



# AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

MEETING DATE: 2019-07-23 10:05 - Regular School Board Meeting

AGENDA ITEM: ITEMS

CATEGORY: I. OFFICE OF THE SUPERINTENDENT

DEPARTMENT: Office of Chief of Staff

Special Order Request  
 Yes  No

Time

Open Agenda  
 Yes  No

ITEM No.:  
 I-5.

TITLE:  
 Broward County School Board v. Sheila Lewis

REQUESTED ACTION:  
 Adopt the Superintendent's recommendation to dismiss Sheila Lewis' Amended Request for Hearing with Prejudice.

SUMMARY EXPLANATION AND BACKGROUND:  
 See Supporting Docs for Summary Explanation and Background.

SCHOOL BOARD GOALS:  
 Goal 1: High Quality Instruction  Goal 2: Continuous Improvement  Goal 3: Effective Communication

FINANCIAL IMPACT:  
 There is no financial impact to the School District.

EXHIBITS: (List)  
 (1) Summary Explanation and Background (2) School Board Dismissal with Prejudice (3) Letter to Counsel (4) Supplement to Amended Petition (5) Notice of Filing Cases (6) Superintendent Response

BOARD ACTION:  
**ADOPTED**  
 (For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Douglas G. Griffin	Phone: 754-321-2050
Name:	Phone:

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA  
 Senior Leader & Title  
 Jeffrey S. Moquin - Chief of Staff

Approved In Open Board Meeting On: JUL 23 2019  
 By: *Heather P. Brinkman*  
 School Board Chair

Signature  
 Jeffrey S. Moquin  
 7/11/2019, 5:03:26 PM

### **SUMMARY EXPLANATION AND BACKGROUND**

Prior to being promoted to an Assistant Principal, Sheila Lewis (hereinafter “S.L.”), worked for the School Board as a teacher pursuant to a professional services contract. After serving as an Assistant Principal, S.L. was reassigned on June 18, 2018, back to a teacher position, effective for the 2018-2019 school year. S.L. was properly placed on an annual contract for the 2018-2019 school year when she was rehired as a teacher, after her contract as an administrator was not renewed. The School Board notified S.L. on May 17, 2019, that her employment contract as a teacher would not be renewed for the 2019-2020 school year.

Subsequently, on June 3, 2019, S.L. submitted her Request for Administrative Hearing regarding the non-renewal of the contract for employment and return to annual contract status. An employee is not entitled to hearing under due process or under the Administrative Procedure Act when her annual contract was not renewed at the conclusion of the contract’s term.

The Assistant General Counsel notified S.L. that he would recommend that the School Board dismiss her Request for Administrative Hearing. S.L.’s response is attached. The School Board’s decision is final and any subsequent requests for hearing should be denied.

**THE BROWARD COUNTY SCHOOL BOARD, FLORIDA**

THE BROWARD COUNTY SCHOOL BOARD<sup>1</sup>,

Petitioner,

v.

SHEILA LEWIS,

Respondent.

**THE BROWARD COUNTY SCHOOL BOARD'S DISMISSAL WITH PREJUDICE OF  
RESPONDENT'S AMENDED REQUEST FOR ADMINISTRATIVE HEARING**

THIS CAUSE concerns the request for the AMENDED REQUEST FOR ADMINISTRATIVE HEARING ("Amended Request") filed by SHEILA LEWIS ("Lewis") with the Broward County School Board (hereinafter "School Board") on or about June 4, 2019. (Exhibit A).

**UNDISPUTED FACTS**

1. Prior to being promoted to an Assistant Principal, Lewis worked for the School Board as a teacher pursuant to a professional services contract.
2. Lewis was demoted on June 18, 2018 from her former position as an Assistant Principal to a teacher position effective for the 2018-2019 school year.
3. The Respondent notified Lewis on May 17, 2019, that her employment contract would not be renewed for the 2019-2020 school year.
4. The only disputed issues of material fact identified in the Amended Request were as follows:

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<sup>1</sup> The style of the case has been changed to reflect the governing agency pursuant to 28-106.2015 (4) F.A.C. 2019.

