



# Escambia County School District Legal Function

## *Analysis of Legal Fees and Comparison to Other Florida Districts*

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Office of Internal Auditing  
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## Preface

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The Office of Internal Auditing serves to improve the fiscal accountability and enhance the public's perception of the management and operations of the Escambia County School District. This engagement strives to meet those objectives.

Audits, reviews, and other engagements are determined through a District-wide risk assessment process, and are incorporated into the annual work plan of the Office of Internal Auditing, as approved by the Audit Committee. Other assignments are also undertaken at the request of District management.

This engagement was conducted with the full cooperation of District operational staff and other school district personnel throughout the state of Florida.

This engagement was conducted in accordance with the International Standards for Professional Practice of Internal Auditing, as promulgated by the Institute of Internal Auditors.

We thank the office of General Counsel, all the various school district personnel outside of Escambia County, and all legal counsel who provided information for their cooperation and commitment.



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## Executive Summary

The Escambia County School District utilizes both internal and external legal counsel. A significant amount of funds are spent each year on using external counsel for specific matters.

The Escambia County School Board (the Board) questioned the viability of hiring additional internal counsel to take the place of using specialized external counsel; with the goals of: reducing the overall amount spent on legal services, increasing the availability of legal counsel, and reducing project turnaround time. The Board requested Internal Auditing assist with providing information to aid in their decision.

Our office analyzed the District's legal fees over a four-year period (2010-2011 fiscal year through the 2013-2014 fiscal year), and developed and conducted a survey for the purpose of gathering comparative information from all 67 districts in the state of Florida.

### Legal Fees Analysis

Our analysis of the legal fees for the District included analyzing each month's legal invoices (both general fund and risk management) during the four-year period and compiling the results. See the information below for details of our analysis:

<b>Category</b>	<b>Four-Year Total</b>	<b>Four-Year Average</b>	<b>2013-2014</b>
Tort Matters	\$266,285	\$66,571	\$49,626
Workers' Compensation	331,870	82,968	87,323
General Litigation*	254,967	63,742	95,604
General Inquiries*	38,657	9,664	9,006
Employment/Labor	109,543	27,386	8,856
Real Estate	118,374	29,594	19,116
<b>Total</b>	<b>\$1,119,696</b>	<b>\$279,924</b>	<b>\$269,531</b>

**The District spent approximately \$1.19 million on external counsel over the past four years, and approximately \$270,000 during 2013-2014.**

**\*The General categories above include services such as general employee matters (discipline, return to work, etc.) and other matters such as student discipline, general staff/Superintendent inquiries regarding contracts and policies, etc. See Appendix B for a brief explanation of typical services provided under each category type.**

**As an additional part of our analysis, we have determined that the approximate amount spent on legal fees for the 2014-2015 year-to-date (July 2014 through March 2015) was approximately \$248,000. However, it should be noted that this amount does include costs (expenses paid by the**

**In any given year, the amount spent for external counsel can vary based on a number of factors.**

**We compared our District's results with those both geographically close and based on FTE count.**

**The majority of the districts utilized external counsel only (72%).**

**District above and beyond hourly fees) as well.**

It is important to note that the numbers above can be affected by a number of factors in any given year, including, but not limited to: caseload, large cases, amount of collective bargaining to be done, and/or amount of real property bought or sold, etc. **See Appendix C for external legal fees by category for all years.**

#### Survey Results

Our survey was designed to gather comparative information from all Florida districts. The survey consisted of 16 questions. **See Appendix A for a listing of questions asked in this survey.**

It should be noted that neither our survey nor this report account for any unintended bias(es) introduced either in question structure or answer choices provided.

The responses to questions were collected, organized, and analyzed based on certain data sets. All questions may not use all data sets. We analyzed the most relevant. In addition to the entire population group (all 67 districts in the State), we created peer groups for comparison purposes; one based on approximate FTE count (FTE Peer Group), made up of the following districts – Manatee, Collier, Marion, Sarasota, Lake, and St. Lucie; and another peer group based on geographical location (Geographical Peer Group) that includes the following districts – Santa Rosa, Okaloosa, and Walton. It should be noted that while St. Lucie is technically a member of the FTE Peer Group, they appear to be an outlier. They are the smallest district in the FTE Peer Group, and also spent the most on external counsel for the period analyzed. Please see the Results/Conclusions section of this report for additional discussion of St. Lucie.

Our FTE Peer Group has generally comparable operations, with no major areas of operations being outsourced.

#### **Type of Counsel Used**

The responses to this question indicated that 48 of 67 (72%) districts utilized external counsel only. The other 19 districts (28%) utilized both internal and external counsel. No district utilized only internal counsel. **See Appendix D for a type of counsel used by all districts.**

For our FTE Peer Group, four of six districts (67%) utilized both internal and external legal counsel. The remaining two districts (33%) utilized only external counsel.

For our Geographical Peer Group, all three districts (100%) reported as having external counsel only.

