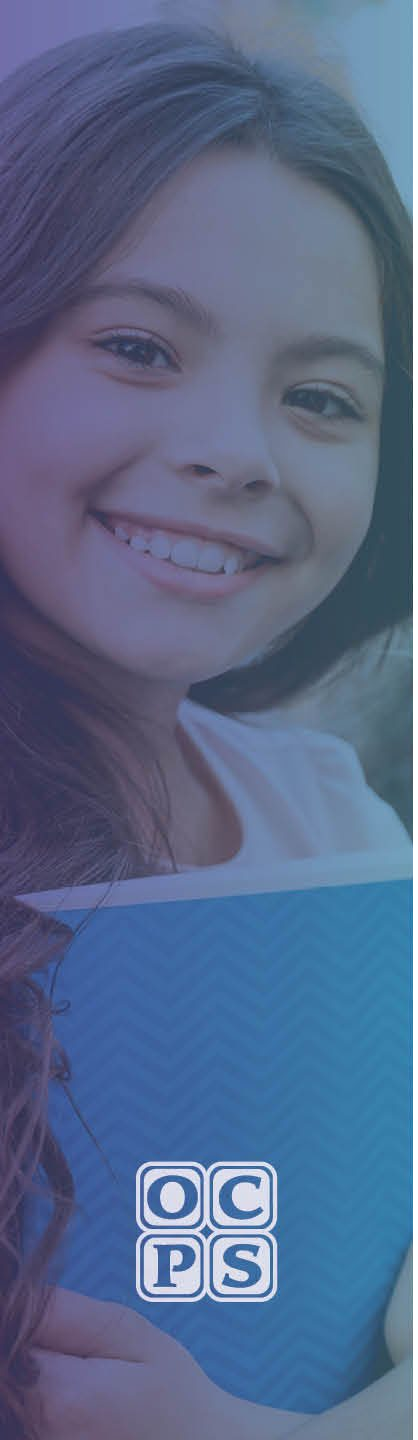
FEN

May 7, 2025

Orange County Public Schools

Public Education cases before the United States Supreme Court

A potential sea change for public education

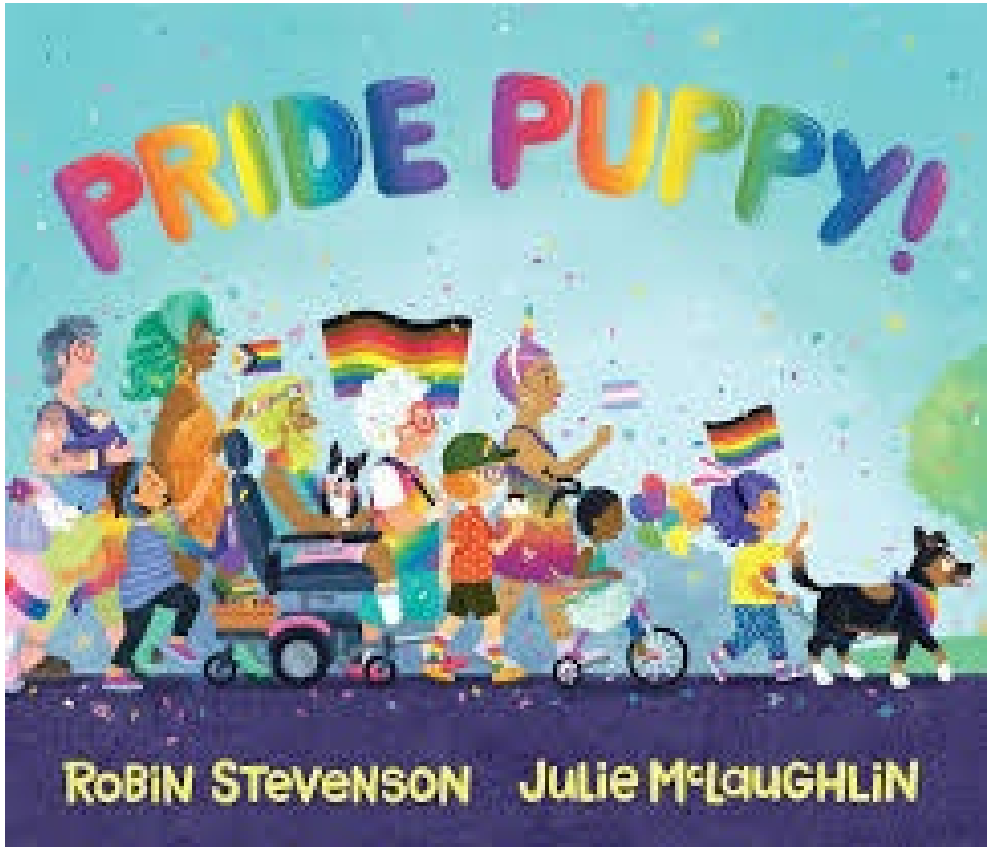


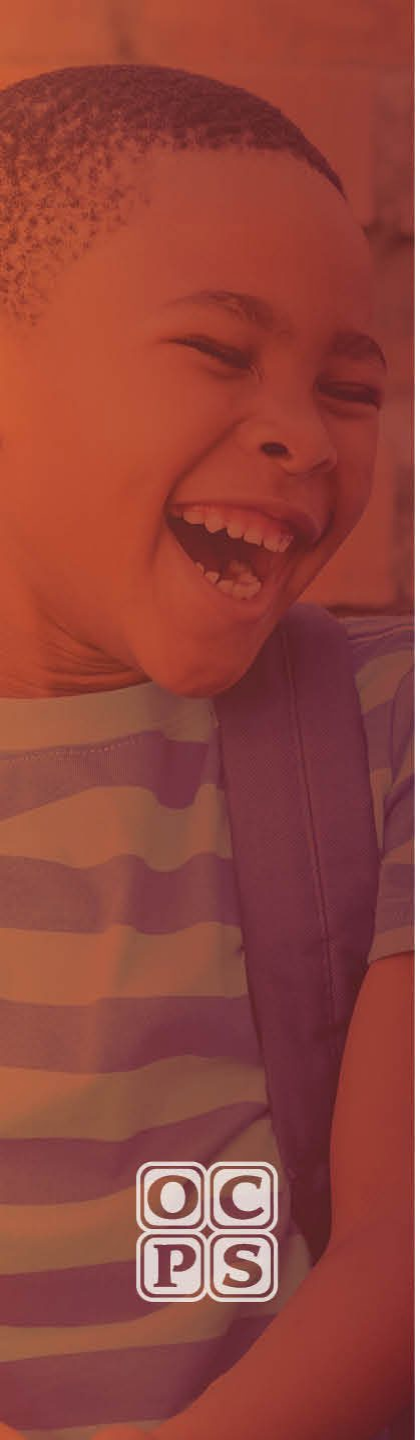
Supreme Court Education Cases

- Mahmoud v. Taylor, 192 F.4th 191 (4th Cir. 2024)
- Parents whose children attend Montgomery County Public Schools state that they want to opt their children out of being exposed to certain books.
- In October 2022, the School Board announced through its regular curriculum adoption process that it had approved a group of LGBTQ-Inclusive Books as part of the English Language Arts curriculum. The books portray homosexual, transgender, and non-binary characters.

Supreme Court Education Cases

- One of the books at issue was “Pride Puppy”



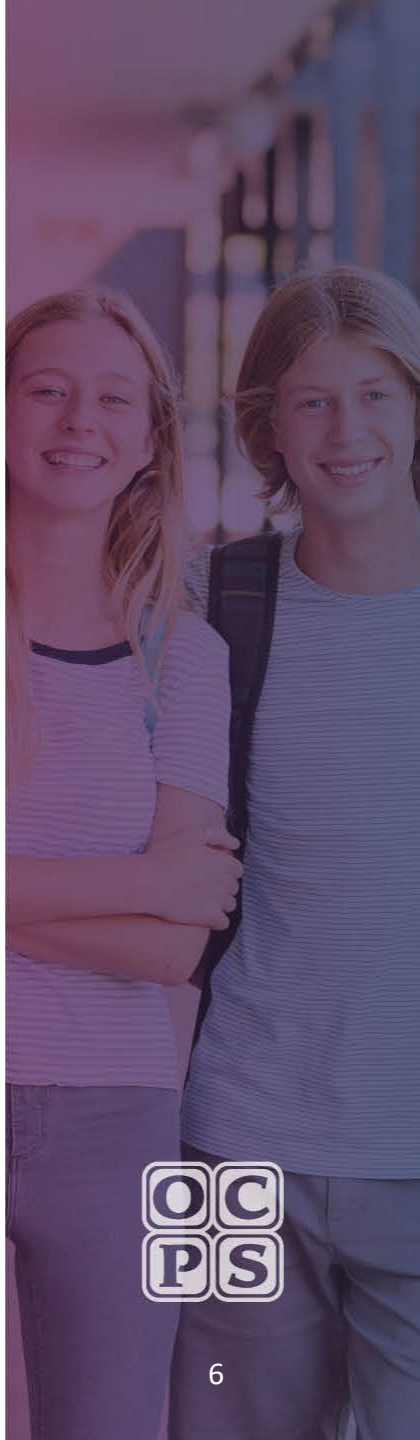


Supreme Court Education Cases

- "Pride Puppy," which was approved for pre-kindergarten and head start students, depicts a family whose books get lost amidst a LGBTQ-pride parade, with each page focused on a letter of the alphabet.
- The children are invited to look for items such as "[drag] king," "leather," "lip ring," "[drag] queen," and "underwear." Mahmoud, 102 F.4th at 198.

