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## MEMORANDUM

**TO:** Commission Members  
**FROM:** Steven J. Zuilkowski, Deputy Executive Director & General Counsel  
**SUBJECT:** Update Regarding Advisory Opinion Request; File 2785  
**DATE:** April 6, 2022

This memorandum has two sections. The first section of this memorandum provides the Commission on Ethics with an update on File 2785. The second section of this memorandum provides a description of a recently-received motion to withdraw the opinion request in File 2785 and includes a staff recommendation on the matter.

### Update on File 2785

At the December 3, 2021 meeting of the Commission on Ethics, you voted to adopt a motion addressing the above-referenced opinion request. The motion had the following components:

- (1) it withdrew your adoption of an opinion rendered at the October 22, 2021 meeting of the Commission on Ethics responsive to Question 1 of the opinion request;
- (2) it rejected the draft opinion presented by staff at the December 3, 2021 meeting of the Commission on Ethics; and
- (3) it held the matter of rendering an opinion in abeyance until the "legal issues underlying this matter are resolved by the Courts."

Staff deems it appropriate at this time to provide you with the following updates concerning this opinion request:

- (1) Upon information and belief, there are no more court cases concerning the masks-in-schools issue. The Division of Administrative Hearings (DOAH) denied a rule challenge by the Broward County School District and other school districts regarding the Department of Health's (DOH) emergency regulations concerning mask mandates in schools. Several school districts appealed to the Fourth District Court of Appeal. Since then, the DOH emergency rule expired (emergency rules are valid for up to 90 days) and the Florida Legislature enacted a law concerning mask mandates in schools, which the Governor

signed. The school districts then filed a motion to dismiss the appeal and vacate the DOAH order and DOH did not oppose the motion. The Fourth District Court of Appeal granted the motion and issued an order vacating the DOAH order and dismissing the appeal for mootness.

- (2) It has come to the attention of staff that Broward County School District is in compliance with all relevant laws and rules concerning mask mandates and Broward County School District's access to State funds has been restored. Broward County School District has returned all federal funds that were the subject of Question 1. (The now-rejected draft opinions from October and December referred to these federal funds as "USDOE funds.")
- (3) Dr. Osgood (the Requestor) had filed an irrevocable resignation from the School Board of Broward County effective March 8, 2022, the date of the election for the race in which she was a candidate. Dr. Osgood is no longer a member of the Broward County School Board.
- (4) The School Board Attorney, Marilyn Batista, has indicated that the Requestor would still like the Commission on Ethics to grant a withdrawal of the entire opinion request for reason of mootness. She has filed a motion for withdrawal of the entire opinion request, which is discussed below.
- (5) The Legislature passed HB 5003, "Implementing the 2022-2023 General Appropriation Act." Sections 11-12 (lines 686-758) of the bill "reward[s] school districts and charter schools for putting parents first and complying with the provisions of emergency rules promulgated by the Department of Health related to face covering mandates during the 2020-2021 or 2021-2022 school years" by allowing them access to the Florida School Recognition Program established in Section 1008.36, Florida Statutes. Those school districts that were found to have violated the emergency rules are not eligible for the Program. The legislation does not appear to create any budgetary shortfalls that are applied only to Board Member salaries.
- (6) The legal staff of the Commission on Ethics field 100 percent of the phone calls to the Commission that involve legal questions about the Code of Ethics. Since the December 3, 2021 meeting of the Commission on Ethics, no public officer, public employee, or representative of a public officer or employee has called the Commission on Ethics seeking ethical guidance about the possibility of funding of any public officer's or employee's salary with federal funds or donations received through the GoFundMe.com platform.

#### Motion to Withdraw the Opinion Request in File 2785

On February 14, 2022, the attorney for the requestor in File Number 2785 submitted a second request for the withdrawal of the request for an advisory opinion. According to Commission Rule 34-6.006(7), Florida Administrative Code, which is also attached, once a working draft of an advisory opinion has been sent to the requestor and to the members of the Commission, the opinion may only be withdrawn upon "the consent of the Commission for good cause shown." You will recall that working draft advisory opinions were considered by the Commission at its October 2021 meeting and at its December 2021 meeting. As noted above, at the December 2021 meeting, the Commission voted to deny the requestor's first request for a withdrawal of the opinion request, voted to rescind its approval of a working draft of Question 1,

voted to reject the working draft of Question 2, and voted to hold the matter in abeyance until such time as related matters in the courts were resolved.

