blind spots are revealed not by actions taken but by actions not taken. For example, recent news reports detailed how a website run by a former Board member published confidential background information about a sitting Board member. The information concerned a confidential document that contained a notation that suggested it came from the District's Special Investigation Unit. Though the breach apparently occurred back during the 2006 election cycle, it only

came to light in October of 2010.

Given the Board's penchant for micromanaging in other areas we are shocked to see that the Board has taken no action to direct or ask the District to determine who was responsible for the breach; how or why such a breach occurred; what policies, if any, were violated; what policies need to be created or strengthened to prevent such a disclosure in the future, and perhaps most importantly-- given the regular practice of Board members bypassing chain of command to speak directly to District personnel-- whether the breach was the result of Board member action.

This failure to act is either another example of nonfeasance or a failure of the Board to even recognize a serious breach of ethics, if not outright criminal conduct, possibly by one of their own. It may ultimately turn out that there is no misconduct by anyone on the Board or at the District, but *the failure to even inquire and demand answers* is inexcusable.

c. Silencing Critics by Threats

Around the same time we became aware of another published report concerning an attack on a person using the Facebook identity of Broward Cleansweep. This person has been highly critical of the Board and its operations and has called for the ouster of virtually all incumbent Board members. An anonymous poster, believing Broward Cleansweep to be a District employee (and married to another District employee) threatened to use his connections at the District or Board to have both of them fired and or prosecuted if he did not immediately take down the Facebook page and stop his attacks on the Board. Ultimately the poster concluded Broward Cleansweep was not who he believed and abandoned his attacks.

This extortionate attempt to silence political criticism is poison in any democratic society. The attack would be reprehensible coming from any quarter. For it to come from a Broward political

consultant who has worked for numerous local political candidates, including school board members, is even more disturbing. Worst of all, the poster who attempted to silence Broward Cleansweep has previously served, and presently does serve on District advisory council(s). Based on the testimony we heard, at least one Board member is aware of what took place, yet so far as we know, no action has been taken to ask this person to voluntarily resign, disclose his actions to the rest of the Board, or otherwise disassociate from him. So far as we know, no one at the Board has even asked a single question about this incident, nor expressed any desire to determine who might be attacking a District employee for exercising his political rights.

d. Voting Conflicts

Back in July of 2010 another press report suggested that there may have been an inappropriate relationship between a Board member and a vendor to the Board. Included within that report were a series of personal and embarrassing e-mails between the two. This Board member at no time disclosed the relationship with the vendor to the public or the rest of the Board, yet voted on matters concerning the vendor that came before the Board. This raises two issues:

First, there appears to be no Board policy that prohibits voting in this situation, or that even requires disclosure.

Second, in all the months since this information has been revealed, the Board has been utterly silent on this issue. Not one Board member has asked a single question. Not one Board member has asked for an admission or denial or explanation. No Board member has, to our knowledge, inquired into the feasibility of creating a policy to cover such situations, and no one has so much as asked for an agenda item to discuss this issue in general.

We understand the reluctance of public officials to disclose details of their personal affairs, but

when personal affairs intrude into the discharge of public duties that reluctance must be overcome. Once again when faced with an opportunity to address a serious ethical issue the Board takes no action.

Contrast their silence on these issues with their response to a chance to pat themselves on the back. Our next example pertains more to style than substance, but it does show how Board members view themselves and the job they've done. It portrays their mindset and their sense of entitlement, which we find surprising, given how poorly they've done their job over the years.

e. Self Serving

Last May, the Board voted 5-3 to honor one of its own by naming a high school athletic field, track facility and press box after a sitting Board member. It was the second track facility named after this Board member, both of which are in that Board member's District. A review of the minutes of the meeting revealed no basis for the honor other than the fact he's a school Board member.

The principal of the affected school implied that the Board member was "involved" with the school. It's their job to be involved. If the implication is that the Board member favored this school (and the other with a track named after him) because it was in his District, then we question the wisdom of rewarding a Board member for acting parochially. Despite the fact that Board members technically represent their own district, we hope they remain aware of their responsibility to look at the big picture and act for the good of the District as a whole.

To the extent the honor is for the Board member's support for either the school or the building of the facility, it would be good for the Board to remember this is taxpayer money they're spending, not their own. We find it hard to believe that with all the people in Broward County they couldn't find one single person to honor who has done something big, something noble, made some sacrifice

or done something beyond the call of duty, something other than just being an elected official. If that wasn't possible they could have at least honored the people truly responsible for the building of the facility and called it the Taxpayers of Broward County Athletic Field and Track Facility.

f. Stalling the Plant Survey

Finally, in what might be the worst example, it is our conclusion that there was a deliberate, conscious effort by senior officials at the District in collusion with or at the direction of certain Board members to avoid the timely filing of an updated Plant Survey with the State Department of Education between 2006 and 2008 for the express purpose of continuing what was by then an out of control and badly mismanaged construction program. This was in our view driven mostly out of a desire to benefit contractors and the political fortunes of Board members. The result of this effort is an abundance of empty classrooms, mostly in the east, \$2 billion in debt and critically overcrowded schools in the western part of the county.