Supreme Court Education Cases

- The Associate Superintendent testified in a declaration that the books were not "planned" to be part of "explicit instruction on gender identity and sexual orientation in elementary school and that no student or adult is asked how to change the way they feel about these issues." Id.
- Teachers were expected to incorporate the books into the curriculum in the same way that other books are used, namely, "to put them on the shelf for students to find on their own; to recommend a book to a student who would enjoy it; to offer the books as an option for literature circles, book clubs, or paired reading groups; or to use them as a read aloud" for students in class.
- Usage of the books would be left to teacher discretion.



Supreme Court Education Cases

- The School Board prepared additional support materials which included the following:
  - If a student says “Being ___ (gay, lesbian, queer, etc.) is wrong and not allowed in my religion,” teachers “can respond,” “I understand that is what you believe, but not everyone believes that. We don't have to understand or support a person's identity to treat them with respect and kindness.”
  - The guidance also counsels that if a student says that “a girl ... can only like boys because she's a girl,” the teacher can “*[d]irrupt* the either/or thinking by saying something like: actually, people of any gender can like whoever they like.... How do you think it would make __ to hear you say that? Do you think it's fair for people to decide for us who we can and can't like?”
  - If a student asks what it means to be transgender, the teacher could explain, “When we're born, people make a guess about our gender and label us ‘boy’ or ‘girl’ based on our body parts. Sometimes they're right and sometimes they're wrong.... Our body parts do not decide our gender. Our gender comes from our inside[.]” J.A. 596.

Supreme Court Education Cases

- With respect to responding to parents or caregivers, the support materials stated as follows:
  - The additional materials include such recommendations as disagreeing with concerns that elementary-age children are "too young to be learning about gender and sexual[ ] identity." It prompts that teachers could respond to such concerns by observing that "[c]hildren are already learning about it" because "[m]essages about gender are everywhere," and that "[b]eginning these conversations in elementary school will help young people develop empathy for a diverse group of people and learn about identities that might relate to their families or even themselves."
  - In response to a caregiver's concern that values in the books "go against the values we are instilling ... at home," the guidance suggests reiterating that "[t]he purpose of learning about gender and sexual[ ] identity diversity is to demonstrate that children are unique and that there is no single way to be a boy, girl, or any other gender. If a child does not agree with or understand another student's ... identity ..., they do not have to change how they feel about it." J.A. 601.

Supreme Court Education Cases

- Various teachers, administrators, and parents began voicing issues with the books during the 2022-2023 year:
  - Several elementary school principals signed onto a document that identified numerous instances in the Storybooks of age-inappropriate content such as words being used without definitions; inherent problems with depicting young children “falling in love” with another individual regardless of orientation; and the overall difficulty of some of the concepts presented.
  - Many parents, including the eventual plaintiffs in this case, expressed concerns about having their children exposed to content at odds with their religious faith or that they deemed to be inappropriate for their children's age and development. In short, the Storybooks' rollout was contentious, and many caregivers sought—for religious and secular reasons—to have their children exempted from the Storybooks.

Supreme Court Education Cases

- During the 2022-2023 school year, Montgomery County allowed for opt-outs and the provision of alternative assignments. The Board stated publicly that when a storybook was used in class, “a notification goes out to parents about the book,” and if a caregiver chooses to opt their child out, the teacher would find a substitute text for that student that supports the same language arts standards and objectives.
- For 2023-2024, the Board did not allow opt-outs:
  - The original notice-and-opt-out policy had led to “high student absenteeism.”
  - It also represented that allowing notice and an opt-out option placed too great a burden on school staff charged with (1) remembering which students could be present during lessons involving the Storybooks or otherwise be permitted access to those books, and (2) developing alternative plans for those students who could not be present across a range of language-arts activities.
  - Lastly, the Board was concerned about stigmatizing and isolating individuals whose circumstances were reflected in the Storybooks.

Supreme Court Education Cases

- Parents sued in Federal Court and moved for a preliminary injunction based upon alleged violations of the Free Exercise Clause of the First Amendment and the Due Process Clause of the Fourteenth Amendment.
- The Court ruled that to be successful, the parents had to prove as follows:
  - "To recap briefly, to show a cognizable burden, the Parents must show that the absence of an opt-out opportunity coerces them or their children to *believe* or *act* contrary to their religious views. This coercion can be both direct or indirect, meaning that a burden exists whenever government conduct either "'compel[s] a violation of conscience' or 'put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs.'"

Supreme Court Education Cases

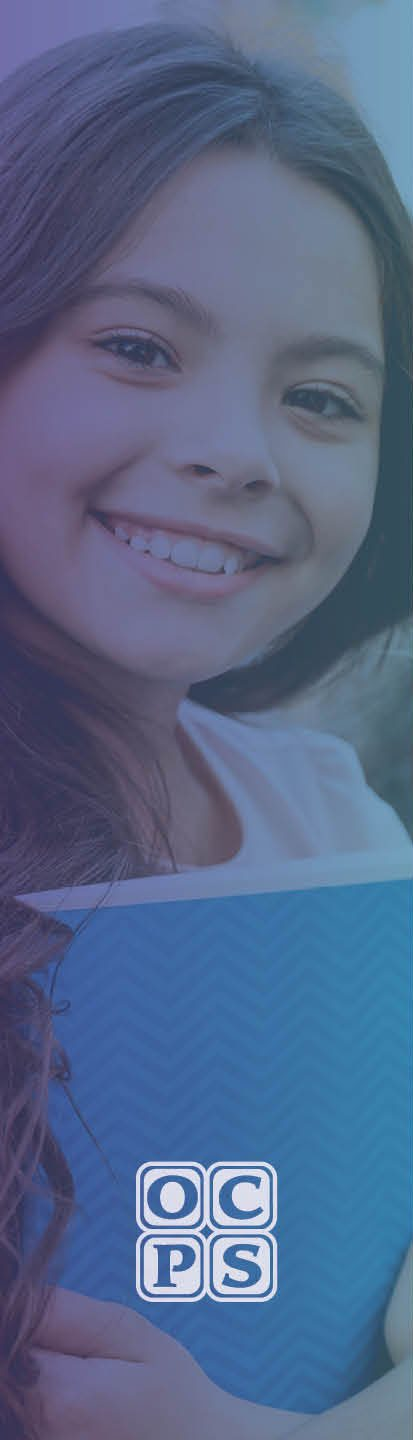
- The Court ruled that the acts of the School Board in not allowing opt-outs did not violate the Free Exercise Clause:
  - “As an initial matter, there's no evidence at present that the Board's decision not to permit opt-outs compels the Parents or their children to *change* their religious beliefs or conduct, either at school or elsewhere. ”
  - “And simply hearing about other views does not necessarily exert pressure to believe or act differently than one's religious faith requires. ”
  - The parents were concerned about the youth and impressionability of the students. “At present, however, no evidence in the record connects the requisite dots between the Parents' children's ages or mental capacity and their unknown exposure to the Storybooks to conclude that the Parents have already shown that a cognizable burden exists. Given that such a conclusion would cut against the weight of legal authority and in the absence of a record supporting the Parents' assertions that their children's religious training would be compromised from every exposure to the Storybooks and related discussions, we cannot reach such a conclusion now.”

Supreme Court Education Cases

- The case was appealed to the U.S. Supreme Court. Oral Argument was held on April 22, 2025.
- Justice Alito:
  - “Yeah, the book has -- the book has a clear message, and a lot of people think it's a good message, and maybe it is a good message, but it's a message that a lot of people who hold on to traditional religious beliefs don't agree with. I don't think anybody can read that and say, well, this is just telling children that there are occasions when men marry other men, that Uncle Bobby gets married to his boyfriend, Jamie, and everybody's happy and everything is -- you know, it portrays this -- everyone accepts this except for the little girl, Chloe, who has reservations about it. But her mother corrects her: No, you shouldn't have any reservations about this.

Supreme Court Education Cases

- Justice Kagan asked about exempting children from biology when evolution is being taught. Counsel for the parents argued that such an exemption would be constitutionally required.
  - "JUSTICE KAGAN: So this is a rule that applies as well to a 16-year-old in biology class saying, you know, I don't --you know, the parents say: **I don't want my child to be there for the classes on evolution or on other biological matters which conflict with my religion? It would apply just as well to that**?
  - MR. BAXTER: We know that those don't happen very often because countries --or schools –
  - JUSTICE KAGAN: **But it would if there were**?
  - MR. BAXTER: **Certainly**. And schools have --there are laws, for example, in states that allow students to opt out of dissection because they don't want to participate in that."