The following are disputed issues of material fact: 1) whether Lewis was entitled to be reinstated to a professional services contract upon demotion from the Assistant Principal position; and 2) whether the School Board must establish just cause to non-renew the Petitioner's contract for employment.

### CONCLUSIONS OF LAW

5. Florida Statutes § 120.569 provides:

(c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b). Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable. This paragraph does not eliminate the availability of equitable tolling as a defense to the untimely filing of a petition.

(d) The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirements of paragraph (c). (emphasis added)

6. Rule 28-106.2015 (4) F.A.C. (2019), which governs “Agency Enforcement and Disciplinary Actions” provides in part that requests for hearing must include, “A statement requesting an administrative hearing identifying those material facts that are in dispute.”
7. The only “issues of material fact” identified by Lewis are actually issues of law, rather than issues of fact; and, therefore, Lewis has failed to demonstrate an entitlement to a hearing.
8. Moreover, it is evident from the face of the Amended Request that the defect cannot be cured.
9. An administrator, who held a professional service contract in the district prior to

accepting a position as administrator, is not entitled to return as a teacher under a professional service contract upon non-renewal as an administrator. Bd. Of Ed of Levy v. Terrell, 967 So. 2d 394 (Fla. 1st DCA 2007).

10. Florida Statutes § 1012.335(6) further provides that an individual newly hired as instructional personnel by a school district is ineligible for a professional services contract.
11. Lewis was properly placed on an annual contract for the 2018-2019 school year when she was rehired as a teacher, after her contract as an administrator was not renewed.
12. An employee is not entitled to hearing under due process or under the Administrative Procedure Act when her annual contract is not renewed at the conclusion of the contract's term. Jones v. Miami-Dade County, Public Schools, 816 So. 2d 824 (Fla. 3d DCA 2002).
13. Moreover, the SCHOOL BOARD's "decision not to enter [into a] new annual contract . . ." is "not reviewable." Fertally v. Miami-Dade Community College, 651 So. 2d 1283 (Fla. 3d DCA 1995); See Cox v. School Board of Osceola County, 996 So. 2d 353 (Fla. 5th DCA 1996) (stating the School Board lacks jurisdiction regarding employees whose contracts are not renewed and have no authority to reinstate an employee who the Superintendent has refused to nominate).

**IT IS THEREFORE ORDERED AND ADJUDGED THAT:**

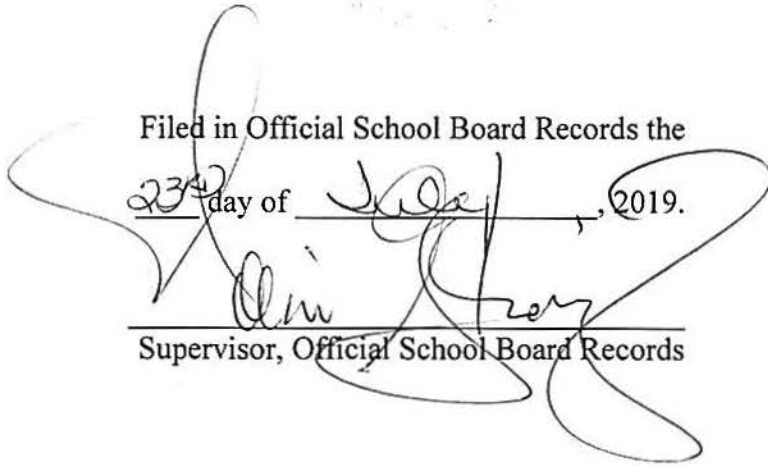
The School Board of Broward County, Florida dismisses Lewis' Amended Request with prejudice.