## External Counsel

### *Most Frequently Addressed Areas – External Counsel*

According to the responses provided to our survey, the most frequently addressed areas were:

#### State:

- Employee Matters – 51 of 67 districts (76%)
- Real Estate Matters – 47 of 67 districts (70%)
- General Inquiries – 46 of 67 districts (69%)
- Tort Matters – 43 of 67 districts (64%)

#### FTE Peer Group:

- Employee Matters – 4 of 6 districts (67%)
- Real Estate Matters – 4 of 6 districts (67%)
- General Inquiries – 4 of 6 districts (67%)
- Tort Matters – 4 of 6 districts (67%)

#### Geographical Peer Group:

- Employee Matters – 3 of 3 districts (100%)
- Real Estate Matters – 3 of 3 districts (100%)
- General Inquiries – 3 of 3 districts (100%)
- Family Law Matters – 3 of 3 districts (100%)
- Commercial Law Matters – 3 of 3 districts (100%)
- Contract Review and Negotiation – 3 of 3 districts (100%)

Our district primarily uses external counsel for employee matters, tort matters, real estate matters, and “other” matters (bonds).

### *Approximate Annual Dollars Spent (Total, Per FTE) – External Counsel*

According to the responses provided by our FTE Peer Group, a range of between approximately \$186,000 and \$1,000,000 was spent for external legal services, in total, for the 2013-2014 fiscal year. The average amount spent was \$494,000. For the same time period, our district spent approximately \$270,000.

Caution should be taken when comparing internal and external counsel based on total dollars spent because external counsel includes cost amounts (on top of “fee” amounts for rendering legal services). For example in 2013-2014, the District spent approximately \$39,475 on costs for external counsel above hourly rates for items such as court reporters, production of exhibits, arbitrators, and mediators.

On a per-FTE basis for the 2013-2014 fiscal year, a range of between approximately \$4.05 and \$25 per FTE was spent. The per FTE costs for our district for the same time period were approximately \$6.71. It appears that the amount spent on external legal counsel for our district, both in total and

**The most frequently utilized service from external counsel, state-wide, was employee-related matters.**

**Our District most frequently used external counsel for employee matters.**

**Between \$186,000 and \$1 million was spent on external counsel by our FTE Peer Group.**

**Costs (above and beyond hourly rates) can affect the comparison between internal and external counsel.**

on a per FTE basis, is in line with that of our FTE Peer Group.

*Negotiated Hourly Rates – External Counsel*

According to the responses provided by our FTE Peer Group, all of these districts had negotiated set hourly rates with their external legal counsel. The rates ranged from a low of \$165 per hour to a high of \$200 per hour. Our district has hourly rates for external legal counsel in the range of \$115 per hour to \$200 per hour (based on the level of attorney performing the work).

For comparative purposes, we determined the per hour rate for the District’s Office of General Counsel. We determined an approximate hourly rate of \$102 per hour. This rate includes staff salaries and benefits and operating costs, but does not include certain overhead costs not directly attributable to the General Counsel’s Office, such as costs related to human resources, payroll, etc.

If we were to add an additional attorney, at the same level of salary (and commensurate benefits), the approximate per-hour cost would decrease to \$86. This rate assumes the paralegal (a fixed cost) would be split between the two attorneys. Splitting the paralegal may not be an option if one internal counsel would represent the Board and another was hired to represent the Superintendent. This cost also does not factor in the potential need for administrative staff should another attorney be hired.

Caution should be taken when comparing internal and external counsel based on relative costs. For additional information regarding comparing types of counsel, see the Results/Conclusions section of this report.

**Internal Counsel**

*Composition and Size of Staff – Internal Counsel*

Based on the responses provided by our FTE Peer Group, four of the six districts utilized internal legal counsel (as well as external legal counsel). The internal counsel staff composition of the these districts is summarized below:

District	FTE Count	Attorney	Paralegal	Administrative Support
Manatee	45,890	1	1	-
Collier	43,818	1	1	1
Marion	41,407	1	1	-
Sarasota	41,136	N/A	N/A	N/A
Lake	40,971	N/A	N/A	N/A
<b>Escambia</b>	40,171	1	1	-
St. Lucie	38,808	2	1	1

**For our FTE Peer Group, hourly rates ranged from \$165 per hour to \$200 per hour. Our rates were between \$115 per hour and \$200 per hour.**

**An approximate rate per hour for our internal counsel was \$102 per hour.**

**The approximate hourly rate would decrease to \$86 if another internal attorney was hired.**

**Both state-wide, and for our FTE Peer Group, contract review and negotiation were the most frequently addressed areas by internal counsel.**

#### *Most Frequently Addressed Areas – Internal Counsel*

According to the responses provided to our survey, the most frequently addressed areas were as follows:

##### State:

- Contract Review and Negotiation – 19 of 19 districts (100%)
- Employee Matters – 17 of 19 districts (89%)
- General Inquiries – 16 of 19 districts (84%)
- Family Law Matters – 13 of 19 districts (68%)

##### FTE Peer Group:

- Contract Review and Negotiation – 4 of 4 districts (100%)
- Employee Matters – 4 of 4 districts (100%)
- General Inquiries – 4 of 4 districts (100%)
- Family Law Matters – 3 of 4 districts (75%)
- Commercial Law Matters – 3 of 4 districts (75%)
- Real Estate Matters – 3 of 4 districts (75%)
- Other – 3 of 4 districts (75%)

(Note: “Other” category included responses such as Insurance Risk Management, Regulation Coordination, Workers’ Compensation, ESE, Policy Revision, Student Discipline, Sunshine Law, etc.)