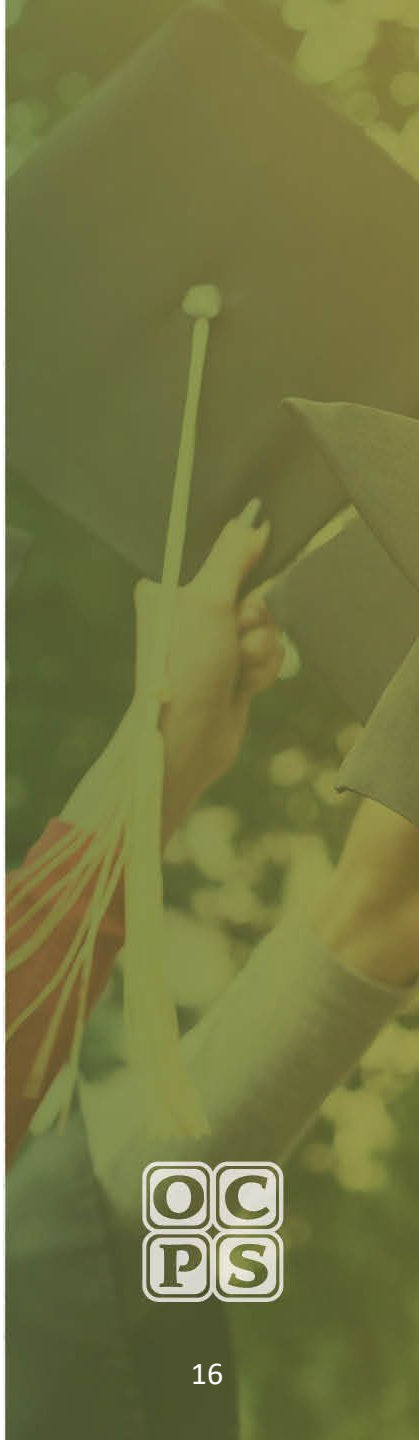


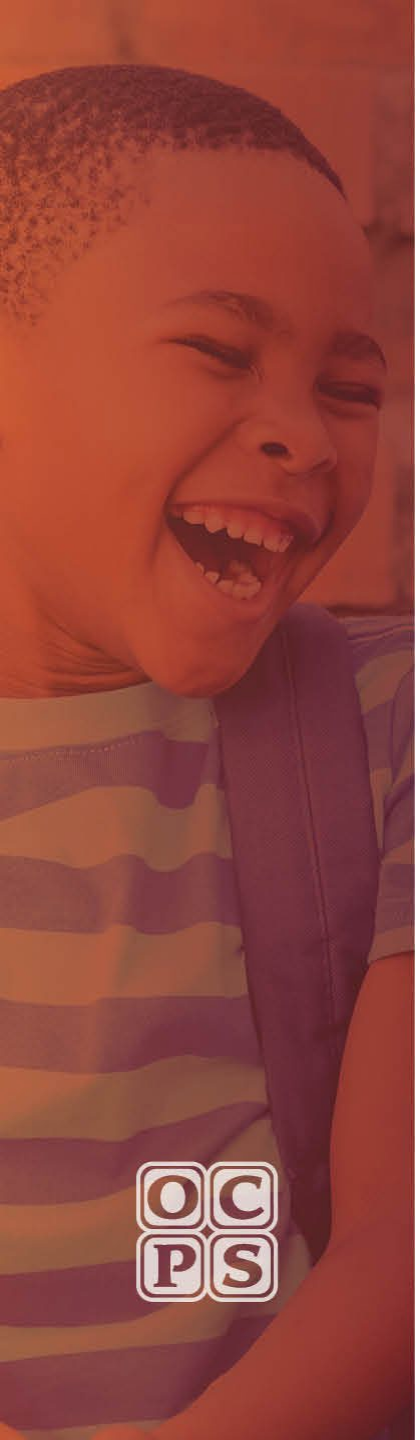
Supreme Court Education Cases

- Justice Roberts to the School Board counsel:
  - “Counsel, you said that nothing in the policy requires students to affirm what's being taught or what's being presented in the books. Is that a realistic concept when you're talking about a five-year-old? I mean, do you --do you want to say you don't have to follow the teacher's instructions, you don't have to agree with the teacher? I mean, that may be a more dangerous message than some of the other things.”

Supreme Court Education Cases

- Florida already has statutory law which allows parents to control the moral, religious, and educational upbringing of their children. (See s. 1014.04(1)(a)-(b), Fla. Stat.
- Florida already prohibits classroom instruction on sexual orientation and gender identity in public schools (See s. 1001.42(8)(c)(3), Fla. Stat.)
- Florida also has a statutory provision allowing parents to challenge library materials based upon pornographic or sexual conduct, content not suited to students' needs and ability to comprehend the material presented, or content which is not appropriate for the grade and age level of the student. (See s. 1006.28(2)(a)(2)(b), Fla. Stat.)
- These cases would make it federal constitutional law to require parental opt-outs of content to which a parent objects on religious and/or moral grounds.





Supreme Court Education Cases

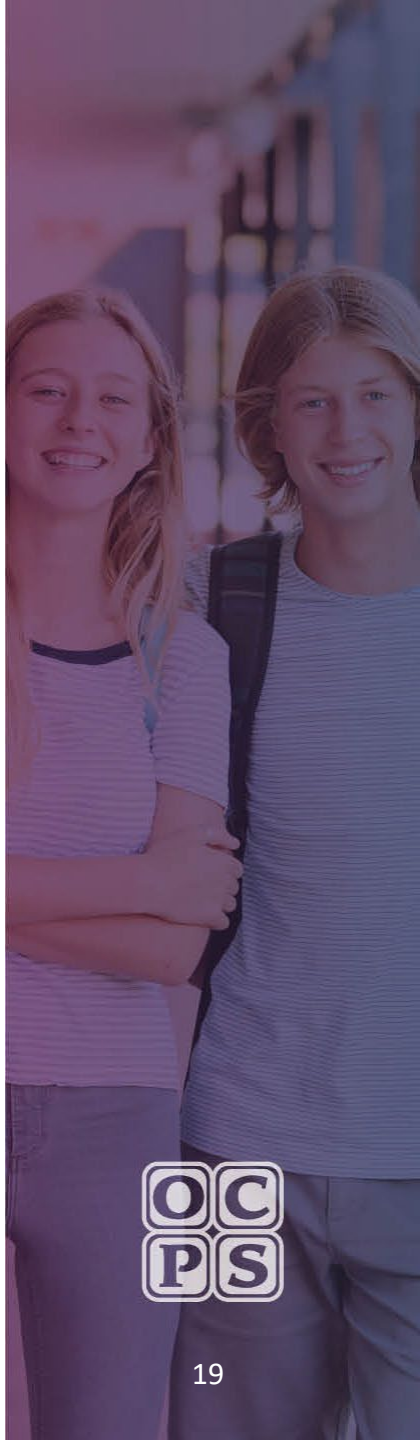
- A.J.T. v. Osseo Area Schools, 96 F.4th 1062 (8th Cir. 2024).
- Because of her disability, A.J.T. cannot attend school prior to noon. The parents asked for an accommodation in the form of the District providing A.J.T. evening instruction. The District refused. The trial court ruled that the denial of night school denied A.J.T. a free and appropriate public education ("FAPE").
- The District provided A.J.T. 4.25 hours a day of instruction in elementary school. It then provided education for 3 hours in middle school due to the earlier end time of class at 2:40 p.m.
- When the child's parents filed suit, the District provided 4.25 hours of education.

Supreme Court Education Cases

- The Administrative Law Judge ruled against the District. The ALJ found that District officials improperly made "maintain[ing] the regular hours of the school's faculty" the "prevailing and paramount consideration" over A.J.T.'s needs and ordered the District to provide 495 hours of compensatory education and add certain services to her IEP, including at-home instruction from 4:30 p.m. to 6:00 p.m. each school day.
- The District appealed the ruling of the ALJ to federal court.

Supreme Court Education Cases

- Specifically, the court found that after moving to the District, A.J.T. made progress in several areas like her desire and intent to communicate, use of eye gaze technology, ability to feed herself, and handwashing. But her overall progress was *de minimis*, and she regressed in other areas like communicating using hand signs, initiating and returning greetings using a prerecorded button switch, and toileting. The court also found that A.J.T. would have made more progress if she had received evening instruction and that a three- or four-hour school day was insufficient to pursue many expert-recommended goals.



Supreme Court Education Cases

- Under the IDEA, disabled students are entitled to FAPE.
- The IEP team must create an IEP, which includes a statement of the student's academic and functional performance, describe how her disability affects her learning, set out measurable goals, and track the student's progress.
- The IEP must be "tailored to the unique needs of the student" and it must be "reasonably calculated to enable a child to make progress appropriate in light of the student's circumstances." (See Endrew F. v. Douglas County School District, 580 U.S. 386 (2017).)

Supreme Court Education Cases

- The Court ruled that providing FAPE is not limited to the regular school day:
  - “As an initial matter, we reject the notion that the IDEA's reach is limited to the regular hours of the school day. Neither the District nor *amici* identify anything in the IDEA implying—let alone stating—that a school district is only obligated to provide a FAPE if it can do so between the bells. So we wade into the finer details of A.J.T.’s IEPs to determine whether she received a FAPE despite the short day.”

Supreme Court Education Cases

- The Court then analyzed a separate lawsuit under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.
- Under Section 504 and the Americans with Disabilities Act. Both statutes are analyzed under the same standards, which is allowing qualified people with disabilities meaningful access to services, programs or activities." This is otherwise known as the "reasonable accommodation" requirement.

Supreme Court Education Cases

- The Court ruled that mere failure to provide a reasonable accommodation was insufficient to prove a violation of Section 504 and the ADA:
  - “That said, when the alleged ADA and Section 504 violations are ‘based on educational services for disabled children,’ a school district's simple failure to provide a reasonable accommodation is not enough to trigger liability. Rather, a plaintiff must prove that school officials acted with ‘either bad faith or gross misjudgment,’ which requires “ ‘something more’ than mere non-compliance with the applicable federal statutes,”. The district's “statutory non-compliance must deviate so substantially from accepted professional judgment, practice, or standards as to demonstrate that [it] acted with wrongful intent.”