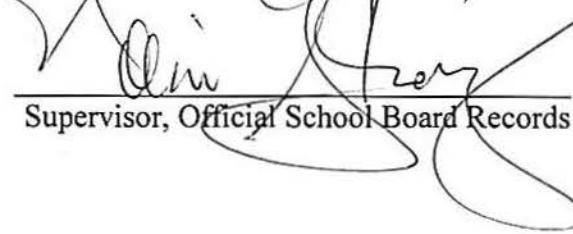
DONE AND ORDERED in Fort Lauderdale, Broward County, Florida this 27<sup>th</sup> day of July, 2019.

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By   
HEATHER P. BRINKWORTH, CHAIR

Filed in Official School Board Records the

  
23<sup>rd</sup> day of July, 2019.

  
Supervisor, Official School Board Records

Copies furnished to:

DOUGLAS G. GRIFFIN, ESQUIRE  
Assistant General Counsel  
Office of the General Counsel  
Broward County School Board  
600 S.E. Third Avenue – 11<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301

MELISSA C. MIHOK, ESQUIRE  
CPLS, P.A.  
201 East Pine Street  
Suite 445  
Orlando, Florida 32801

ROBERT W. RUNCIE, Superintendent of Schools  
Office of the Superintendent  
The School Board of Broward County, Florida  
600 Southeast Third Avenue - 10th Floor  
Fort Lauderdale, Florida 33301

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

Pursuant to Section 120.68, Fla. Stat., a party to this proceeding may seek judicial review of the School Board's Dismissal in the appropriate district court of appeal by filing a notice of appeal with Noemi Gutierrez, Agency Clerk, Official School Board Records, The School Board of Broward County, Florida, 600 Southeast Third Avenue – 2nd Floor, Fort Lauderdale, Florida 33301, on or before thirty (30) days from the date of this Dismissal. A copy of the notice and a copy of this Dismissal, together with the appropriate filing fee, must also be filed with the Clerk, Fourth District Court of Appeal, 1525 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401-2399. If you fail to file your notice of appeal within the time prescribed by laws and the rules of court, you will lose your right to appeal this Dismissal.

BEFORE THE SCHOOL BOARD  
OF BROWARD COUNTY, FLORIDA

SHEILA LEWIS, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 ROBERT W. RUNCIE, as )  
 Superintendent, )  
 )  
 Respondent )  
 \_\_\_\_\_ )

AMENDED REQUEST FOR ADMINISTRATIVE HEARING<sup>1</sup>

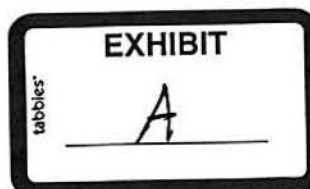
Petitioner, SHEILA LEWIS, requests an Administrative Hearing regarding the non-renewal of the Petitioner's contract for employment and return to annual contract status and states as follows:

1. The name and address of the Petitioner is Sheila Lewis, 1229 Spring Circle Drive, Coral Springs, FL 33071 (954) 254-2514.

2. The name, address, and telephone number of the Respondent is Robert W. Runcie, as Superintendent of the Broward County School District, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301.

3. The name, address, and telephone number of the Respondent's attorney is Melissa C. Mihok, CPLS, P.A., 201 E. Pine St., Ste. 445, Orlando, FL 32801, 407-647-7887.

<sup>1</sup> Amended to reflect correct name of Petitioner due to scrivener's error.





4. The Petitioner is currently employed by the School Board as a teacher.

5. The Petitioner was demoted on June 18, 2018 from her position as an Assistant Principal to a teacher position effective the 2018-2019 school year.

6. Prior to being promoted to an Assistant Principal, the Petitioner worked for the School Board as a teacher pursuant to a professional services contract.

7. The Petitioner's professional contract status should have been reinstated upon the demotion to a teacher position.

8. The Respondent notified the Petitioner on May 17, 2019 that her employment contract would not be renewed for the 2019-2020 school year.

9. The Respondent did not provide just cause for the non-renewal of the Petitioner's contract.

10. The Petitioner's substantial interest is affected by the Superintendent's recommendation that the School Board return the Petitioner to annual contract status and to not renew the Petitioner's contract for employment without establishing just cause.

