Education -- School Achievement Awards

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Subject:
Education -- School Achievement Awards

Mr. Usher L. Brown
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Osceola County
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RE: EDUCATION – SCHOOLS – SCHOOL ACHIEVEMENT AWARDS – teachers considered school staff participating in determination of use of school achievement awards. s. 1008.36, Fla. Stat.

Dear Mr. Brown:

On behalf of the School Board of Osceola County, you ask the following questions:

1. Does section 1008.36, Florida Statutes, allow classroom teachers to participate in the joint determination by school staff and the school advisory council for the use of school recognition funds?

2. If classroom teachers outnumber other school staff engaged in the joint determination with the school advisory council regarding the distribution and use of school recognition funds, may the school develop a procedure by which the position of the school staff is decided by a vote of all of the staff at the school, including the teachers?

In sum:

Absent a legislative intent limiting participation in the process, classroom teachers would be considered part of the school's staff participating in the joint determination by school staff and the school advisory council of the use of school recognition funds. There is nothing in the legislation which would appear to preclude the adoption of a procedure whereby all of the staff, including teachers, may vote on the matter.

As your questions are interrelated, they will be answered together.

You state that the School Board of Osceola County allows the schools eligible for financial awards under section 1008.36, Florida Statutes, flexibility to decide at the school level how the awards will be distributed and that generally the individual school will make the determination in conjunction with its school advisory council. In light of the provisions in section 1008.36, Florida Statutes, stating that should the school’s staff and the school advisory council fail to reach an

agreement, the awards are distributed equally to all classroom teachers currently teaching in the school, you are concerned that teachers participating in the determination could purposely thwart an agreement in order to ensure such a distribution of the award. You, therefore, question whether the Legislature intended that teachers could participate in the joint decision-making process and, if so, whether there are limits on the extent of their participation.

Section 1008.36, Florida Statutes, characterizes the "Florida School Recognition Program" as a performance incentive program for "outstanding faculty and staff" in highly productive schools. [1] It was created to provide financial awards to all public schools, including charter schools, receiving a school grade of "A," making excellent progress, or demonstrating exemplary improvement due to innovation and effort by improving at least one letter grade or by improving more than one letter grade and sustaining the improvement the following school year. [2]

Section 1008.36(4), Florida Statutes, provides:

"All selected schools shall receive financial awards depending on the availability of funds appropriated and the number and size of schools selected to receive an award. Funds must be distributed to the school's fiscal agent and placed in the school's account and must be used for purposes listed in subsection (5) *as determined jointly by the school's staff and school advisory council*. If school staff and the school advisory council cannot reach agreement by February 1, the awards must be equally distributed to all classroom teachers currently teaching in the school. If a school selected to receive a school recognition award is no longer in existence at the time the award is paid, the district school superintendent shall distribute the funds to teachers who taught at the school in the previous year in the form of a bonus."[3] (e.s.)

Thus, the Legislature has used the term "school's staff" to identify the employees of the school who participate in the determination of the use of school recognition awards, without defining the term for purposes of the statute. Absent a statutory definition for the term "staff" or a legislative intent that it be defined in another manner, the plain and ordinary meaning of the term may be used. [4] The term "staff" is commonly defined as "the personnel responsible for the functioning of an institution or the establishment or the carrying out of an assigned task under an overall director or head[,]" such as "the teaching and administrative personnel of an educational institution[.]" [5] The Legislature’s use of the term "school’s staff" is broad enough to encompass classroom teachers. For instance, in other areas of the school code, "staff" has been used to refer to instructional personnel. [6] Moreover, in defining certain positions, ranging from principals to educational support employees, the school code characterizes such positions as "staff members." [7] Clearly, had the Legislature wished to restrict or exclude certain members of the school’s staff from the process of participating in the determination of the use of financial awards, it could have easily stated its intent and done so.

