

Response to Questions on the *FY 2013 Carryover Review*

Request By: Supervisor Foust

Question: Attachment C of the FY 2013 Budget Carryover package is titled: FCPS FY 2013 Final Budget Review and Appropriation Resolutions.

Please answer the following budget questions concerning the FY 2013 Carryover package (page numbers refer to Attachment C to the July 30, 2013 Admin Item #1).

1. Beginning on page 134, there is a list of “FY 2014 Recommended Expenditure Adjustments”. On page 135, item F is titled Division Counsel. The item proposes 3 new positions including 2.0 staff attorneys and 1.0 support position. The total amount is \$490,625. The description of the request includes the following statement: “The additional staff will allow for more specialization within the office and aims to reduce outside counsel expense.” Please answer the following questions:
 - a. What efforts has FCPS Counsel made to work with the County Attorney’s Office to reduce FCPS expenditures for outside counsel?
 - b. Is there additional support the County Attorney’s office could provide FCPS that would eliminate or reduce the perceived need for this additional expenditure?
 - c. Is the \$490,625 a net amount that reflects the saving that FCPS expects to realize as a result of reducing outside counsel expense?
 - d. Is the \$490,625 for a portion of the FY 2014 budget year? If so, how many months are included? What is the estimated expenditure amount for FY 2015 and going forward?
 - e. Why are these new positions and recurring expenditures included in a carry-over request?

Response: The following response was prepared by Fairfax County Public Schools:

FCPS counsel and the County Attorney’s office have a productive partnership. The FCPS Division Counsel’s office currently refers certain litigation matters to the County Attorney’s Office, which represents FCPS if the matter presents no conflict of interest, falls within the County’s expertise, and is manageable within the constraints of the County’s litigation workload. For example, on behalf of FCPS, the County Attorney has filed motions to quash, handled collections matters, and defended a variety of cases including insurance, disability, and property damage. In addition, the County has shared its expertise on matters where the Division Counsel’s office lacks staff (e.g. voting rights, criminal issues) to research particular problems, thereby saving the cost of referring specialized research requests to outside counsel.

As part of the County-FCPS smart savings initiative, both offices worked jointly to develop the measures discussed above. FCPS plans to continue to examine litigation, in particular, to determine whether additional referrals can be made to the County

Attorney's office rather than to outside counsel. However, due to the specialized nature of the legal services required by the school system and the potential for conflict of interest between the entities, not all cases will be viable or appropriate for referral to the County.

FCPS expects to achieve a reduction in expenditures for outside counsel due to the addition of these positions. Over the past two years at least \$150,000 per year in litigation support and research, which ordinarily would have been handled in-house, was referred outside because of a shortage of Division Counsel staff; thus, additional attorneys clearly will save on those costs. In addition, the new positions should reduce litigation costs by providing earlier identification and correction of legal problems, although the exact amount of savings cannot be determined--the amount of litigation being largely unpredictable. Finally, these positions will be focused on meeting unmet needs within the system for legal services that are not suitable for assignment to outside counsel. The provision of more comprehensive and proactive legal services is prudent and is expected to reduce the system's legal exposure going forward. However, it was decided to hold reductions to outside counsel fees until the FY 2015 budget due to the unpredictable nature of legal expenses and the fact that the positions are not expected to be filled immediately.

The FY 2014 budget of \$490,625 includes the full year cost of 3.0 positions and one-time funding of \$75,000 for logistics (materials, equipment, office space modifications, etc.). Any lapse resulting from the positions being filled for only a portion of FY 2014 will be recognized during a quarterly review. The estimated FY 2015 budget for positions is \$415,625. This will be offset by estimated savings in FY 2015 to outside counsel fees.

The Division Counsel presented its staffing recommendations at the June 10, 2013 School Board Work Session No. 128. The School Board agreed with the recommendation to improve staffing, particularly in light of the immediately pending retirements of Division Counsel and primary outside counsel. Therefore, the School Board approved the positions and expenditures detailed in the FY 2013 final budget review at the July 25, 2013, School Board Regular Meeting through the carryover funding process.