11. The following are disputed issues of material fact: 1) whether the Petitioner was entitled to be


reinstated to a professional services contract upon demotion from the Assistant Principal position; and 2) whether the Respondent must establish just cause to non-renew the Petitioner's contract for employment.

12. The specific acts that warrant the School Board rejecting or modifying the recommendation to non-renew the Petitioner's contract for employment are as follows: Petitioner was employed pursuant to a professional services contract and the Respondent is required to establish just cause to non-renew the contract.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing document was served on June 3, 2019 via U.S. Mail and fax upon: Robert W. Runcie, Superintendent, Broward County School District, 600 3rd Ave., Ft. Lauderdale, FL 33301 (754) 321-2701 and to Office of the General Counsel, 600 3rd Ave., Ft. Lauderdale, FL 33301 (754) 321-2705.

CPLS, P.A.  
Attorneys|Consultants|Mediators  
201 East Pine St., Suite 445  
Orlando, Florida 32801  
(407) 647-7887  
(407) 647-5396 Fax  
CPLS File No. 3442-1  
*Attorneys for Petitioner*



---

Melissa C. Mihok, Esq.  
Florida Bar No. 555851  
[mmihok@cplspa.com](mailto:mmihok@cplspa.com)  
[courtefiling@cplspa.com](mailto:courtefiling@cplspa.com)



THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

600 S.E. Third Avenue, 11<sup>TH</sup> Floor • Fort Lauderdale, Florida 33301 • Office: 754-321-2050 • Fax: 754-321-2705

Office of the General Counsel  
Barbara J. Myrick, General Counsel  
www.browardschools.com

The School Board of  
Broward County, Florida

Heather P. Brinkworth, Chair  
Donna P. Korn, Vice Chair

Lori Alhadeff  
Robin Bartleman  
Patricia Good  
Laurie Rich Levinson  
Ann Murray  
Dr. Rosalind Osgood  
Nora Rupert

Robert W. Runcie  
Superintendent of Schools

June 20, 2019

VIA EMAIL: [mmihok@cplspa.com](mailto:mmihok@cplspa.com)

Melissa C. Mihok, Esquire  
CPLS, P.A.  
201 East Pine Street  
Suite 445  
Orlando, Florida 32801

**RE: Broward County School Board v. Sheila Lewis**

Ms. Mihok,

Attached please find a proposed response to Ms. Lewis' Amended Request for Administrative Hearing that I will recommend to the School Board at its meeting on July 23, 2019. I am writing to invite you to submit any amendments to the request or other response that you want the School Board to consider in making its decision. Please note that anything that you want to submit must be delivered to: Robert W. Runcie, Superintendent, Broward County School District, 600 S.E. Third Avenue, Fort Lauderdale, Florida 33301, before 5:00 on July 5, 2019, in order to be included with the meeting agenda.

If you have questions, feel free to contact me.

Sincerely,

Douglas G. Griffin  
Assistant General Counsel

DGG:asj  
Enclosure

Melissa C. Mihok, Esq.

June 20, 2019

Page 2 of 2

c: Jeffrey S. Moquin, Chief of Staff  
Judith Marte, Chief Financial Officer  
Valerie Wanza, Ph.D., Chief School Performance and Accountability Officer  
Barbara Myrick, General Counsel  
Susan Rockelman, Director, Talent Acquisition & Operations (Instructional)  
Dorothy Davis, Director, Employee and Labor Relations  
Craig Kowalski, Chief, Broward District Schools Special Investigative Unit  
Samantha Gordon, Manager, Human Resource Support Services

BEFORE THE SCHOOL BOARD  
OF BROWARD COUNTY, FLORIDA

SHEILA LEWIS, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 ROBERT W. RUNCIE, as )  
 Superintendent, )  
 )  
 Respondent )  
 \_\_\_\_\_ )