Supreme Court Education Cases

- The Court ruled that while the parents had demonstrated a genuine dispute about whether the District was negligent or deliberately indifferent to the child's rights under Section 504 and the ADA, such demonstration was not enough to trigger liability for the District:
  - "A.J.T. may have established a genuine dispute about whether the district was negligent or even deliberately indifferent, but under Monahan, that's just not enough. She points out that her parents repeatedly notified the District that its refusal to provide evening instruction violated Section 504 and the ADA. And she says that the District violated accepted professional standards by failing to follow its own policies and procedures requiring its staff to report, investigate, and respond to complaints of discrimination. As evidence, she notes that the District's Director of Student Services, who oversees Section 504 compliance, testified that she was unaware of the parents' complaints and did not know that the District's policies permit at-home schooling as an accommodation. But the Director's non-compliance does not amount to a deviation 'so substantial[ ]' that it demonstrates 'wrongful intent.'"

Supreme Court Education Cases

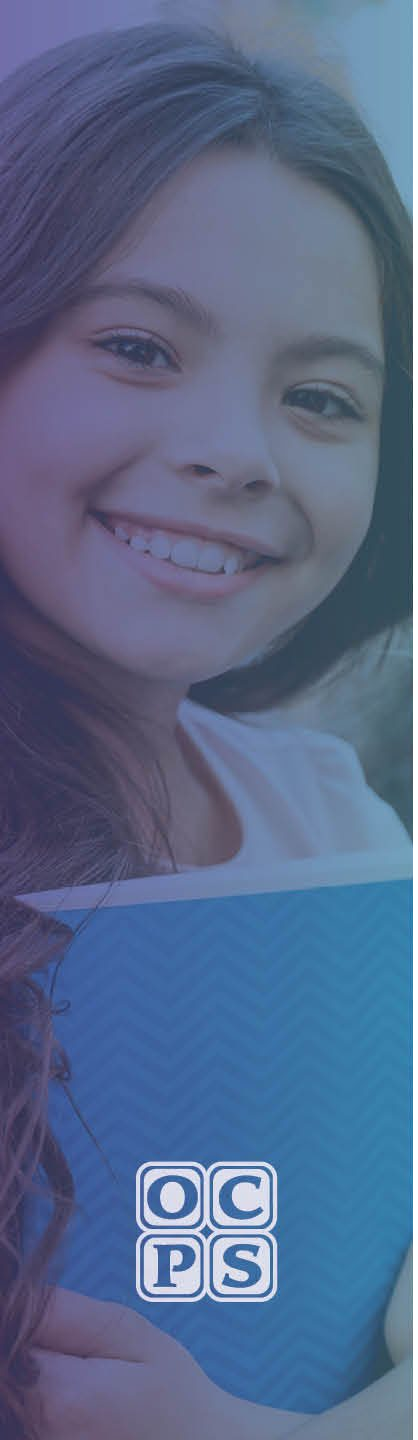
- The U.S. Supreme Court heard arguments in the case on April 28, 2025.
- The case was taken up to resolve a circuit split. Five Circuits apply the "bad faith or gross mismanagement standard" for school-children suing for violations of Section 504 and the Rehabilitation Act. Two circuits applied the same "deliberate indifference" standard for all plaintiffs suing under Section 504 and the ADA.
- There is no controlling precedent on the matter in the 11th Circuit, where Florida is located.

Supreme Court Education Cases

- The student and the federal government both argue that there is no basis to apply different standards to school children than to other plaintiffs bringing claims under Section 504 and the ADA. Both agree that the standard is deliberate indifference rather than bad faith or gross mismanagement.
- Bad faith has discriminatory animus against a person because of the person's status as being disabled.
- The School Board argued that "bare IDEA violations do not support liability under Section 504 or the ADA. Instead the defendant must have acted with discriminatory intent."

Supreme Court Education Cases

- Drummond ex rel. State v. Oklahoma Statewide Virtual Charter School Board, 558 P.3d 1 (Okla. 2024)
- The Oklahoma Legislature has a constitutional duty to establish a free system of public schools.
- The Legislature enacted the Oklahoma Charter School Act. The act requires that all charter schools be nonsectarian in their program, admission policy, and other operations.
- Section 1002.33(9)(a), Fla. Stat.: "A charter school shall be nonsectarian in its programs, admission policies, employment practices, and operations."
- The Archdiocese of Oklahoma City and the Diocese of Tulsa applied to establish St. Isidore, a religious virtual charter school. The school plans to derive its "original characteristics and its structure as a genuine instrument of the church" and participate in "the evangelizing mission of the church."

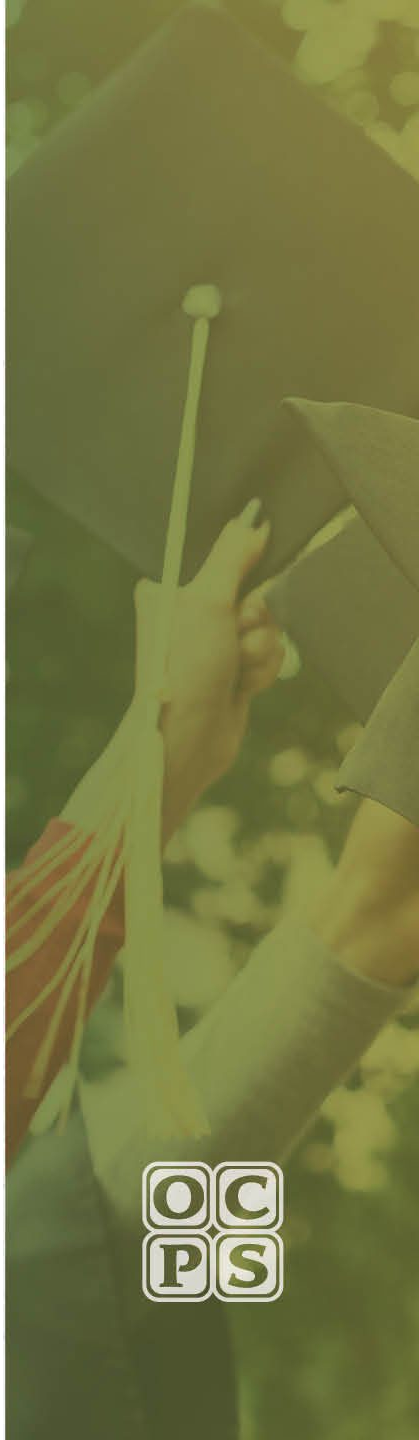


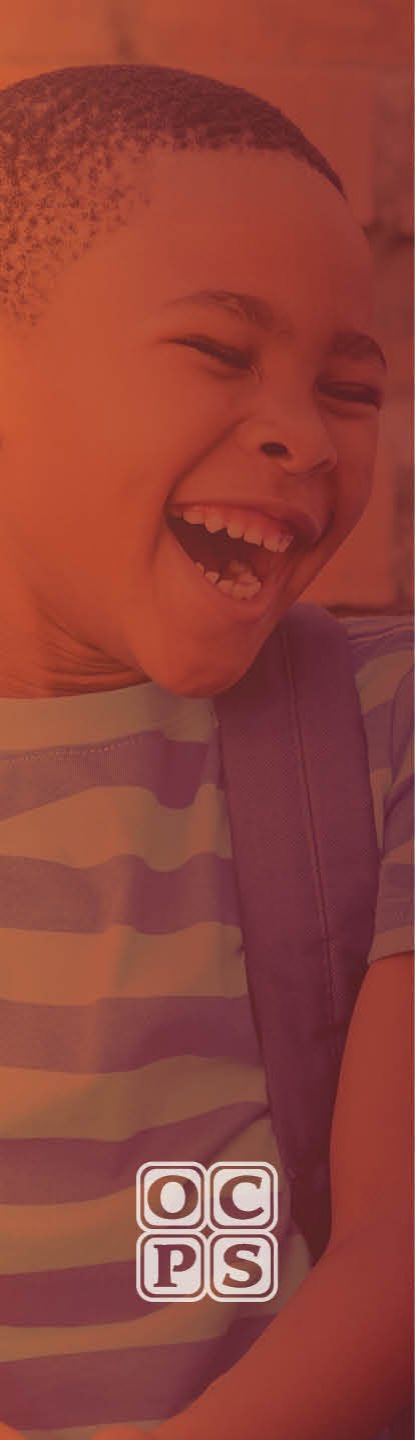
Supreme Court Education Cases

- Article 2, Section 5 of the Oklahoma Constitution: “No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.”
- Article I, Section 3 of the Florida Constitution: “There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”

Supreme Court Education Cases

- The Oklahoma Supreme Court ruled its no-aid provision was meant "to ban State Government, its officials, and its subdivisions from using public money or property for the benefit of any religious purpose. Use of the words 'no,' 'ever,' and 'any' reflects the broad and expansive reach of the ban."
- The Court explained the rule as follows:
  - "[N]ot only guards the citizens right to be free from taxation for the support of the church, but protects the rights of all denominations, however few the number of their respective adherents, by with-holding any incentive that might prompt any ecclesiastical body to participate in political struggles and by reason of their numbers exert an undue influence and become beneficiaries at the expense of the public and a menace to weaker denominations and ultimately destructive of rel[i]gious liberty."



