

School Board of Brevard County

2700 Judge Fran Jamieson Way • Viera, FL 32940-6601

Robert E. Schiller, Ed.D., Interim Superintendent



MEMORANDUM

TO: SCHOOL BOARD MEMBERS

FROM: Paul Gibbs, Esq., General Counsel
Office of Legal Services
The School Board of Brevard County, Florida

SENT VIA: E-mail

DATE: March 24, 2023

RE: Board Member's Residence Boundary Redistricting

Issue:

Can the School Board adopt the County's residence district lines as the adoption would move 2 current district seats into other districts for future elections?

Findings:

As a little background, at the conclusion of the last census the school district had an internal district population discrepancy between the largest and smallest districts of 10.8%. Based on federal case law, any number under 10% is presumed to follow federal requirements. As Florida statute only allows school boards to alter their residence areas in odd-numbered years, the school district looked to 2023 to make changes so that there was sufficient time to hold public meetings, do proper bid engagements, etc., if needed and desired by the Board. Florida Statute 1001.36(1) further requires that each member residence area be "as nearly as practicable, equal in population."

Florida Statute 1001.36(2) provides:

(2) Any district school board may make any change that it deems necessary in the boundaries of any district school board member residence area at any meeting of the district school board, provided that such changes shall be made only in odd-numbered years and that no change that would affect the residence qualifications of any incumbent member shall disqualify such incumbent member during the term for which he or she is elected.

There are no relevant cases to base a determination on regarding the school statute cited above. There are some where board members have moved out of their district, but not any regarding residence area changes.

Mrs. Campbell provided me an AGO, AGO 99-36 (attached for everyone's convenience). I have reviewed the AGO and researched it as much as possible given the lack of any cases, and I concur with the conclusion of the AGO that based on the plain language of the statute at hand, any changes

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to the residence areas for qualification of office should not affect the term for those members who are still serving the remainder of their term.

The current issue is that should the Board members adopt the County Commission's lines, Mrs. Jenkins and Mrs. Campbell will change districts based on their current residences. Mrs. Campbell will move to District 3, and Mrs. Jenkins will move to District 4. Based on the language of the statute, both Mrs. Campbell and Mrs. Jenkins would be allowed to serve out the remainder of their current elected terms for District 3 and District 5. However, should Mrs. Jenkins wish to run for re-election in 2024, she would have to do so in District 4. Should Mrs. Campbell wish to run again she would have to do so in District 3, once her District 5 term ends in 2026. This would result in both District 3 and District 5 having no incumbent running for those seats during their next election cycle, 2024 and 2026 respectively, but any qualifiers would have to live in the new district areas.

Conclusion:

I believe that the School Board can adopt the County Commission's residence requirement districts if it wishes to do so. Will this potentially result in legal challenges to Mrs. Jenkins and Mrs. Campbell once the new requirements are effective? Possibly, and the School Board would have to defend those cases as the statute forbids changes from affecting the incumbents elected term. A court should side with the School Board and dismiss the action, but as always, there are no guarantees when it comes to legal action. Any change to the residence areas must be completed by the end of December 2023, as school districts may only change residence area requirements in odd numbered years.