The current request for withdrawal specifies that "material changes in the facts and circumstances at hand have rendered moot Dr. Osgood's request." The attorney for the requestor listed the changes in facts and circumstances that have occurred since the first withdrawal request:

- Dr. Osgood's salary was paid by "traditional funding sources" and the District did not use any funds from the United States Department of Education (USDOE funds) or funds raised through the GoFundMe.com platform to make any salary payment to her;
- The USDOE funds that had been made available to the District for Board Member salaries were returned to the USDOE;
- The District did not receive any funds through the GoFundMe.com platform for the payment of Board Member salaries; and
- All litigation between the District and the Florida Department of Education (and other state agencies) has concluded, which resulted in FLDOE restoring the District's access to state funds that could be applied to Member salaries.

Questions 1 and 2 of the opinion request asked whether using alternative funding sources to fill budgetary shortfalls that were applied to Board Member salaries were allowable under the Code of Ethics. The changes in facts and circumstances detailed in the withdrawal request demonstrate that those alternative funding sources, USDOE funds and donations received through the GoFundMe.com platform, were, respectively, returned and never received. For these reasons, Commission staff agrees that Questions 1 and 2 are now moot. Commission staff recommends that the Commission grant the request and find that the mootness of Questions 1 and 2 are good cause to allow the withdrawal of the opinion request.

If the Commission does not grant the withdrawal request, staff will seek guidance from the Commission on how to proceed in light of the substantial changes in facts and circumstances.

END OF MEMORANDUM



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Interim Superintendent of Schools

February 14, 2022

Steven J. Zuilkowski, Esquire  
State of Florida Commission on Ethics  
Building E, Suite 200  
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Tallahassee, FL 32303-4113

**RE: *Request for Leave to Withdraw Request for Advisory Opinion – Dr. Rosalind Osgood  
Commission on Ethics File Number 2785***

Dear Mr. Zuilkowski:

On September 1, 2021, School Board Member Dr. Rosalind Osgood (at that time School Board Chair) requested an advisory opinion from the Florida Commission on Ethics regarding two alternate means of funding School Board Member salaries – (a) funds made available from the USDOE or (b) funds raised through a “GoFundMe” account. Subsequent to the initial submission of that request for an advisory opinion, material changes in the facts and circumstances at hand have rendered moot Dr. Osgood’s request. These changes in the facts and circumstances include the following described matters. Dr. Osgood’s salary has been paid by the school district using traditional funding sources which did not include the use of any funds raised through a “GoFundMe” account or the USDOE funds which alternative funding sources were referenced in her request for an opinion. The USDOE funds that had been made available to the school district to pay school board members’ salaries have been returned to the USDOE by the school district. No funds were ever received by the school district from a GoFundMe account for the payment of school board member salaries. Any disputes or litigation between the school district and the Florida Department of Education or other state actors have been concluded and the traditional funding sources for payment of Dr. Osgood’s salary have been restored by the state.

Section 34-6.006(7), Florida Administrative Code, permits a party to withdraw a request for an advisory opinion with the consent of the Commission for good cause shown after copies of the working draft of the opinion have been sent to him and to Commission members. It is respectfully submitted that the changed facts and circumstances referenced above have rendered moot all aspects of Dr. Osgood’s request for an advisory opinion from the Commission on Ethics. As such, the Commission is respectfully requested to find that such mootness constitutes good cause to grant Dr. Osgood leave to withdraw her request for an advisory opinion.



In closing, Dr. Osgood and the school district wish to express their gratitude to the Commission for its thoughtful deliberations on October 22 and December 3, 2021 and to its staff attorneys for their thorough research upon the issues submitted for the Commission's consideration.

Respectfully submitted,

Marilyn C. Batista  
Interim General Counsel

MCB:mi

CC: Dr. Rosalind Osgood, School Board Member  
Robert Paul Vignola, Deputy General Counsel

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ENROLLED

HB 5003, Engrossed 1

2022 Legislature

676 9. If the provider is a Florida College System  
 677 institution, employs instructors who meet the certification  
 678 requirements for instructional staff under chapter 1012; and

679 10. Performs an annual financial audit of its accounts and  
 680 records conducted by an independent certified public accountant  
 681 which is in accordance with rules adopted by the Auditor  
 682 General, is conducted in compliance with generally accepted  
 683 auditing standards, and includes a report on financial  
 684 statements presented in accordance with generally accepted  
 685 accounting principles.

686 Section 10. The amendment to s. 1002.45, Florida Statutes,  
 687 by this act expires July 1, 2023, and the text of that  
 688 subsection shall revert to that in existence on June 30, 2022,  
 689 except that any amendment enacted other than by this act shall  
 690 be preserved and continue to operate to the extent that such  
 691 amendments are not dependent upon the portions of text which  
 692 expire pursuant to this section.