We have heard the explanations proffered for the delays in the survey (See Exhibit 9) and reject them as not credible; they are excuses and bad ones at that. Balanced against them was overwhelming testimony that everyone involved in the District's construction program knew of, and openly spoke of, the looming deadline for the issuance of the new survey, that they knew they had overbuilt and that the State would freeze any new building as soon as the new survey was submitted. Minutes from a Project Management Staff Meeting on September 25th, 2007 attribute to Deputy Garretson the statement that "projects had to be bid because of the new state survey which is due the last of October, which will most likely remove all of our capacity additions." Each time the survey was stalled and the new deadline approached, the alarm would sound throughout the facilities department to rush plans and contracts through to have them in place before the freeze.

The Board knew as early as 2003 that enrollment was projected to flatten out by the time the new plant survey was due. In 2002 the Board had commissioned a private consultant to create a Long-Range Facility Master Plan covering the years 2003-2013. It was provided in April of 2003 at a cost of \$1.1 million. It was then promptly shelved and ignored according to high level district employees. The problem was the consultant predicted enrollment numbers well below what the District was projecting and well below what the Board wanted to hear. In hindsight the consultant's numbers were much closer to the mark than the District's.

The worst part of all this is that despite their mania to build to overcapacity, they still weren't able to put a dent into the critically overcrowded schools in the western portion of the county. As far back as 2003 the disparity in capacity between east and west Broward was apparent. The 2002 Report warned "A boundary shift is necessary to take advantage of eastern schools' excess capacity. This might prove to be very controversial."

The Board was warned over seven years ago about this issue and they have done nothing to address it. We don't know if boundary shifts will be the answer but we do know that thanks to the Board's shortsighted and wasteful building program, building more capacity out west will no longer be an option to relieve overcrowded schools.

3. The Problem with Single Member Districting

One of the issues raised by having single member districting is that it intensifies politician's instinct to act parochially and play to their perceived power base. This is especially a problem when the politician is a member of a Board that is supposed to act in concert for the good of the entire larger organization, i.e. the school District as a whole. Instead of fostering cooperation single-member districts tend to divide the Board as members compete for dollars for their particular district. The

legislature itself recognized the potential for Board members losing sight of the big picture when it stated in F.S.1001.363 “Each member of the district school board shall serve as the representative of the entire district, rather than as the representative of a district school board member residence area.” The statute, and School Board Policy 1005 which follows it, has been routinely ignored by the majority of Board members.

Our view of the evidence convinces us that Broward County does not have a School Board as such, but rather a collection of nine independent officials who by and large act independently and generally make decisions solely for the benefit of what they perceive to be their power base, usually their own district. We’ve already heard that the Board itself admitted that it was acting dysfunctionally and was prone to petty infighting as far back as 2005.

One witness (a senior staffer in the building department) testified that during a discussion with one of the Board members, the Board member stated “I don’t give a crap about anything in the south, those people don’t vote for me”

Sometimes there are side deals agreed to by a couple of Board members to the detriment of the District as a whole. The same witness testified to an arrangement by two Board members agreeing to shrink the size of one high school project in one of their districts to free up dollars to build a high school in the other member’s District. This vote trade of course was never publicly revealed.

We question the value of single member districts as well as the need for having nine board members. The current makeup only dates back to 1998. The move to single member districts and the increase to nine members was the result of a referendum mandated by a special, short lived (passed in 1997, it was repealed in 2000) legislative act.

The Board members have created havoc by acting individually. They have interfered in the day

to day operations of the District. They have made petty and costly demands like changing bus stop locations, increasing the size of stadium scoreboards, and doubling football stand capacity from 2,500 to 5,000. They have pressured officials to rush school openings, influenced principals to allow certain children to bypass the lottery or waiting lists, influenced the selection of contractors and vendors, and pressured Facilities to use more expensive contracting methods. Inspectors and PMs have been reassigned to benefit contractors. Personnel have been pressured to sign off on retainage reductions. The Board has pushed pet projects that have cost the public millions. Why not have the required minimum of five Board members instead of providing jobs for four more politicians?

The way it stands now the District has ten bosses, nine of which have no particular expertise in the running of a large multi-billion dollar school district. And it should be obvious that the more people involved in a decision the less individual accountability there can be. Returning power to a Superintendent and reducing the influence of the Board should be the goal. We see no way of making that happen and getting it to stick without moving to an elected Superintendent.

We understand it seems to go against the grain to solve the problem of too many politicians by creating another political office. Electing the Superintendent certainly has its' drawbacks, one of which will be limiting the search for a Superintendent to just Broward, and its' likely that the position will be filled by a politician rather than an educator.

Many Florida counties do rely on elected Superintendents however, and having an elected Superintendent would bring back accountability, something sorely lacking at the Board for many, many years. It's not an easy choice, but the behavior of the Board over the last 20 years makes it easier.

V. Conclusion

The 2002 Report said:

“Over the past fifteen (15) years, the School Board may have lost the public's confidence in its ability to spend taxpayers' money wisely in the construction of our schools. Whether this loss of confidence is well taken is debatable.”