While you have expressed concern that teachers could have a special interest in making sure there was no agreement between the school's staff and the school advisory council so that school recognition awards would be distributed only to teachers, there is nothing in section 1008.36, Florida Statutes, indicating that the participation of teachers in the process is to be limited, nor may this office read such a limitation where no such intent is present. [8] Such matters should be addressed to your legislative delegation for clarification. While this office has recognized that school boards possess home rule powers, the exercise of such authority must

be consistent with the provisions of state law. [9] Accordingly, any action taken by the school must be consistent with the provisions of section 1008.36, Florida Statutes.

In light of the Legislature's use of the broad term "school's staff" in delineating those who are to participate in the process and the absence of any limitation on school employees included within that term, it is my opinion that classroom teachers are included as part of the school's staff which are allowed to participate in the joint determination by school staff and the school advisory council for the use of school recognition funds. Nothing in the legislation would appear to preclude the adoption of a procedure whereby all of the staff, including teachers, may vote on the matter. Due to the concerns you have expressed, however, it may be advisable to seek legislative clarification on this issue.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 1008.36(1), Fla. Stat.

[2] *See* s. 1008.36(2) and (3), Fla. Stat.

[3] Section 1008.36(5), Fla. Stat., states that school recognition awards must be used for the following:

"(a) Nonrecurring bonuses to the faculty and staff;
(b) Nonrecurring expenditures for educational equipment or materials to assist in maintaining and improving student performance; or
(c) Temporary personnel for the school to assist in maintaining and improving student performance."

[4] *See, e.g., Sieniarecki v. State*, 756 So. 2d 68 (Fla. 2000) (absent statutory definition, words of common usage are construed in their plain and ordinary sense and, if necessary, plain and ordinary meaning of the word can be ascertained by reference to a dictionary); *Rollins v. Pizzarelli*, 761 So. 2d 294 (Fla. 2000); *In re McCollam*, 612 So. 2d 572 (Fla. 1993) (when language of statute is clear and unambiguous and conveys a clear meaning, statute must be given its plain and ordinary meaning); *Frankenmuth Mutual Insurance Company v. Magaha*, 769 So. 2d 1012 (Fla. 2000) (in ascertaining the plain and ordinary meaning of a term, a court may refer to a dictionary); Ops. Att'y Gen. Fla. 93-47 (1993) (in construing statute which is clear and unambiguous, the plain meaning of statute must first be considered) and 93-02 (1993) (it is presumed that the Legislature knows the meaning of the words it uses and conveys its intent by the use of specific terms, courts must apply the plain meaning of those words if they are unambiguous).

[5] Webster’s Third New International Dictionary (unabridged, 1981), p. 2219.

[6] *See* s. 1012.01(2), Fla. Stat., defining "Instructional personnel" as "any K-12 *staff* member whose function includes the provision of direct instructional services to students." The subsection further states that "Classroom teachers" are "*staff* members assigned the professional activity of instructing students in courses in classroom situations," and student personnel services, librarians/media specialists, and other instructional staff (primary specialists, learning resource specialists, instructional trainers, adjunct educators, and similar positions) as "staff members." (e.s.)

[7] *See* s. 1012.01(3) and (6), Fla. Stat.

[8] *See, e.g.,* Ops. Att'y Gen. Fla. 82-80 (1982) (Attorney General is not free to add words to a statute to support a conclusion that the plain wording of the statute does not supply); 94-09 (1994); 87-43 (1987); 86-32 (1986); and 82-20 (1982). *And see Chaffee v. Miami Transfer Company, Inc.*, 288 So. 2d 209 (Fla. 1974) (Attorney General's Office has no authority to supply additional words to or modify the meaning of a duly enacted statute).

[9] *See, e.g.,* Ops. Att'y Gen. Fla. 03-55 (2003) and 83-72 (1983); *and see W.E.R. v. School Board of Polk County*, 749 So. 2d 540 (Fla. 2d DCA 2000) (while school board has significant authority in matters not addressed specifically by the Legislature, it is prohibited from promulgating rules at variance with legislation).