Our district primarily uses internal legal counsel for contract review and negotiation, family law, and matters similar those mentioned above in the Other Matters category.

#### Comments

Both internal and external counsel have pros and cons. Some of the pros associated with internal counsel are: their availability, their non-profit status, the fixed nature of their costs, and their familiarity with the operations of a school district. Some cons associated with internal counsel are their wide range of responsibilities, their workload, and their status as salaried employees (i.e., they are paid whether they have specific tasks/cases to work on for a specific time period).

Some of the pros associated with external counsel are: their specialization, their knowledge resources, their litigation skills, and the ability to use them on an as-needed basis. Some cons of external legal counsel are their profit motivation, their lack of familiarity with school district operations (in most cases), and the volume of clients they typically serve.

For additional detail/explanation related to these pros and cons, see the Results/Conclusions section of this report. It is our hope that the information provided and compiled in this report will benefit the Board, and aid in their decision-making process.

## Background

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**Florida Statutes give the School Board authority to adopt policy and procedures related to the provision of legal services.**

Per Florida Statute 1001.43(10), the district school board may adopt policies and procedures necessary for the daily operation of the district school board, including but not limited to the provision of legal services for the district school board.

Generally, school districts have several available options regarding legal services. The first of these options available consists of hiring a district employee, or set of employees, to handle legal situations. This scenario would be considered “internal” legal counsel. The second option would be to contract for services with attorneys (or law firms with multiple attorneys) that are not district employees. This scenario is considered to be “external” legal counsel. The final option available to school districts would be to have both internal and external counsel. Typically in these scenarios, the internal counsel would address general and specific matters/topics, and the external counsel would provide services related to more specialized matters/topics.

**Our District utilizes both internal and external counsel, and our Office of General Counsel was established in 1999.**

Our District employs both internal and external legal counsel. The District’s Office of General Counsel was created, in its current capacity, in 1999. Since its inception, the office has had one attorney and one assistant/paralegal. This office is “responsible for providing proactive legal advice to the school board, superintendent, and school district on all legal matters relating to the operations of the district, and for representing the school board and superintendent in legal and administrative proceedings.” In addition, the General Counsel advises the School Board at all School Board meetings and when the School Board sits as a quasi-judicial body deciding employee discipline cases and student expulsions. A contract attorney has been designated to represent the superintendent’s position in such cases.

For the 2013-2014 fiscal year, our district spent approximately \$270,000 on legal fees from external sources. It should be noted that in any given year, this dollar figure could be much higher or much lower based on caseload or other factors. The dollar figure mentioned above is comprised of fees (not including costs) paid to four attorneys/firms:

**The Hammons Law Firm has represented the District for over 20 years in various matters.**

The Hammons Law Firm is a small Pensacola law firm that has represented the District in issues related to workers’ compensation, general litigation, and matters related to the Superintendent for approximately 20 years.

**Rumberger, Kirk & Caldwell has represented the District for approximately four years.**

Rumberger, Kirk & Caldwell is a large firm in Tallahassee that has represented the District in issues related to employment and labor for approximately four years.

**Shell, Fleming, Davis & Menge**



**has represented the District for at least 10 years.**

**Steven J. Baker, P.A. has represented the District for approximately 12 years.**

Shell, Fleming, Davis & Menge is a Pensacola firm comprised of approximately eight attorneys that represents the District in matters related to real estate and commercial litigation. They have represented our District for at least 10 years.

Finally, Steven J. Baker, P.A. represents the District in tort-related matters, and has been working with the District for approximately 12 years.

**See Appendix B for definitions of categories of legal fees and the firms that represent the District in those matters.**

Based on the large dollar amount spent on external legal counsel, members of the Board questioned the cost effectiveness of this arrangement. In an effort to assist the Board, the Office of Internal Auditing has performed both an analysis of our district's legal fees for a four-year period (2010-2011 through 2013-2014 fiscal years) and compiled legal information (including, but not limited to major areas of expertise provided, whether a district has internal/external counsel, composition of legal staff, approximate annual dollars spent on legal fees, hourly rates, etc.) from all 67 districts in the state of Florida. This accumulation of legal information was obtained via an informational survey created by our office, the Superintendent, and our own General Counsel. **See Appendix A for a listing of questions asked in the survey developed.**

## Objective

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Our objective in performing this engagement was to assist the Board Members in determining the cost effectiveness of the amount spent on legal services and to deciding if it would be more cost effective to hire additional internal counsel (with differing areas of expertise) to take the place of the utilization of various external counsel.

## Scope

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**We reviewed legal invoices for a four-year period, and gathered certain information from all 67 Florida districts.**

The scope of our engagement included reviewing all monthly legal invoices for a four-year period. We reviewed each month from the start of the 2010-2011 fiscal year through the 2013-2014 fiscal year. In addition, we sent our survey to all Florida districts (67), and did all requisite follow-up (calling attorneys who did not initially respond to the survey, calling various district personnel at the necessary districts, and doing research to populate any questions that could be answered by our office – i.e., whether the district's superintendent is appointed or elected, approximate FTE count, etc.).

## Methodology

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Our office reviewed invoices for legal services for each month for the four-year period beginning in July 2010 and ending in June 2014 and compiled this information into a summary spreadsheet organized by attorney/firm and timeframe.