We have spent a great deal of time reviewing the work of the Board and District, heard from many witnesses and reviewed hundreds of pages of documents. In fairness to both we didn't look at everything they do, but sadly, everywhere we did look, we found problems. We think it's no longer debatable; in fact we have little confidence in their ability. One of the legacies of the Board will be the squandering of hundreds of millions of taxpayer dollars for a mediocre product, debt and empty seats in the east and overcrowded schools in the west.

We did not anticipate at the outset that a review of the Board and District would be so time consuming. The reality is that as much time as we spent we have only scratched the surface. The examples we have reported on are typical, not the exceptions. There simply isn't sufficient time and resources to follow up all the leads we learned of, nor to comment fully on all we did learn. What we did learn however, was enough to support our findings and make our recommendations.

One area we would have liked to explore further was the quality, or lack thereof, of construction projects. Many of the issues we heard of were raised in the 2002 report, including shoddy roofing jobs, water intrusion, and early failure of stucco. Some of these issues have been raised in the press, like the new addition to Parkside Elementary that can't be occupied because of an unknown stench. We're not surprised these problems continue to occur, given the Board's interference in the construction process and their protection of contractors.

Corruption comes in many forms; not always the obvious money in an envelope for a vote

trade that's easy to recognize. One dictionary definition is "An act done with an intent to give some advantage inconsistent with official duty and the rights of others." Much of the activity we have learned of and reported on can be described as corrupt, at least as understood by regular citizens and yet escape criminal punishment because of the deficiencies and weaknesses in state law we earlier reported on. Whether prosecutable or not we find this sort of corruption has a longstanding foothold at the Board.

The corruptive influence here is most often campaign contributions from individuals with a financial stake in how Board members vote. Long ago the Board should have recognized the risk that putting themselves in the center of handing out hundreds of millions in taxpayer dollars would inevitably drawn attention and undue influence from moneyed interests. They should have taken steps to insulate themselves from this influence by delegating to professionals in the District things like contractor selection and bid processes and simply have adopted a watchdog role. Instead they drew closer to it and fiercely protected their role. Only now, years late and with pressure from all sides, have they begun to take steps to resolve this and other issues. Unfortunately based on the history of this Board as an institution, we have no confidence in their ability to make meaningful changes and to adhere to them. The solutions we see, at least short term, are to remove as much power and influence from the Board as possible and to have an independent outside authority monitor their dealings closely.

VI. RECOMMENDATIONS

To the Broward County School Board

1. Read the Broward County Grand Jury's "Interim Report of the 2002 Fall Term Grand Jury on School Board Construction" at:
<http://sao17.state.fl.us/GrandJury2002.html>

2. Refuse campaign contributions from contractors, vendors and others doing business with the Board.
3. Require mandatory ethics training *and testing* by an outside agency
4. All late additions to the Board's agenda must be discussed at a public meeting.
5. Add more detail to agenda items or provide a link to where more information concerning the item can be found.
6. Reduce the threshold on spending items on the consent agenda.
7. Remove retainage reductions from consent agenda.
8. Require documentation listed in Policy 7005 to accompany request for retainage reduction.
9. Require recommendation of the Superintendent or the Deputy Superintendent for reduction in retainage to be in writing and under their signature.
10. End the influence of the Board over the Building department by turning over inspections to local building departments.
11. Reduce number of school board members to 5.
12. Place before the voters the issue of electing the Superintendent
13. Create independent office of Inspector General to monitor the Board and District
14. Go back to hard bids from prequalified contractors. Prohibit bids from builders with outstanding issues.
15. Remove all involvement by Board members in the selection of contractors, vendors, or financial institutions.
16. No official business conducted between school board members and staff, nor should Board members attempt to influence staff regarding official business. All business should be done with Superintendent or manager of department, or personally at public school board meeting.
17. All bids should be opened in public, with Auditor there to certify bids met minimums.

18. No decisions, formal or informal, should be made anywhere other than a regularly scheduled board meeting.
19. No discussions should be had other than at Board meetings or workshops as per Sunshine Law requirements.
20. Prohibit gifts of any value to any Board member or District employee from anyone doing business with the District or lobbying the Board

To the Legislature/State Department of Education

1. Empower DOE to penalize Districts that don't file required paperwork by withholding any State funds until Certificates of Occupancy, Certificates of Final Inspection and Project Implementation Forms are filed with DOE.

Respectfully submitted to the Honorable Victor Tobin, Presiding Judge, this ____ day of January, 2011.

Foreperson, Juror # _____, Nineteenth Statewide Grand Jury
of Florida

I, Oscar Gelpi, Special Counsel and Assistant Legal Adviser, Nineteenth Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this _____ day of January, 2011

NICHOLAS B. COX
STATEWIDE PROSECUTOR
STATEWIDE GRAND JURY LEGAL ADVISER
NINETEENTH STATEWIDE GRAND JURY OF FLORIDA
STATE OF FLORIDA

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THE FOREGOING Final Report was returned before me in open court, this _____ day of January, 2011.

HONORABLE VICTOR TOBIN, Presiding Judge
Nineteenth Statewide Grand Jury of Florida