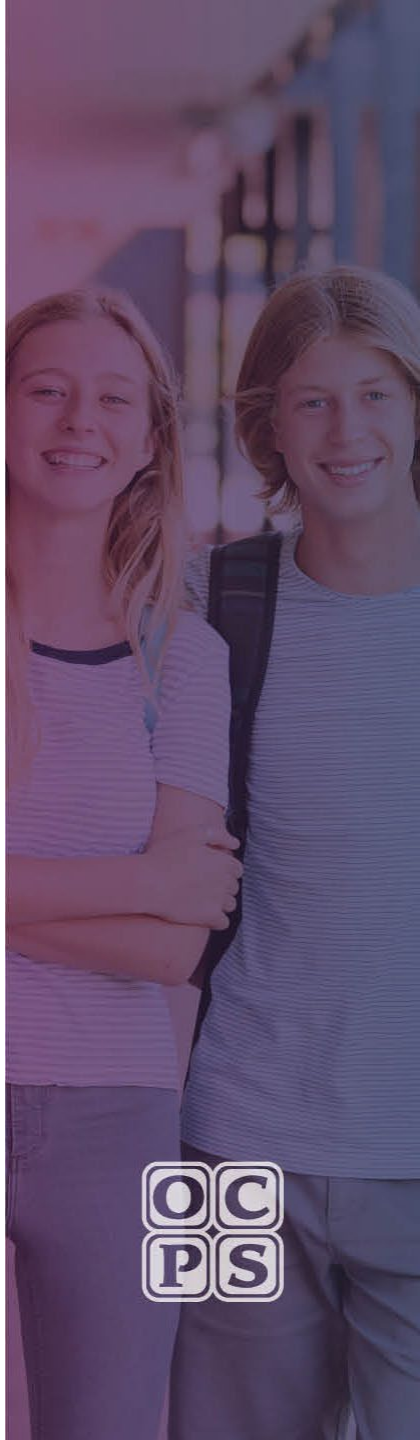


Supreme Court Education Cases

- Article 1, Section 5 of the Oklahoma Constitution states: “Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the state and free from sectarian control.”
- The Oklahoma Supreme Court also ruled that the Establishment Clause of the First Amendment to the U.S. Constitution prohibited the establishment of a religious public charter school:

Supreme Court Education Cases

- “Under the Establishment Clause of the First Amendment, made binding upon the States through the Fourteenth Amendment, Oklahoma cannot pass laws ‘which aid one religion, aid all religions, or prefer one religion over another.’ *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 15 (1947). The Establishment Clause prohibits government spending in direct support of any religious activities or institutions. The Establishment Clause also prohibits the government from participating in the same religious exercise that the law protects when performed by a private party.”



Supreme Court Education Cases

- The Oklahoma Supreme Court ruled that the Free Exercise Clause of the First Amendment did not apply. It distinguished the three free exercise cases the Court recently decided on the basis that none of the cases involved public schools:
  - *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017) (holding the denial of grants to religiously affiliated applicants for purchase of rubber playground surfaces violated the Free Exercise Clause)
  - *Espinoza v. Mont. Dep't of Rev.*, 591 U.S. 464 (2020) (concluding the state scholarship program for students attending private schools was permissible under the Free Exercise Clause)
  - *Carson v. Makin*, 596 U.S. 767 (2022) (holding the "nonsectarian" requirement of Maine's tuition assistance program for private secondary schools violated the Free Exercise Clause)

Supreme Court Education Cases

- “The Free Exercise Trilogy cases do not apply to the governmental action in this case. St. Isidore is a state-created school that does not exist independently of the State. Unlike the private entities in the Free Exercise Trilogy cases, St. Isidore was created in furtherance of the State's objective of providing free public education.”
- “The differences between the Free Exercise Trilogy cases and this case are at the core of what this case entails—what St. Isidore requests from this Court is beyond the fair treatment of a private religious institution in receiving a generally available benefit, implicating the Free Exercise Clause. It is about the State's creation and funding of a new religious institution violating the Establishment Clause. Even if St. Isidore could assert free exercise rights, those rights would not override the legal prohibition under the Establishment Clause.”

Supreme Court Education Cases

- The United States Supreme Court heard oral argument on April 30.
- Most legal commentators think four justices (Thomas, Alito, Gorsuch, and Kavanaugh) will rule that the Free Exercise Clause requires the establishment of religious public charter schools:
  - "JUSTICE KAVANAUGH: I think, as Justice Gorsuch pointed out earlier, a state could easily design a different kind of charter schools system where they really were government-run, government-controlled, government-created, government-established private charter schools. That's not what --some states have. They open it up to private people to apply, and then, when you say to someone, you're no good because you're religious, they're not asking -- and to make the point, they're not asking for special treatment. They're not asking for favoritism. They're just saying don't treat us worse because we're religious."

Supreme Court Education Cases

- Most legal commentators think three justices (Sotomayor, Kagan, and Jackson) will rule that the Establishment Clause prohibits the establishment of religious public schools.
  - JUSTICE KAGAN: “Well, I guess the question is: Why is a school allowed to strike some requirements but not strike other requirements, right? Like, Oklahoma law has a requirement of nonsectarianism, for example. Essentially, what St. Isidore's did was it struck that from the contract. So the next school says: We want to strike from the contract --I mean, St. Isidore did some other things too, right? It --it struck out the nondiscrimination provision because of doctrines like the ministerial exemption or church autonomy principles. So the next school says: We also want to strike from the contract the requirement that we teach children of all faiths.”

Supreme Court Education Cases

- Justice Barrett has recused herself. Chief Justice Roberts is the swing vote:
  - “CHIEF JUSTICE ROBERTS: You rely heavily on --in --in your brief on a number of cases, Trinity Lutheran, Espinoza, Carson. Those involved fairly discrete state involvement. In Trinity Lutheran, they're going to pave --pave the -- or -- or, you know, put wood chips on the --on the playground. In Espinoza, it was a tuition credit. In Carson, again, tax --tax credits. I mean, this does strike me as a --a much more comprehensive involvement, and I wonder, what case do you think supports the position with respect to that level of --of involvement?”
- If the case is a 4-4 tie, the decision of the Oklahoma Supreme Court stands.

Evaluation

Are they negotiable or not?

EVALUATION

- On November 20, 2018, the Orange County Classroom Teachers Association filed an unfair labor practice charge over OCPS's refusal to bargain the evaluation model. The Union was told of the refusal to bargain on May 18, 2018.
- OCPS uses Marzano.
- On January 20, 2021, the Hearing Officer issued a Recommended Order.
- The Hearing Officer made some findings:
  - "Private vendors offer a variety of evaluation systems. The School District selected the Marzano model of evaluation and began using it in 2011. The School District and OCCTA did not negotiate the choice of the Marzano model."
- The Hearing Officer recommends dismissal of the Charge on timeliness.

EVALUATION

- The Union filed exceptions to the Recommended Order.
- The Public Employee Relations Commission, on April 20, 2021, reversed the legal holding of the Hearing Officer:
  - "Although the District contends that the Union was aware on May 18 that the District 'believed it could unilaterally change the model,' see Response at 17, this is different than taking action based on that belief. We reiterate that the timeliness standard is, as it has been since at least 1981, when the complaining party 'knew or should have known' of the alleged unlawful conduct – not a belief of the ability to engage in such conduct in the future. Indeed, in Orange County, 47 FPER ¶ 79, the issue was when the union knew or should have known of the alleged unlawful conduct that the district had repudiated the CBA language in question."

EVALUATION

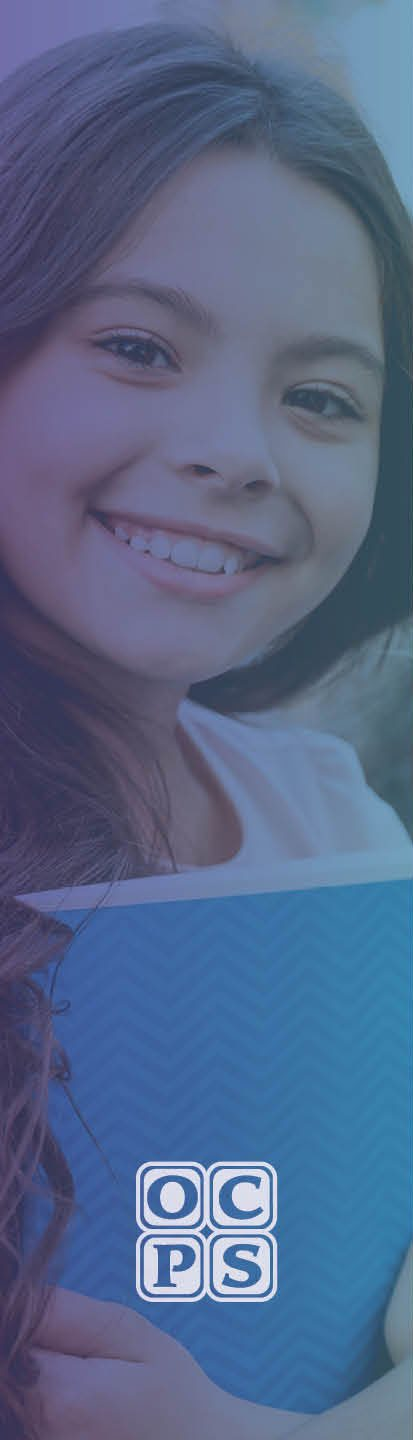
- When remanding, the Commission stated as follows: "Accordingly, we grant exceptions one, two, and three. **In doing so, we do not necessarily endorse all of the Union's legal arguments contained in those exceptions**."
- The Hearing Officer issued a Supplemental Recommended Order on May 27, 2021.
- In the Supplemental Recommended Order, the Hearing Officer found that the District bargained over the initial adoption of Marzano. This directly contradicted his previous ruling in the first Recommended Order that the District did not bargain over the initial adoption of Marzano.
- The Hearing Officer also stated SDOC actually implemented the Marzano Focused Evaluation Model in 2018-2019 despite the District committing in writing not to do so and despite no changes to the Learning Map.

