

POLICY

BOARD OF EDUCATION OF MONTGOMERY COUNTY

Related Entries: BOA-RA, BLB, EIA, EIA-RA
Responsible Office: Superintendent of Schools
General Counsel

Legal Services

A. PURPOSE

This policy reaffirms the right of the Board of Education (Board) to retain attorneys for advice and representation in legal matters and sets forth a comprehensive plan for the efficient and effective management of legal services. The goals of this legal services management plan shall be to facilitate cost-effective, creative, and proactive legal problem solving of the highest quality to assist the Board, the superintendent of schools, and other Montgomery County Public Schools (MCPS) staff to navigate legal requirements, evaluate and manage legal risk, align and conserve resources, promote collaborative dispute resolution and reduce avoidable litigation, if possible, and engage in strategic decision making to promote equity and academic excellence for all students.

B. IMPLEMENTATION STRATEGIES

1. Management of Legal Services

- a) Under the direction of the Board, and in consultation and collaboration with the superintendent of schools, and other authorized administrators of MCPS, the general counsel of MCPS shall be responsible for overall management of legal services, including –
 - (1) providing timely advice and legal counsel on personnel issues, student matters, special education, policy development and implementation, real estate and land use, contracting and procurement, civil rights, and other legal issues that have implications for the operation of MCPS;
 - (2) conducting and supervising all aspects of litigation and administrative agency proceedings in which the Board, superintendent of schools, or other staff acting in the course of their

duties for MCPS are named as plaintiffs or defendants, including but not limited to legal support for special education proceedings, consistent with Board Policy BLC, *Procedures for Review and Resolution of Special Education Disputes*;

- (3) monitoring and evaluating all internal and external providers of legal services, including managing the process for selection and oversight of outside counsel, as discussed below, and coordinating with the Montgomery County Attorney's Office, which provides counsel to the Board through the Board's participation in the Montgomery County Self-Insurance Fund;
- (4) providing legal review and advice regarding the drafting, negotiation, execution, and implementation of contracts, agreements, and other transactional documents that structure the relationships with government agencies, vendors, contractors, and other parties in support of MCPS' educational mission; and
- (5) proactively anticipating and addressing legal issues relevant to decision making by the Board and MCPS staff, including the impact of state and federal legislation and judicial decisions; facilitating review of key MCPS initiatives with significant legal implications; and supporting the work of the Board, in consultation with the superintendent of schools, to review, update, and revise Board policies.

- b) Under the direction of the Board, and in consultation and collaboration with the superintendent of schools, the general counsel coordinates the management of all legal services for the Board, the superintendent of schools, and MCPS, as a whole, except in those limited circumstances where the Board may require legal support in fulfillment of its quasi-judicial responsibilities to adjudicate appeals and hearings challenging actions by the superintendent of schools, or regarding the employment of the superintendent of schools.

2. Selection, Retention, and Oversight of Outside Counsel

- a) As necessary to supplement the work of the general counsel, the Board retains outside counsel to assist it and the superintendent of schools in carrying out their duties. Outside counsel retained by the Board fulfill three primary functions:

- (1) Representation in litigation in which the Board is a party
 - (2) Advise on general legal issues that arise in the ongoing operation of MCPS, including Board policy or action in which highly specialized legal expertise is required
 - (3) Provide advice and assistance to the Board as it carries out its quasi-judicial responsibilities in appeals and hearings
- b) The factors to be considered in the selection or retention of an attorney as outside counsel include the quality of the attorney's work, background and relevant experience, legal skills, commitment to diversity and equity, responsiveness and sensitivity to the client's needs, style and presence, freedom from conflict of interest, and management skills.
- c) With the advice of the superintendent of schools and the general counsel, the Board will identify attorneys or firms that meet its criteria and will invite them to express their interest in providing services to the Board as outside counsel.
- d) The Board will contract with the attorneys or firms selected to serve as outside counsel, subject to renewal.
- e) The general counsel shall work closely with outside counsel to review strategy and supervise resources applied to legal matters, ensure consistency of legal position, avoid duplication of cost and effort, and otherwise coordinate the efficient management of their legal services through –
- (1) maintenance of written agreements with outside counsel,
 - (2) standardization of billing practices for outside counsel,
 - (3) management of costs and staff access to attorneys, including the development and implementation of project plans for management of cases and other significant legal matters,
 - (4) monitoring and developing appropriate responses to any legal ethics issues that may arise regarding the provision of legal services by outside counsel, and
 - (5) a periodic appraisal of the quality of legal services, for use by the Board and the superintendent of schools.

3. The superintendent of schools will develop regulations for implementing this policy.

C. REVIEW AND REPORTING

1. The superintendent of schools will provide monthly reports to the Board on funds expended for outside counsel and other legal services. The Board will receive evaluative reports on legal services of outside counsel on a cycle aligned with contract reconsideration.
2. The general counsel, in collaboration with the superintendent of schools and other MCPS staff, shall provide legal advice and updates on significant legal matters, including pending or potential litigation, consistent with Section 3-305(b) of the General Provisions Article of the Maryland Code, and shall consult with the Board regarding settlement of legal claims with significant budgetary or programmatic implications.
3. This policy will be reviewed in accordance with the Board policy review process.

Related Sources: Annotated Code of Maryland, *Education Articles* §4-104, §4-204, §4-205, and General Provisions Article §3-305(b). *Policy History:* Adopted by Resolution No. 282-85, June 12, 1985; reformatted in accordance with Resolution No. 458-86, August 12, 1986, and accepted by Resolution No. 550-88, October 24, 1988; amended by Resolution No. 210-04, April 15, 2004; amended by Resolution No. 451-09, October 26, 2009; amended by Resolution No. 148-20, March 10, 2020.