Additionally, to gain information from other districts in Florida, we developed a set of questions internally that was reviewed by the Office of General Counsel. After developing this survey, a link was distributed to representatives from each district whose contact information was obtained from both a Florida School Board Attorneys Association (FSBAA) membership directory for the 2013-2014 school year and the FSBAA website. If a response was not obtained from a survey recipient, we contacted the representative by e-mail and/or telephone to request completion of the survey. If a response was still not obtained, our office called personnel from the school district (not necessarily the external or internal counsel – Human Resources, Payroll, Finance, Budgeting, etc.) to obtain any answers they could provide. Also, there were questions we were able to pre-populate as a result of our own research. Some examples of questions pre-populated by our office were the contact information of the counsel, FTE count (obtained via the DOE website), and whether or not the district's superintendent was elected or appointed (also obtained via DOE website).

## Results/Conclusions

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As mentioned previously, our fieldwork consisted of two main pieces: an analysis of external legal fees incurred by the District over a four-year period, and the development of a survey sent to all 67 districts in Florida to gain insight into how other districts address their legal needs.

### **Analysis of the Amount Spent on External Legal Fees for the Escambia County School District:**

For the 2013-2014 year, the District spent approximately \$270,000 for external legal services. Over the previous four years (2010-2011 fiscal year through 2013-2014 fiscal year), the District spent approximately \$1,120,000 on external legal services. In both the single-year analysis and the four-year period analysis, the categories where the most money was spent were workers' compensation, tort matters, and general litigation/inquiries. Please see summarization below for specific statistics by category:

The District spent approximately \$1.19 million on external legal services for the four-year period analyzed.

The average dollar amount spent over that four-year period on external legal services was approximately \$280,000.

In 2013-2014, the District spent approximately \$270,000 on external legal services.

This amount spent can be influenced by various factors.

See Appendix A for a complete listing of survey questions.

Category	Four-Year Total	Four-Year Average	2013-2014
Tort Matters	\$266,285	\$66,571	\$49,626
Workers' Compensation	331,870	82,968	97,323
General Litigation	254,967	63,742	95,604
General Inquiries	38,657	9,664	9,006
Employment/Labor	109,543	27,386	8,856
Real Estate	118,374	29,594	19,116
Total	\$1,119,696	\$279,924	\$269,531

As an additional part of our analysis, we have determined that the approximate amount spent on legal fees for the 2014-2015 year-to-date (July 2014 through March 2015) was approximately \$248,000. However, it should be noted that this amount does include costs (expenses paid by the District above and beyond hourly fees) as well.

It is important to note that the numbers above can be affected in many ways for a given time period. For instance, caseload (a greater number of a particular type of case) could either drastically increase or decrease the amount associated with a given category. More specifically, tort matters can be influenced by things such as a larger number of bus accidents or injuries on District property. Workers' Compensation amounts can be influenced by several factors, including the number of work-related injuries in a given period, or a series of large (costly) injuries. General Litigation and General Inquiry costs listed above could be affected by things such as a greater number of student-related matters (expulsion hearings, etc.), or particular issues brought to and discussed with the superintendent pre-trial (or before becoming an official "case"). Employment/Labor matters listed above could be heavily influenced, for example, by the amount of collective bargaining to be done in a given year. Finally, Real Estate fees and costs listed above are influenced by the amount of real estate bought and sold in a given year, or by the amount of any litigation related to real estate matters. **For additional graphical representation of amounts spent by our district on legal fees for the four-year period analyzed, see Appendix C.**

**Analysis of Comparative Information Obtained from Other Florida Districts (Survey Results):**

As a part of gathering additional comparative information, we developed a survey comprised of various relevant questions. After initial development of questions, we asked General Counsel to review the survey and provide her feedback. **See Appendix A for a complete listing of questions asked via this survey).**

Our survey does not account for any unintended bias that may exist, either in questions asked, or answer choices presented.

The questions that we thought would provide the most relevant information for the purposes of this report were as follows:

- Does your school district have internal or external counsel (or both)?
- If your school district has external legal counsel, what are the areas of expertise provided?
- If your school district has external legal counsel, approximately how much is spent for their services annually?
- If your school district has external legal counsel, do you have a negotiated set hourly rate (if yes, what is it, and does it depend on service(s) rendered)?
- If your school district has internal legal counsel, what is the composition and size of the staff?
- If your school district has internal legal counsel, what are the most frequent matters they address?

The responses to the questions above were collected, organized, and analyzed based on certain data sets. All questions may not use all data sets. We analyzed the most relevant. In addition to the entire population group (all 67 districts in the State), we created peer groups for comparison purposes; one based on approximate FTE count (FTE Peer Group); and another peer group based on geographical location (Geographical Peer Group). See below for additional detail regarding what districts are in our additional data sets:

<b>FTE Peer Group</b>	
<b>District</b>	<b>Approximate FTE Count</b>
Manatee	45,890
Collier	43,818
Marion	41,407
Sarasota	41,136
Lake	40,971
<b>Escambia</b>	40,171
St. Lucie	38,808

<b>Geographical Peer Group</b>	
<b>District</b>	<b>Approximate FTE Count</b>
<b>Escambia</b>	40,171
Okaloosa	29,876
Santa Rosa	25,402
Walton	7,845

**Results of Highlighted Questions:**

**Does your school district have internal or external counsel (or both)?**

According to the responses provided in our survey, 48 of the 67 districts (72%) reported having external counsel only, while the remaining 19 districts (28%), including our district, reported having both internal and external counsel. **See Appendix D for a type of counsel used by all districts.**

As it relates to the FTE Peer Group, four of the six districts (67%) reported having both internal and external counsel, while the remaining two districts (33%) reported having external counsel only.