EVALUATION

- In the legal analysis, the Hearing Officer determined that evaluation procedures are a mandatory subject of bargaining rather than a management right.
- Section 447.209, Fla. Stat.:
  - "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, and exercise control and discretion over its organization and operations."

EVALUATION

- Mandatory subjects of bargaining are delineated in s. 447.309(1), Fla. Stat.:
  - “After an employee organization has been certified pursuant to the provisions of this part, the bargaining agent for the organization and the chief executive officer of the appropriate public employer or employers, jointly, shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit.”

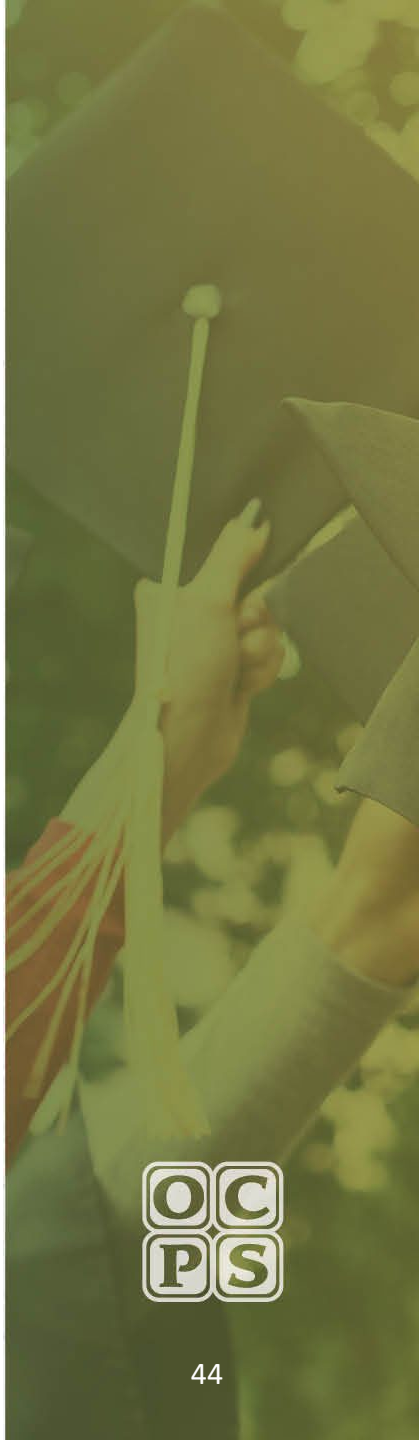


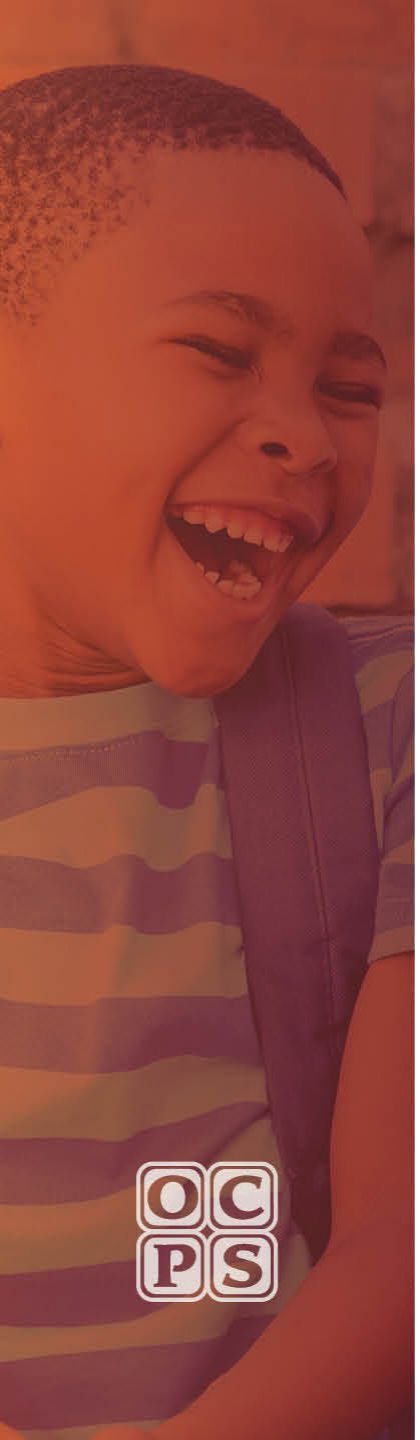
EVALUATION

- The Hearing Officer ruled that OCPS and the Union bargained over "all aspects of teacher evaluations" since 1999. This is factually inaccurate.
- The Hearing Officer utilized a balancing test enunciated in FOP v. Miami Lodge 20 v. City of Miami, 609 So. 2d 31 (Fla. 1992):
  - "Where, as here, we are dealing with a subject which is arguably both a managerial prerogative and a 'term or condition of employment,' we hold that a balancing test should apply to determine which characteristic predominates." Fraternal Order of Police, Miami Lodge 20 v. City of Miami, 609 So. 2d 31, 34 (Fla. 1992).

EVALUATION

- The Hearing Officer also rejected OCPS's argument that s. 1012.34(1)(a), Fla. Stat., which states "the district school superintendent shall establish procedures for evaluating the performance of duties and responsibilities of all instructional, administrative, and supervisory personnel" establishes that evaluation procedures are management rights:
  - "However, section 1012.34(1)(a), Florida Statutes, does not explicitly prohibit collective bargaining in the development of, or decision to impose, an evaluation system. In fact, the statute cannot prohibit such bargaining."



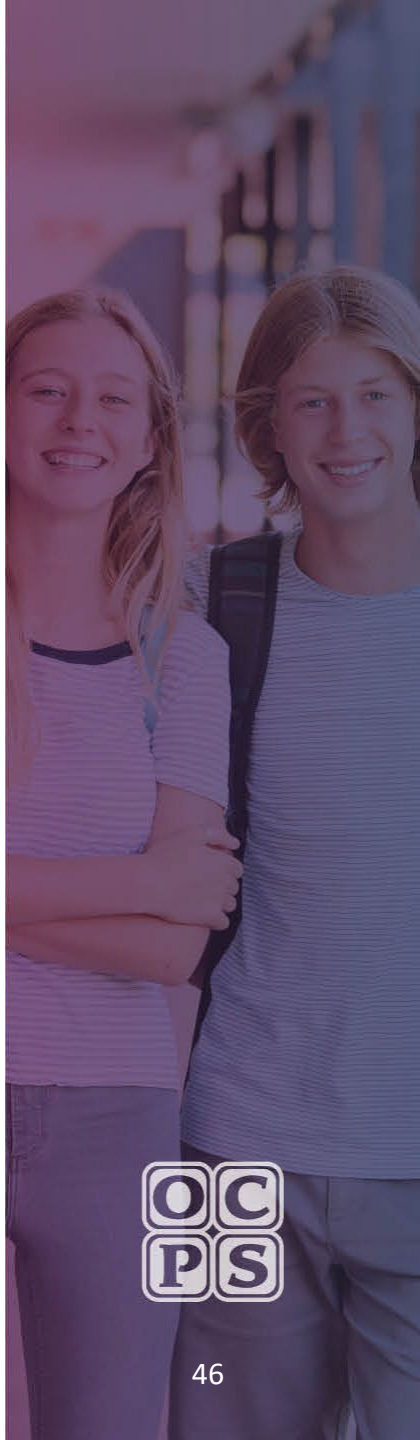


EVALUATION

- The District filed a 63-page exception to the Supplemental Recommended Order.
- The Commission granted OCPS' request for oral argument.
- Oral Argument occurred. OCPS was asked two questions by one commissioner. The other two commissioners did not ask any questions. The Union received no questions in their argument.
- The Commission upheld the ruling of the Hearing Officer in the Supplemental Recommended Order.

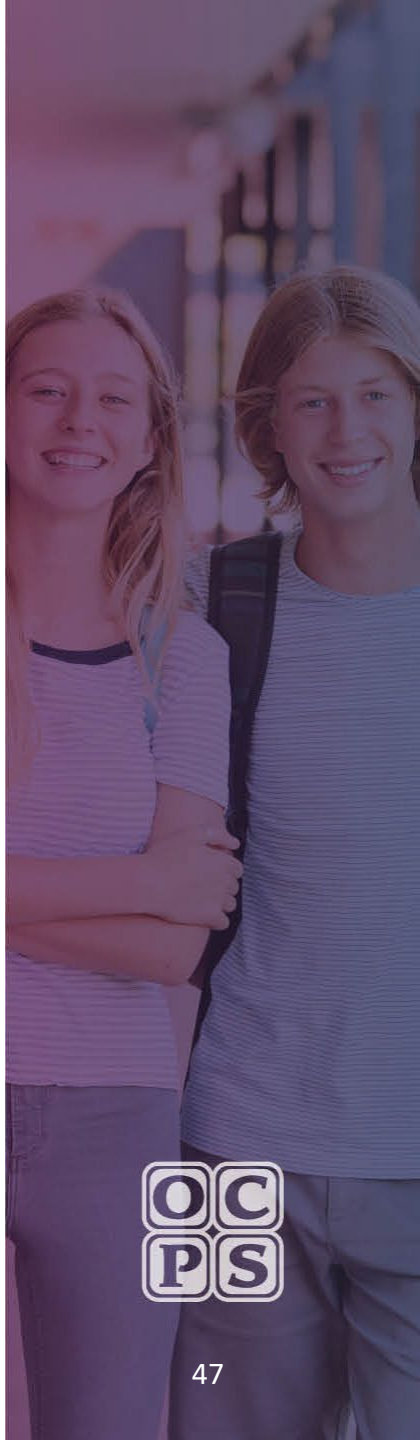
EVALUATION

- The Commission held as follows:
  - “We recognize the management right to set levels of service or to assign tasks to employees within the basic scope of employment. However, such rights cannot subsume mandatory subjects of bargaining. To hold that the teacher evaluation system in this case is a management right would essentially eviscerate the Union’s ability to negotiate mandatory subjects of bargaining. For all the above reasons, under the balancing test, we conclude that teacher evaluation systems that essentially determine hours, wages, and terms and conditions of employment are a mandatory subject of bargaining. We note that the requirement to bargain with the Union prior to adopting a teacher evaluation system is the requirement to meet at reasonable times and to negotiate in good faith with the intent of reaching a common accord, but there is no requirement that either party make a concession or be compelled to agree to a proposal. § 447.203(14), (17), Fla. Stat.; § 447.309, Fla. Stat. We additionally emphasize that there is no dispute that any evaluation system adopted must conform to and comply with the applicable requirements, including those set forth in section 1012.34, Florida Statutes, and the FEAPs in Florida Administrative Code Rule 6A-5.065.”



