

From: [Howat, Scott D.](#)
To: Valerie.Clarke@myfloridahouse.gov
Cc: elizabeth.fetterhoff@myfloridahouse.gov
Subject: Fwd: Language re: PERC Fix
Date: Monday, November 15, 2021 4:04:12 PM

Valerie,
I spoke to Ron LaFace and Megan Fay. We are in agreement with the language in red below. Would you please update the language submitted to drafting? I appreciate it.
Regards,
Scott

Sent from my iPhone

Begin forwarded message:

From: Megan Fay <megan@cccfla.com>
Date: November 15, 2021 at 3:13:13 PM EST
To: "Howat, Scott D." <scott.howat@ocps.net>
Subject: Language re: PERC Fix

CAUTION: This email originated from outside of Orange County Public Schools. Do not click links or open attachments unless you know the content is safe.

Hi Scott – please let me know if this is the same language you are using for the PERC ruling fix. I'll work on getting into drafting once I hear back from you.

1012.34 - Personnel evaluation procedures and criteria.

(1) EVALUATION SYSTEM APPROVAL AND REPORTING.—

(a) For the purpose of increasing student academic performance by improving the quality of instructional, administrative, and supervisory services in the public schools of the state, the district school superintendent shall establish procedures for evaluating the performance of duties and responsibilities of all instructional, administrative, and supervisory personnel employed by the school district. The procedures established by the school superintendent measure the standard of services offered to the public within the meaning of s. 447.209 and are not subject to the bargaining process. The district school superintendent shall provide instructional personnel the opportunity to review their class rosters for accuracy and to correct any mistakes. The district school superintendent shall report accurate class rosters for the purpose of calculating district and statewide student performance and annually report

the evaluation results of instructional personnel and school administrators to the Department of Education in addition to the information required under subsection (5).

(b) The department must approve each school district's instructional personnel and school administrator evaluation systems. The department shall monitor each district's implementation of its instructional personnel and school administrator evaluation systems for compliance with the requirements of this section.

(c) Annually, by February 1, the Commissioner of Education shall publish on the department's website the status of each school district's instructional personnel and school administrator evaluation systems. This information must include performance evaluation results for the prior school year for instructional personnel and school administrators using the four levels of performance specified in paragraph (2)(e). The performance evaluation results for instructional personnel shall be disaggregated by classroom teachers, as defined in s. 1012.01(2)(a), excluding substitute teachers, and all other instructional personnel, as defined in s. 1012.01(2)(b)-(d).



Megan Fay *Partner*

124 West Jefferson Street | Tallahassee, FL 32301

p. 850.222.9075 c. 727.424.6919

From: [Howat, Scott D.](#)
To: elizabeth.fetterhoff@myfloridahouse.gov
Cc: [LaGosh, Jason D.](#)
Subject: Proposed statutory changes
Date: Thursday, October 28, 2021 2:18:36 PM
Attachments: [Final PERC Order.pdf](#)

Dear Representative Fetterhoff,

We believe the proposed changes to the statute below will cure the issue regarding requiring the collective bargaining of the instructional personnel evaluation. Attached is the PERC order and below the language is the rationale and background. Thank you for your assistance and consideration.

**Regards,
Scott**

Scott D. Howat
Chief Communications Officer
President of the Foundation for OCPS
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407.317.3200, 2002811
www.ocps.net

1012.34 Personnel evaluation procedures and criteria. —

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These changes are needed to legislatively overrule Orange County Classroom Teachers Association v. School District of Orange County, Case No. CA-2018-050. In that case, the Public Employee Relations Commission ruled evaluation, including the criteria that school districts determine indicates good teaching and the scoring scales for how those teachers earn their evaluation scores, is a mandatory subject of bargaining. This means before any changes are made to the evaluation system, the Union has to agree or the District has to impose such standards after a six month impasse process.