Based on responses to our survey by districts in our geographical peer group, all three reported as having external counsel only.

**If your school district has external legal counsel, what are the areas of expertise provided?**

According to the responses provided in our survey, all districts used external legal counsel for multiple types of services, and the results are broken down into the following data sets:

**State:**

- Employee Matters - 51 of 67 districts (76%)
- Real Estate Matters - 47 of 67 districts (70%)
- General Inquiries – 46 of 67 districts (69%)
- Tort Matters - 43 of 67 districts (64%)
- Contract Review and Negotiation - 42 of 67 districts (63%)
- Commercial Law Matters - 41 of 67 districts (61%)
- Family Law Matters - 34 of 67 districts (51%)
- Other Matters\* - 29 of 67 districts (43%)

**FTE Peer Group:**

- Employee Matters - 4 of 6 districts (67%)
- Real Estate Matters - 4 of 6 districts (67%)
- General Inquiries – 4 of 6 districts (67%)
- Tort Matters - 4 of 6 districts (67%)
- Contract Review and Negotiation - 2 of 6 districts (33%)
- Commercial Law Matters - 2 of 6 districts (33%)
- Family Law Matters - 1 of 6 districts (17%)
- Other Matters\* - 1 of 6 districts (17%)

**\*The Other Matters category includes matters such as workers' compensation, school law, bonds, sunshine law, etc.**

**The matters addressed by our District’s external legal counsel appears consistent with those of other districts.**

**In 2013-2014, St. Lucie transitioned from external counsel only, to both internal and external counsel.**

**Costs (above and beyond hourly rates) can influence the comparison of internal counsel versus external counsel.**

**It appears our overall costs for external legal services, both annually and per-FTE, are consistent with our FTE Peer Group.**

**Geographical Peer Group:**

- Employee Matters - 3 of 3 districts (100%)
- Real Estate Matters - 3 of 3 districts (100%)
- General Inquiries - 3 of 3 districts (100%)
- Family Law Matters - 3 of 3 districts (100%)
- Commercial Law Matters - 3 of 3 districts (100%)
- Contract Review and Negotiation - 3 of 3 districts (100%)
- Tort Matters - 1 of 3 districts (33%)

Our district primarily uses external legal counsel for employee matters, tort matters, real estate matters, and “other” (bonds). **Our District’s use of external legal counsel appears consistent with other districts state-wide, and with both the FTE and Geographical Peer Groups.**

**If your school district has external legal counsel, approximately how much is spent for their services annually?**

According to the responses provided in our survey, members of our six-district FTE Peer Group spent between approximately \$186,000 (Manatee) and \$1,000,000 (St. Lucie) in the 2013-2014 fiscal year, with an overall average of approximately \$494,000. For the same time period, our district spent approximately \$270,000.

Based on FTE, St. Lucie is a peer to our District. Their information may be considered an outlier, as they are in a transition from external counsel only, to both internal and external counsel. Based on discussions with their current internal counsel, external legal fees of approximately \$1 million in 2012-2013 resulted in a district decision to employ internal counsel. In 2013-2014, a general counsel’s office was established and staff was hired. Due to ongoing cases, and transitioning, external legal fees in 2013-2014 remained at approximately \$1 million; however, external legal fees for the current year through March 2015, have fallen to approximately \$200,000.

Caution should be taken when comparing internal and external counsel based on total dollars spent because external counsel includes cost amounts (on top of “fee” amounts for rendering legal services). For example in 2013-2014, the District spent approximately \$39,475 on costs for external counsel above hourly rates for items such as court reporters, production of exhibits, arbitrators, and mediators.

External legal costs per FTE (total approximate external legal costs divided by approximate FTE count) for our FTE Peer Group had ranged from a low of \$4.05 (Manatee) to a high of \$25 (St. Lucie). The legal costs per FTE for our district was \$6.71. **It appears that our external legal costs, both on an annual basis and on a per FTE basis, are consistent with those of our FTE Peer Group.**

**If your school district has external legal counsel, do you have a negotiated set hourly rate (if yes, what is it, and does it depend on service(s) rendered)?**

According to the responses provided to our survey, all districts in our FTE Peer Group had negotiated set hourly rates with their external legal counsel. The hourly rates ranged from a low of \$165 per hour (Manatee) to a high of \$200 per hour (Collier). Our District has hourly rates for external legal counsel ranging from \$115 per hour to \$200 per hour, based on the level of attorney performing the work. It appears our District's negotiated hourly rates for external counsel are consistent with those of our FTE Peer Group.

**Our calculated hourly rate for our Internal Counsel was approximately \$102 per hour.**

As it relates to our internal counsel, we determined an approximate hourly rate for her services based on her salary, benefits (retirement, taxes, health insurance, dental insurance, workers' compensation costs, sick and annual leave, and unemployment costs), departmental operating budget, and the paralegal's salary and benefits (same items included/calculated for the attorney above). Based on inclusion of all the above factors, we determined that an approximate hourly rate for our internal counsel was approximately \$102 per hour.