EVALUATION

- The District filed a notice of appeal in October 2021.
- House Bill 1203 was introduced on January 5, 2022. It clarified s. 1012.34(1)(a), Fla. Stat., as follows:
  - "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 district school superintendent set the standards of service to be offered to the public within the meaning of s. 447.209 and are not subject to collective bargaining."



EVALUATION

- House Bill 1203 passed the House on March 7, 2022.
- The Staff Analysis of the Bill states as follows:
  - "The law prohibits, as an unfair labor practice, a public employer from refusing to bargain in good faith with the certified bargaining agent on terms and conditions of employment. However, a public employer is not per se required to bargain matters of managerial right, including the ability to set standards of services offered to the public. **In September 2021, the Public Employment Relations Commission ruled that a school district's personnel evaluation procedures, including the criteria that it used to evaluate instructional practice and set performance ratings, were a mandatory subject of bargaining. In other words, the school district committed an unfair labor practice by unilaterally changing instructional personnel evaluation procedures**. Based on this decision, a school district may be required to undergo collective bargaining to revise evaluation requirements, which may result in impasse and relating proceedings.
  - Effect of Proposed Changes The bill provides that school district evaluation procedures constitute standards of service offered to the public, within the meaning of Section 447.209, F.S., **and are not subject to mandatory collective bargaining**." The Staff Analysis cited this matter in Footnote 103: "*The Orange County Classroom Teachers Association, Inc. v. School District of Orange Cnty .*, No. 21U-285, CA-2018-050 at 38 (Public Employees Relations Commission Sept. 24, 2021). (requiring the School District of Orange County to meet with representatives of the Union for purposes of collective bargaining concerning the teacher evaluation system)."

EVALUATION

- The Senate had an identical measure, Senate Bill 1386. It passed two committees.
- During the February 1, 2022 Appropriations Subcommittee on Education meeting, sponsor Senator Manny Diaz made it clear that the statutory revision was mere clarification as to what was already law – that the superintendent sets evaluation procedures and that such procedures are not a mandatory subject of bargaining:
- "If you look at the current statute, it clearly says that the superintendent shall establish the procedures for evaluating the performance of duties and responsibilities of all instructional, administrative and supervisory personnel employed by the district. That is the current statute. **This clarifies – because of that ruling, they said it lacked clarity, this clarifies that those procedures are the responsibility of the Superintendent and not mandatory part of the collective bargaining system**."
- Senate Bill 1386 died in the Senate Appropriations Committee.

EVALUATION

- As final negotiations for the budget were completed, Senate Bill 2524 (the budget conforming bill) was introduced on March 11, 2022. The conforming bill had the language from House Bill 1203.
- The Legislature passed the bill on March 14, 2022, with votes of 83-24 in the House and 31-2 in the Senate.

EVALUATION

- The 5th DCA affirmed the decision of the Commission.
  - During the Oral Argument, the following statements were made:
    - Judge Lambert: “You now have a statute that says you win for lack of a better term on this issue.”
  - Union Counsel: “We agree that from June the second this year forward, we cannot bargain over the evaluation procedures, only the impact of the evaluation procedures.”
  - Union Counsel: “On June 3rd 2022, the School Board can devise whatever kind of evaluation system it wants and only have to impact bargain with the Union.
  - Union Counsel: “A lot of the value that this case had was gone upon the effective date of the legislative amendment.”

EVALUATION

- In 2024, the District moved in bargaining to delete most of its language out of the evaluation article based upon the new law stating that evaluation procedures are “not subject to collective bargaining.” The District proposed to keep the evaluation language that was in the Contract in an evaluation manual. The District also agreed that any violation of the evaluation manual could be grieved and arbitrated.
- The Union opposed those measures and proposed to keep the language in the contract.
- The parties reached an impasse.

EVALUATION

- The Union did not have the impasse article as an issue at impasse based upon the language in s. 1012.34. The parties agreed and ultimately ratified the following language:
  - “The purpose of evaluation shall be to improve the quality of instruction in compliance with the mandates of Florida Statutes and State Board Rule regarding the evaluation of the performance of instructional personnel. These mandates include Section 1012.34(1)(a), Fla. Stat. which provides that: [T]he 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 district school superintendent set the standards of service to be offered to the public within the meaning of s. 447.209 and are not subject to collective bargaining. Nothing herein waives the position of either party regarding the interpretation, applicability, or constitutionality of Section 1012.34(1)(a), Fla. Stat., and/or of the ability of the Superintendent to make changes to the current Instructional Personnel Evaluation System without bargaining. Should the Association prevail in an action relating to Section 1012.34(1)(a), Fla. Stat., the parties agree to automatically reopen this article for further negotiations pursuant to Chapter 447, Fl. Stat.”

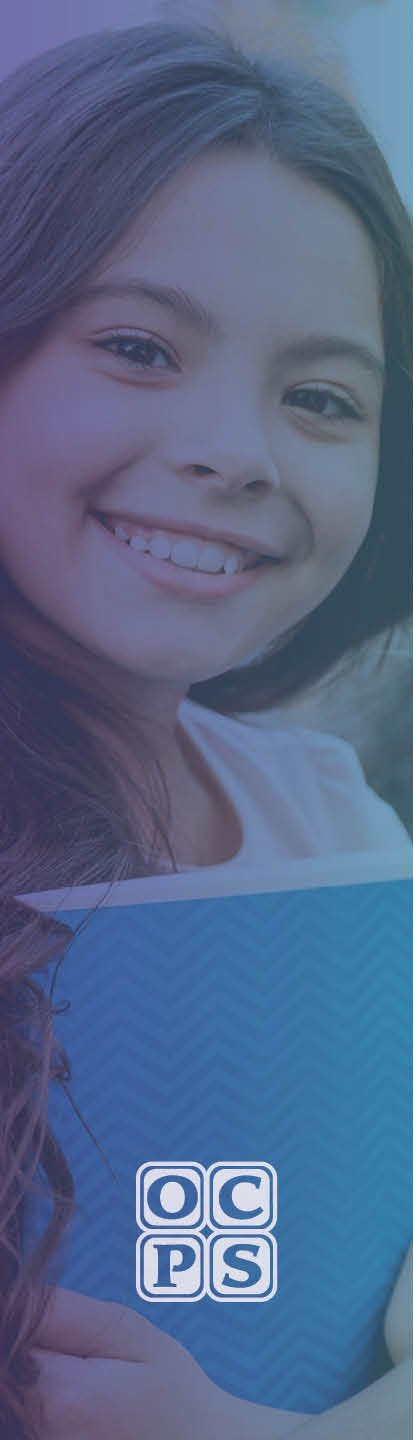
EVALUATION

- The Union filed a two-count complaint in state court.
- Count I – Unconstitutional Application of s. 1012.34(1)(a), Fla. Stat. The Union argues that while the statute says the procedures established by the superintendent are not subject to collective bargaining, the substantive provisions remain subject to collective bargaining.
- The staff analysis on SB 2524, which passed the language at issue, identified the criteria used to evaluate instructional practice and set performance ratings as part of evaluation procedures:
  - "In September 2021, the Public Employment Relations Commission ruled that **a school district's personnel evaluation procedures, including the criteria that it used to evaluate instructional practice and set performance ratings**, were a mandatory subject of bargaining."
- In its Motion to Dismiss, the District argued that it did not refuse to negotiate – in fact, it bargained through the impasse process to remove the evaluation language from the Contract. Therefore, there could not be an unconstitutional refusal to collectively bargain.

EVALUATION

- Count II – The Union is seeking a declaratory judgment to construe a statutory construction of s. 1012.34(1)(a) and its meaning, specifically that despite the language in the statute, the District is still required to bargain over the substantive aspects of the evaluation system.
- The District moved to dismiss on the basis that such question is a question of labor policy, which is the exclusive jurisdiction of the Florida Public Employee Relations Commission.
  - "One of the primary duties and responsibilities of the Public Employees Relations Commission (PERC) is to investigate and resolve charges of unfair labor practices, as defined under sec. 447.501, F.S.... From an analysis of its purpose and objectives and from a review of its provisions it appears that the legislature intended Part II, Chapter 447 to provide an exclusive method for resolving labor disputes between public employers and public employees, with the Public Employees Relations Commission having preemptive jurisdiction over such matters...." Maxwell v. School Board of Broward County, 330 So.2d 177, 179–80 (Fla. 4th DCA 1976).
- The Motion to Dismiss is to be heard on May 7, 2025.