Evaluation of performance that everyone has understood to be a function of management. If management cannot determine evaluation criteria and scoring scales to determine what is good teaching, then it cannot set standards of service to the public. A PERC hearing officer recognized this back in 2003 in the case of Gilchrist Employees/United v. School Board of Gilchrist County, 30 FPER ¶ 71 (2004). In that case, the Hearing Officer ruled as follows: "In addition, defining the "outstanding" criteria is fundamental to the School Board's basic mission of providing good education through outstanding teachers. The School Board may unilaterally set standards of service. Therefore, establishing what criterion a teacher's proficiency is measured is a management right. Thus, the School Board was entitled to unilaterally implement the criteria for an 'outstanding' rating and it did not commit an unfair labor practice when it did so." Despite this being the only case decided by a PERC hearing officer, the Commission completely switched course and ruled the criterion upon which a teacher's proficiency is not a management right.

This will also mean that if a Union submits an offer on evaluation, the school districts will have to send such offers to the Florida Department of Education to see if the FDOE will approve the evaluation changes, as required under s.1012.34(1)(b), Fla. Stat. This will embroil DOE in negotiations between school districts and employee organizations needlessly.

From: [LaGosh, Jason D.](#)
To: [LaGosh, Jason D.](#)
Subject: Tallahassee Follow-up
Date: Thursday, January 13, 2022 10:20:16 AM

Meeting Requests:

Jan 24: OCASA

Feb 2-4: CTE with Melanie

Feb 2-4: FSBA visits

Rep. Plasencia

- Send bill feedback and request follow-up meeting.

Rep. Morales

- Student artwork for congressional office

- Status update on foster grandparents program

Rep. Fetterhoff

- Talking points for PERC bill

FSBA

- School concurrency feedback

FELL Transportation work group

- OCPS busing data

From: Howat, Scott D.
To: LaGosh, Jason D.
Cc: Howat, Scott D.
Bcc: jbertsch@pasco.k12.fl.us; mwvant@lawfla.com; theresa.boston-ellis@marion.k12.fl.us; John.Boyd@osceolaschools.net; tomcerra@gmail.com; bobcerra@comcast.net; cerraj@comcast.net; carlecia.collins@gray-robinson.com; kristinw.davis@sdhc.k12.fl.us; wendy.dodge@polk-fl.net; cdoolin@doolinandassoc.com; megan@cccfla.com; tfazzino@dadeschools.net; FogartyN@stlucieco.org; jimhbeck@gmail.com; bharris@lawfla.com; kelly@heffleyassociates.com; djane@dadeschools.net; jessica@rutledge-ecenia.com; colin.kirkland@stjohns.k12.fl.us; ron@cccfla.com; kim.mcdougal@gray-robinson.com; messina@fsba.org; militoc@gmail.com; millerkimberlyj@gmail.com; martinmiller@millerconsultinggroup.com; bmoore@fadss.org; mark_russi@scps.k12.fl.us; dsikes@fadss.org; johnj.sullivan@browardschools.com; watson@fsba.org; mwhite@fasa.net; foster@scgroup.us; wagoner@scgroup.us

Subject: FW: Proposed statutory changes
Date: Tuesday, October 19, 2021 2:49:24 PM
Attachments: [OC Classroom Teachers Association v. School District of OC - Case No. CA-2018-050 - Final Order.pdf](#)

Dear FELL Members,

Attached and below is the PERC ruling, background, and proposed language on the issue discussed in FELL this afternoon.

Regards,
Scott

From: Palmerini, John C.
Sent: Monday, October 11, 2021 8:48 AM
To: Howat, Scott D. <scott.howat@ocps.net>
Subject: Proposed statutory changes

Dear Scott,

The proposed changes to the two statutes I believe are necessary are below:

447.209 Public employer's rights.—It is the right of the public employer to determine unilaterally the purpose of each of its constituent agencies, set standards of services to be offered to the public, **to evaluate employees**, and exercise control and discretion over its organization and operations. It is also the right of the public employer to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or for other legitimate reasons. However, the exercise of such rights shall not preclude employees or their representatives from raising grievances, should decisions on the above matters have the practical consequence of violating the terms and conditions of any collective bargaining agreement in force or any civil or career service regulation.

1012.34 Personnel evaluation procedures and criteria.—

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I hope this is helpful. I stand ready to answer any questions any person may have on the issue.

John Palmerini