**This rate would decrease to approximately \$86 if another internal attorney was hired.**

If we were to add an additional internal attorney, at the same level of salary (and commensurate benefits), we estimate the approximate per-hour cost would decrease to \$86, due to the paralegal's costs (salary and benefits) being treated as fixed and split among the two attorneys.

Splitting the paralegal may not be an option if one internal counsel would represent the Board and another was hired to represent the Superintendent. This cost also does not factor in the potential need for administrative staff should another attorney be hired.

**If your school district has internal legal counsel, what is the composition and size of the staff?**

For our FTE Peer Group, four of the six districts utilized internal legal counsel (these districts had both internal and external counsel – no district had solely internal counsel). The other two districts had external legal counsel only.

For the four districts that had internal counsel, their survey responses showed that all four had at least one attorney, with St. Lucie having two attorneys. Additionally, all four districts had one paralegal. Finally, two of the four districts (Collier and St. Lucie) had one administrative support position in their office. The previous information can be summarized, graphically, as follows:

**It appears the size and composition of our internal counsel is consistent with those of our FTE Peer Group.**

District	FTE Count	Attorney	Paralegal	Administrative Support
Manatee	45,890	1	1	-
Collier	43,818	1	1	1
Marion	41,407	1	1	-
Sarasota	41,136	N/A	N/A	N/A
Lake	40,971	N/A	N/A	N/A
<b>Escambia</b>	40,171	1	1	-
St. Lucie	38,808	2	1	1

**It appears that the size and composition of our internal counsel is consistent with those of our FTE Peer Group.**

**If your school district has internal legal counsel, what are the most frequent matters they address?**

According to the responses provided in our survey, 19 districts used internal legal counsel for multiple types of services. For our FTE Peer Group, only four of the six districts used internal legal counsel (other two had external counsel only). The responses are summarized as follows:

**State:**

- Contract Review and Negotiation - 19 of 19 districts (100%)
- Employee Matters - 17 of 19 districts (89%)
- General Inquiries - 16 of 19 districts (84%)
- Family Law Matters - 13 of 19 districts (68%)
- Commercial Law Matters - 12 of 19 districts (63%)
- Real Estate Matters - 11 of 19 districts (58%)
- Other Matters\* - 9 of 19 districts (47%)
- Tort Matters - 7 of 19 districts (37%)

**FTE Count Peer Group:**

- Contract Review and Negotiation - 4 of 4 districts (100%)
- Employee Matters - 4 of 4 districts (100%)
- General Inquiries - 4 of 4 districts (100%)
- Family Law Matters - 3 of 4 districts (75%)
- Commercial Law Matters - 3 of 4 districts (75%)
- Real Estate Matters - 3 of 4 districts (75%)
- Other Matters\* - 3 of 4 districts (75%)
- Tort Matters - 1 of 4 districts (25%)

**\*The Other Matters category includes responses such as Insurance Risk Management, Regulation Coordination, Workers' Compensation, ESE, Policy Revision, Student Discipline, Sunshine Law, etc.**



**Other districts in our FTE Peer Group utilize internal counsel for a larger variety of issues.**

Our district primarily uses internal legal counsel for contract review and negotiation, family law, and matters similar those mentioned above in the Other Matters category. **It appears that other districts in our FTE Peer Group use internal legal counsel for a larger variety of issues.**

Caution should be taken when comparing internal and external counsel based solely on relative costs. **All cost factors of each option should be considered in any comparison and when drawing any conclusion.**

**Both internal and external legal counsel have pros and cons.**

Based on our research, we noted some general pros and cons of each type of legal counsel. For example, some pros associated with internal legal counsel include:

**Pros of internal counsel include their availability, non-profit status, fixed cost nature, and familiarity.**

- Availability - Internal counsel is generally available to answer questions of various personnel as needed, and on a nearly immediate basis.
- Non-Profit Status - Internal counsel is not usually motivated by profit, since they are salaried employees of the district.
- Fixed Cost - Internal counsel is essentially a “fixed” cost. When an external attorney is asked to do more work or address more projects, the cost rises. Having an internal counsel as a district employee eliminates this issue and encourages employees to bring issues to counsel.
- Familiarity - Internal counsel is extremely familiar with the day-to-day operations of the district.

**Cons associated with internal counsel include wide-ranging responsibilities, a large workload, and their nature as salaries employees.**

There are also cons associated with internal counsel. Some of those cons would include:

- Wide Responsibilities - Internal counsel is likely to be responsible for overseeing any legal matter related to the operations of a school district. They may not be as knowledgeable about all areas.
- Workload - As school districts handle hundreds of legal issues each year, the workload of internal counsel can be tremendous. This could lead to less efficient operation, and delayed response to certain issues.
- Salaried - Internal counsel are on-staff and paid, regardless of whether or not their services are needed for a particular matter.