House Bill 1105

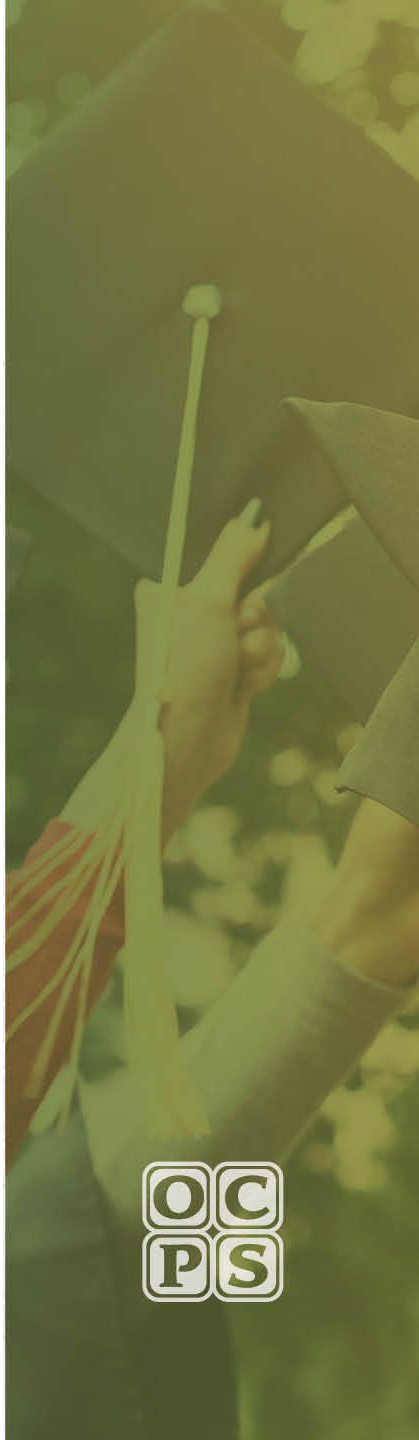


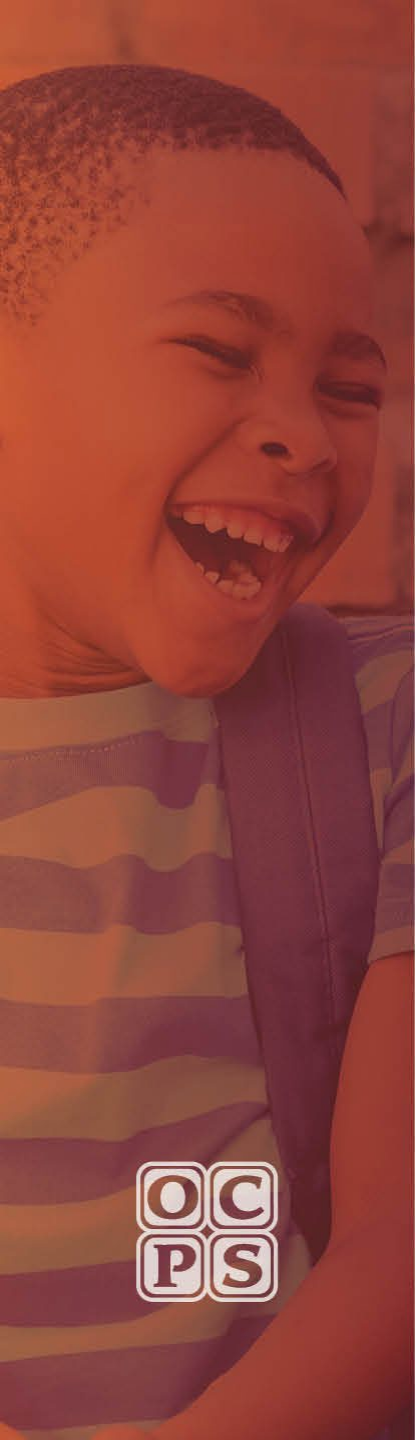
House Bill 1105

- Section 810.097(6), Fla. Stat.: “For purposes of this section, a clearly posted sign or a verbal warning provided by the school bus operator, the principal, a school district employee, or law enforcement personnel, indicating that unauthorized boarding or remaining on a school bus is prohibited and violators will be prosecuted, constitutes sufficient notice and satisfies the prior warning requirement necessary for immediate arrest and prosecution of any person who boards, enters, or remains upon a school bus without authorization.”

House Bill 1105

- By July 1 of each year, school districts shall provide charter schools the following information pertaining to shared revenues generated by a discretionary half-cent sales surtax, voted district school operating millage, and non-voted district school capital improvement millage:
  a. The estimated total revenue to be received from each tax.
  b. The estimated per-student allocation to charter schools from each tax and the methodology used to determine the estimate.
  c. The estimated timeframe within which the charter school will receive funds from each tax.
  d. A detailed explanation for each revenue transmission at the time funds are transferred.
  2. By March 31 of each year, each school district shall provide to the department a summary report, by charter school, of distributed revenues, by revenue source, and shall post the report on its website.





House Bill 1105

- Section 1003.32(1)(a), Fla. Stat.: “In accordance with this section and within the framework of the district school board's code of student conduct, teachers and other instructional personnel shall have the authority to undertake any of the following actions in managing student behavior and ensuring the safety of all students in their classes and school and their opportunity to learn in an orderly and disciplined classroom: Establish classroom rules of conduct, including designating an area for wireless communications devices during instructional time for students in grades **9 through 12**.”

House Bill 1105

- Section 1006.07(2)(f), Fla. Stat.:
  - “A student may possess a wireless communications device while the student is on school property or in attendance at a school function; however, elementary and middle school students a student may not use a wireless communications device during the school day. High school students may not use a wireless communications device during instructional time, except when expressly directed by a teacher solely for educational purposes. A high school teacher shall designate an area for wireless communications devices during instructional time. Each district school board shall adopt rules governing the use of a wireless communications device by a student while the student is on school property or in attendance at a school function, including rules:

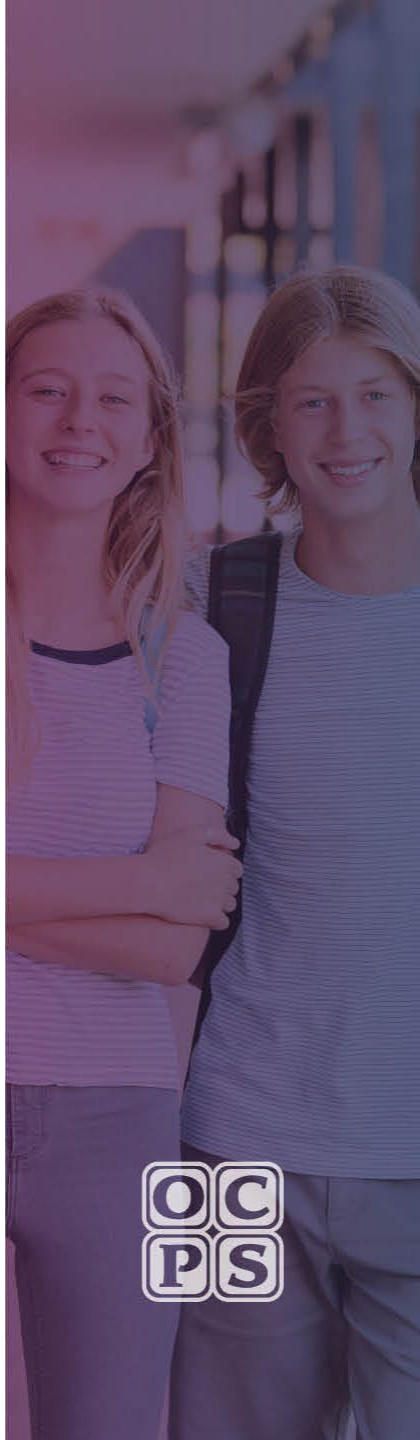
    1. Designating locations within school buildings where a student may use his or her wireless communications device with the express permission of a school administrator.

    2. Allowing the use of a wireless communications device by a student during the school day in accordance with:

        a. The student's individualized education plan;

        b. The student's 504 accommodation plan issued under s. 504 of the Rehabilitation Act of 1973; or

        c. A doctor's note from a physician licensed under chapter 458 or chapter 459 certifying in writing that the student requires the use of a wireless communications device based upon valid clinical reasoning or evidence.



House Bill 1105

- Section 1002.33(3)(b), Fla. Stat.: “An application submitted proposing to convert an existing public school to a charter school must demonstrate the support of at least 50 percent of the parents voting whose children are enrolled at the school, provided that a majority of the parents eligible to vote participate in the ballot process, according to rules adopted by the State Board of Education.”
- This removes the requirement that 50 percent of teachers employed at the school agree to the conversion of the school to a charter school.

Florida Attorney General Office of Parental Rights

Office of Parental Rights

- The Florida Attorney General launched an Office of Parental Rights "to empower parents and protect children."
- The Office will assist with the following cases:
  - Denial of access to school records;
  - Lack of consent for biometric or personal data collection;
  - Unauthorized healthcare, counseling, or mental health services;
  - Interference with educational choices;
  - Failure to notify parents of suspected criminal offenses;
  - Coercion or encouragement to withhold information;
  - Objectionable instructional or library materials;
  - Violations of parental notification for health services;
  - Restrictions on parental participation in school governance; and
  - Unauthorized data sharing or surveys.
- There will be a creation of a portal by the Attorney General to allow parents to directly report alleged violations to the Office of Parental Rights.

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Orange County Public Schools