693 Section 11. In order to implement Specific Appropriation  
 694 87A of the 2022-2023 General Appropriations Act, subsections  
 695 (1), (2), (3), and (4) of section 1008.36, Florida Statutes, are  
 696 amended to read:

697 1008.36 Florida School Recognition Program.—

698 (1) The Legislature finds that there is a need for a  
 699 ~~performance incentive~~ program to reward school districts and  
 700 charter schools for putting parents first and complying with the

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HB 5003, Engrossed 1

2022 Legislature

701 provisions of emergency rules promulgated by the Department of  
 702 Health related to face covering mandates during the 2020-2021 or  
 703 2021-2022 school years ~~for outstanding faculty and staff in~~  
 704 ~~highly productive schools. The Legislature further finds that~~  
 705 ~~performance-based incentives are commonplace in the private~~  
 706 ~~sector and should be infused into the public sector as a reward~~  
 707 ~~for productivity.~~

708 (2) The Florida School Recognition Program is created to  
 709 recognize the efforts of outstanding faculty and staff from  
 710 school districts and charter schools that overcame pandemic-  
 711 related learning disruptions to maintain highly productive  
 712 schools by providing ~~provide~~ financial awards to public schools  
 713 that for the 2021-2022 school year:

714 (a) Sustained ~~sustain~~ high performance by receiving a  
 715 school grade of "A," making excellent progress; or

716 (b) Demonstrated ~~demonstrate~~ exemplary improvement due to  
 717 innovation and effort by improving at least one letter grade  
 718 compared to the 2018-2019 school year ~~or by improving more than~~  
 719 ~~one letter grade and sustaining the improvement the following~~  
 720 ~~school year.~~

721 (3) All public schools, including charter schools, that  
 722 received ~~receive~~ a school grade pursuant to s. 1008.34 and were  
 723 not found in violation of emergency rules promulgated by the  
 724 Department of Health related to face covering mandates during  
 725 the 2020-2021 or 2021-2022 school year are eligible to

ENROLLED

HB 5003, Engrossed 1

2022 Legislature

726 participate in the program.

727 (4) (a) The Department of Education may distribute the  
 728 funds appropriated in Specific Appropriation 88A when the  
 729 official school grades for the 2021-2022 school year are  
 730 available. The results of these school grades shall be used to  
 731 calculate the distribution of the appropriated funds. The amount  
 732 for each eligible school district and charter school shall be  
 733 based on the school district's and charter school's  
 734 proportionate share of the total eligible full-time equivalent  
 735 students ~~All selected schools shall receive financial awards~~  
 736 ~~depending on the availability of funds appropriated and the~~  
 737 ~~number and size of schools selected to receive an award.~~

738 (b) Funds must be distributed to the school's fiscal agent  
 739 and placed in the school's account and must be used for purposes  
 740 listed in subsection (5) as determined jointly by the school's  
 741 staff and school advisory council. If school staff and the  
 742 school advisory council cannot reach agreement by February 1,  
 743 the awards must be equally distributed to all classroom teachers  
 744 currently teaching in the school. If a school selected to  
 745 receive a school recognition award is no longer in existence at  
 746 the time the award is paid, the district school superintendent  
 747 shall distribute the funds to teachers who taught at the school  
 748 in the previous year in the form of a bonus.

749  
 750 Notwithstanding statutory provisions to the contrary, incentive



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HB 5003, Engrossed 1

2022 Legislature

751 awards are not subject to collective bargaining.

752 Section 12. The amendments to s. 1008.36(1), (2), (3), and  
 753 (4), Florida Statutes, made by this act expire July 1, 2023, and  
 754 the text of those subsections shall revert to those in existence  
 755 on June 30, 2022, except that any amendment enacted other than  
 756 by this act shall be preserved and continue to operate to the  
 757 extent that such amendments are not dependent upon the portions  
 758 of text which expire pursuant to this section.

759 Section 13. In order to implement Specific Appropriation  
 760 145 of the 2022-2023 General Appropriations Act, Florida State  
 761 University is authorized under s. 1010.62(2)(a), Florida  
 762 Statutes, to use revenues derived from the student facilities  
 763 use fees authorized by s. 1009.24(14)(p), Florida Statutes, to  
 764 pay and secure debt with annual debt service in an amount not to  
 765 exceed \$4 million to finance or refinance the university's new  
 766 student union project. This section expires July 1, 2023.

767 Section 14. In order to implement Specific Appropriations  
 768 197 through 224 and 524 of the 2022-2023 General Appropriations  
 769 Act, and notwithstanding ss. 216.181 and 216.292, Florida  
 770 Statutes, the Agency for Health Care Administration, in  
 771 consultation with the Department of Health, may submit a budget  
 772 amendment, subject to the notice, review, and objection  
 773 procedures of s. 216.177, Florida Statutes, to realign funding  
 774 within and between agencies based on implementation of the  
 775 managed medical assistance component of the Statewide Medicaid