**Some pros of external counsel are their specialization, knowledge resources, litigation skills, and their as-needed nature.**

There are also pros and cons associated with external legal counsel. Some of these pros include:

- Specialization - Typically, external attorneys focus on specialties and are often subject matter experts.
- Knowledge Resources - External firms typically have numerous attorneys who can be a resource if another firm member has a question or issue, saving on research time/costs.
- Litigation Skill - Typically, external attorneys are well equipped to deal with the intricacies of litigation with honed trial skills that are difficult to obtain in a company setting.

**Some cons of external counsel are their profit motivation, lack of familiarity, and their overall client volume.**

**Before making any decisions regarding the utilization of either internal or external counsel, districts should consider all factors relevant to the environment in which the district operates.**

- As-Needed - If there are no issues requiring legal services, then the district does not incur any costs.

As with internal counsel, there are also cons to using external counsel:

- Profit Motivated - External attorneys and firms have a built-in profit motive. It is their mission to maximize earnings.
- Lack of Familiarity - External attorneys not employed by a school district may or may not be familiar with the nuances of school-related issues, and thus may not be as efficient at resolving certain matters.
- Client Volume - As external counsel typically serves many clients, they may not be able to provide the focused attention and requisite expediency that an internal counsel might be able to provide.

**As discussed, there are pros and cons to both internal and external legal counsel. Before making a decision to utilize either internal or external counsel, or both, districts should consider these factors as well as any others that may be relevant to the environment in which the district operates.**

It is the hope of our office that the information provided and compiled in this report will benefit our School Board and other boards, and will aid in any decisions they make in regards to this matter.

## Appendix A – Legal Analysis Survey

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1. School District
2. Name (Coordinator of Legal Services)
3. Contact Phone Number
4. Contact E-Mail Address
5. What is the approximate FTE count for your school district?
6. What is the approximate employee count (both full-time and part-time) for your school district?
7. Does your school district outsource any of its major areas of operation?
  - Food Service
  - Human Resource Services
  - Payroll
  - Maintenance
  - Transportation
  - Custodial
  - No, we do not outsource any areas
  - Other (please specify)
8. Does your school district have an elected or appointed Superintendent?
  - Elected
  - Appointed
9. Does your school district have internal or external legal counsel?
  - Internal
  - External
  - Both
10. If your school district has internal legal counsel, what is the composition and size of the staff?
  - Attorney(s)
  - Paralegal(s)
  - Administrative Support
  - Other (please explain)
  - No internal legal counsel (please write "N/A" in box)

## Appendix A – Legal Analysis Survey (continued)

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11. If your school district has internal legal counsel, what are the most frequent matters they address?

- Tort matters
- Employee matters
- General inquiries
- Family Law matters
- Commercial Law matters
- Real estate matters
- Contract review/negotiation
- Other (please specify)
- N/A – We do not utilize internal legal counsel

12. If your school district has internal legal counsel, is there a mechanism in place to reward counsel for obtaining national/state certifications or specializations, such as the Florida Board Certification as an Education (or other subject matter) Law Specialist?

- Yes
- No
- N/A – We don't have internal legal counsel

13. If your school district has external legal counsel, approximately how many attorneys/firms are utilized?

- N/A – We do not utilize external legal counsel
- Approximate attorneys/firms

14. If your school district has external legal counsel, what are the areas of expertise provided?

- Tort matters
- Employee matters
- General inquiries
- Family Law matters
- Commercial Law matters
- Real estate matters
- Contract review/negotiation
- Other (please specify)
- N/A – We do not utilize external legal counsel

