

## County school legal costs above state average

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Taxpayers funding school districts in Galveston County spent, on average, \$25.61 per student on lawyers, more than twice the average state school rate of \$12 per student, according to education agency information.

Two law firms were primarily responsible for the bills. All local school districts, except Hitchcock, use either Houston-based Feldman & Rogers or international firm Bracewell & Giuliani, or both.

While Texas school districts reported spending an average of \$43,000 on legal fees in 2004-05, according to an October 2006 Texas Education Agency survey, Galveston County school districts, except Hitchcock, spent an average of \$218,000 — or about five times as much — on legal fees in 2006-07.

### 'An Industry'

Local school officials point out that state surveys are skewed because they include districts that range in size from 83 students to 202,000. At least half of the county's school districts were involved in lawsuits, as either the plaintiff or defendant, which increased legal costs.

Even so, districts such as Friendswood, Galveston and Texas City spent three to five times more per student on legal expenses in 2006-07 than the average state school district.

Joy Baskin, the director of legal services for the Texas Association of School Boards, said most county districts likely use the same two firms because districts talk to each other.

"School law is an industry," she said. "It doesn't surprise me that they all use the same groups."

More than 99 percent of Feldman & Rogers' cases are school-related, said attorney Erik Nichols. The firm, one of the largest in this region serving school districts, earned at least \$500,000 in county taxpayer money last year. Nichols partially blamed high legal costs on litigiousness in the Gulf Coast area. He said he did not think his firm charged higher rates than other firms. He did not want those rates published.

Bracewell & Giuliani represents more than 100 school districts, junior colleges and private schools and is also one of the largest school attorney firms in this region. The company's Web site boasts: "In Texas alone, we represent clients with a combined student population larger than that represented by any other law firm in the state."

Officials at the Bracewell & Giuliani's Houston office declined to comment on this story because they said they didn't have authorization from local school districts.

### Making Donations

The Texas Association of School Boards does not recommend which attorneys districts should use, but it does encourage school districts to consider its list of "experienced school attorneys" who are actively representing state schools, Baskin said. That list, the Texas Council of School Attorneys, works to "promote closer relationships among school attorneys," according to its Web site.

Attorneys on this list sometimes sponsor conventions, dinners and receptions for school administrators and employees. Nichols said Feldman & Rogers advertises in school publications, such as the Texas Association of School Board newsletter and Texas Association of School Administrators newsletter. Nichols' firm also sponsors some events and occasionally donates to districts.

"We do things that make sense for children," he said.

School districts do not usually hire attorneys based on a quoted fee schedule. They post a request for qualifications and choose an attorney who meets the district's needs. Fees are typically negotiated after the firm is hired.

### Above Average

The school districts in Dickinson, Friendswood, Galveston and Texas City spent more per student on attorneys than the state average of \$11.93 per student, according to Texas Education Agency information.

Officials with Galveston public school district, which had the highest legal expenses at \$57.27 per student, blamed the high costs on lawsuits, \$50,000 worth of open records requests, an epic federal desegregation lawsuit and personnel issues. Dickinson's legal bills, at \$12.33 per student, stemmed from special education issues, open records requests, personnel and construction contracts. Friendswood officials said half the district's legal expenses, at \$36.16 per student, were due to a lawsuit filed by resident Nancy Kessling. Texas City school officials did not return phone calls about its legal expenses, at \$41.34 per student.

Brooke Dollens-Terry is a policy analyst with the Texas Public Policy Foundation, a nonprofit, nonpartisan research institute, who has studied transparency in school finance.

She said districts are likely spending thousands of dollars on lawyers because they're battling special education parents or because they're facing lawsuits.

"Legal fees and lobby fees are the reason we need transparency," she said. "If taxpayers knew how much we were spending on that, they'd request reducing that in exchange for more teachers salaries."

### Not Easily Available

In 2005, the governor issued an executive order asking the education commissioner to find out how much school districts were spending on attorneys and why. In response, the Texas Education Agency conducted a survey of almost 1,000 school districts in 2006 which showed that, on average, a Texas school district spent \$42,644 on lawyers in 2004-05 and planned to spend \$45,910 in 2005-06.

Those expenditures were so small — typically less than 0.2 percent of the total budget — that the agency declined to force districts to report those details annually.

The amount districts spend on lawyers is not easily accessible today. The Texas Education Agency collects that information yearly, but does not post it online. Those interested in finding out how much their districts spend on lawyers must ask district officials or file an open records request with the Texas Education Agency.

Although districts are required to report how much they spend to the state, the state doesn't question the amount.

"As long as the bills are being paid, we don't look into (why they're spending so much)," said Rita Chase, director of financial audits at the Texas Education Agency. "It's a taxpayer local issue and not where TEA gets involved."

She said she couldn't say why local school districts appear to spend more than the state average on attorneys.

### Cutting Costs

Most school districts try to control costs by limiting who can talk to attorneys, but for the most part, they don't tend to agree on how to limit legal fees. Some districts negotiate retainers, but some firms, such as Feldman & Rogers, don't offer retainers to school districts.

A 2006 School Performance Review of La Marque school district, conducted by the Legislative Budget Board, chastised the district for not having a retainer.

"A lack of a retainer agreement with a general counsel firm could result in unnecessary legal cost," the review stated. "This practice helps ensure the district receives quality prices at the best possible price."

Some districts send their administrators and staff to legal training to hedge against future legal action. Santa Fe Superintendent Jon Whittemore said he cuts costs by talking to attorneys only by phone. School district attorneys rarely attend school board meetings.

Dickinson school spokeswoman Tammy Dowdy said the district has saved money by avoiding contracts with firms and refusing to hire in-house counsel, but Clear Creek school spokeswoman Elaina Polsen said the district's saved money by hiring an in-house attorney, who is paid \$97,240 per year.

Clear Creek is the only county district with in-house counsel, though school districts are increasingly hiring in-house attorneys, Baskin said. Districts in large suburbs and metropolitans can save money by having in-house counsel, she said.

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## Curbing Costs

The top 10 ways a school district can cut its legal costs:

1. Write and enforce effective policies — poor policies leave districts open to lawsuits involving discrimination, sexual harassment, wrongful termination and breach of procedure.
2. Shop around for appropriate legal counsel — evaluate firm's experience, training and reputation in community and cost.
3. Negotiate contract provisions and always sign a contract.
4. Hedge against excessive legal costs through insurance policies.
5. Negotiate a retainer for routine and ongoing legal matters.
6. Hire in-house counsel to handle routine legal matters — if feasible.
7. Manage legal costs internally — a policy can clarify expectations regarding use of legal counsel and cost.
8. Monitor monthly legal bills.
9. Establish a tracking and document retention system — good documentation helps a district adhere to records retention, open records requirements, court orders and legal trends.
10. Resolve the problems before they turn litigious — administrators should heed the warning signs long before a lawsuit is filed.

Source: "Navigating the Legal Maze: A Practical Guide for Controlling the Cost of School District Legal Services," by Carol Keeton Strayhorn, March 2003

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