15. If your school district has external legal counsel, approximately how much is spent for their services annually?

- N/A – We do not utilize external legal counsel
- Approximate amount

16. If your school district has external legal counsel, do you have a negotiated hourly rate?

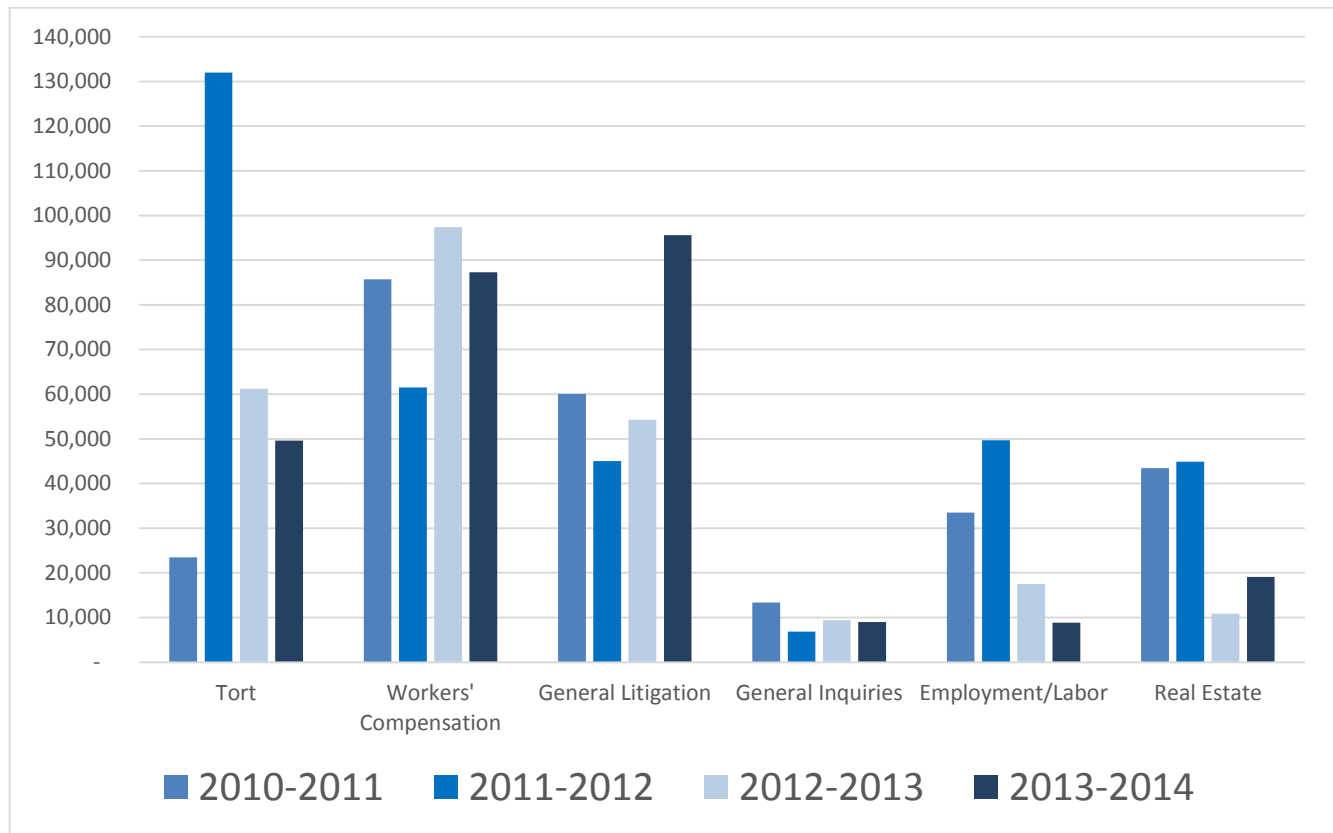
- Yes (if yes, what is the rate and does it depend on the type of service(s) rendered?)
- No
- N/A – We do not utilize external legal counsel

## Appendix B – Categories of Legal Fees Defined

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- **Tort Matters** – The District is represented by Steven J. Baker, P.A. in tort matters. Torts are generally defined as civil (not criminal) wrongdoing that unfairly causes someone else to suffer harm resulting in legal liability for the person who commits the act of wrongdoing. Typical examples of tort matters involving the District would be personal injury matters (i.e., someone is hit by a bus or other District vehicle).
- **Workers' Compensation** – The District is represented by The Hammons Law Firm in Workers' Compensation matters. Workers' Compensation issues are those related to injuries sustained in the normal course of employment. Normally, there is a form of insurance payment to the injured employee(s) in exchange for the mandatory relinquishment of the right to sue the employer.
- **General (Inquiries)** – The District is represented by The Hammons Law Firm for general inquiries. This category includes general employee matters (discipline, return to work, etc.) and other matters such as student discipline, general staff/Superintendent inquiries regarding contracts, policy, etc.
- **General (Litigation)** – The District is represented by The Hammons Law Firm in general litigation matters. This category includes all matters listed above in General (Inquiries), which have reached a level where litigation has been filed (i.e., a case established) by either the District or another party.
- **Employment/Labor Matters** – The District is represented by Rumberger, Kirk & Caldwell in employment/labor matters. Typical matters in this category are contract negotiations and the various elements of collective bargaining.
- **Real Estate Matters** – The District is represented by Shell, Fleming, Davis & Menge in real estate matters. Examples of typical matters in this category are the purchase and sale of real property, and any litigation related to real estate.

## Appendix C – External Legal Fees by Category – All Years



## Appendix D – Type of Counsel Used by District

District	FTE Count	Internal Counsel?	External Counsel?
Dade	350,796	Yes	Yes
Broward	260,741	Yes	Yes
Hillsborough	200,719	No	Yes
Orange	185,594	Yes	Yes
Palm Beach	180,172	Yes	Yes
Duval	127,630	Yes	Yes
Pinellas	102,251	Yes	Yes
Polk	96,144	Yes	Yes
Lee	86,469	Yes	Yes
Brevard	70,071	No	Yes
Pasco	66,904	Yes	Yes
Seminole	64,019	Yes	Yes
Volusia	60,935	Yes	Yes
Osceola	57,239	No	Yes
Manatee	45,890	Yes	Yes
Collier	43,818	Yes	Yes
Marion	41,407	Yes	Yes
Sarasota	41,136	No	Yes
Lake	40,971	No	Yes
<b>Escambia</b>	<b>40,171</b>	<b>Yes</b>	<b>Yes</b>
St. Lucie	38,808	Yes	Yes
Clay	35,070	Yes	Yes
Leon	33,334	No	Yes
St. Johns	33,272	No	Yes
Okaloosa	29,876	No	Yes
Alachua	27,276	Yes	Yes
Bay	26,262	No	Yes
Santa Rosa	25,402	No	Yes
Hernando	21,828	No	Yes
Martin	18,294	No	Yes
Indian River	17,603	No	Yes
Charlotte	15,812	No	Yes
Citrus	14,675	No	Yes
Flagler	12,508	Yes	Yes
All Remaining Districts (33)	12,076 - 922	No	Yes

# Management Response

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