SUPPLEMENT TO AMENDED REQUEST FOR ADMINISTRATIVE HEARING

Petitioner, SHEILA LEWIS, requests an Administrative Hearing regarding the non-renewal of the Petitioner's contract for employment and return to annual contract status and states as follows:

Relevant Facts

1. The Petitioner was employed by the School Board as a teacher through the end of the 2018-2019 school year.

2. The Petitioner was previously demoted on June 18, 2018 from her position as an Assistant Principal to a teacher position effective the 2018-2019 school year. (See Ex. 1)

3. Prior to being promoted to an Assistant Principal, the Petitioner worked for the School Board as a teacher pursuant to a professional services contract. (See Ex. 2)

4. The Petitioner never revoked or rescinded the professional services contract with the School Board.

5. The School Board never revoked or rescinded the professional services contract with the Petitioner.

6. The Petitioner did not sign or agree to an annual services contract to work as a teacher for the School Board during the 2018-2019 school year. (See Ex. 3)

7. The Petitioner's professional contract status was still in effect upon the demotion to a teacher position.

8. The Respondent notified the Petitioner on May 17, 2019 that her employment contract would not be renewed for the 2019-2020 school year. (See Ex. 4)

9. The Respondent did not provide just cause for the non-renewal of the Petitioner's contract. (Id.)

#### Law and Analysis

The General Counsel contends that there are no disputed issues of fact. The Petitioner disagrees, as detailed in the Amended Petition for Evidentiary Hearing. Thus, the Petitioner is entitled to a formal hearing to receive a recommendation from the Division of Administrative Hearings regarding if, based upon the particular facts, she is entitled to be returned to professional services contract service.

*School Board v. Terrell*, 967 So. 2d 394 (Fla. 1st DCA 2007) is distinguishable from the instant matter because the decision was based upon the fact that the School Board in Levy County had included a provision in its collective bargaining agreement that administrators who were non-renewed were entitled to reinstatement as a teacher; but then later rescinded that provision. Such is not the case here. Upon diligent research, the undersigned represents that there are no reported cases dealing with the issue presented here.

Courts have consistently held that a teacher working pursuant to a professional services contract cannot be dismissed unless just cause is established or their employment is unsatisfactory. *See, e.g., Terrell, supra; Gabriele v. Manatee County School Board*, 114 Sp. 3d 477 (Fla. 2d DCA 2013); *Orange County School Board v. Rachman*, 87 So. 3d 48 (Fla. 5th DCA 2012). *See, also, Fla. Stat.* 1012.33.

The Petitioner was awarded a professional services contract by the School Board. Notably, she did not sign or agree to an annual services contract as a teacher after she was non-renewed as an administrator. The notice of non-renewal of her administrator contract did not state she was being returned to annual contract status. Just cause or performance deficiencies have not been shown.



The Petitioner is not disputing whether the purported decision to non-renew her annual contract is reviewable because she was not working pursuant to an annual contract.

Even assuming there are no disputed issues of fact, there are disputed issues of law and the Petitioner is entitled to an informal hearing to have her rights determined. See, Fla. Stat. 120.57(1)(i). Dismissal of the Petitioner's request for hearing is inappropriate. Conclusion

WHEREFORE, based upon the foregoing, the Petitioner respectfully requests that the School Board refer the Petition for Evidentiary Hearing to the Division of Administrative Hearings, or in the alternative, provide an informal hearing to determine the Petitioner's rights.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing document was served on July 8, 2019 via fax and U.S. Mail upon: Robert W. Runcie, Superintendent, Broward County School District, 600 3rd Ave., Ft. Lauderdale, FL 33301 and to via email to Douglas Griffin, Office of the General Counsel, 600 3rd Ave., Ft. Lauderdale, FL 33301 (doug.griffin@browardschools.com).

**CPLS, P.A.**

Attorneys|Consultants|Mediators  
201 East Pine St., Suite 445  
Orlando, Florida 32801  
(407) 647-7887  
(407) 647-5396 Fax  
CPLS File No. 3442-1  
*Attorneys for Petitioner*



---

Melissa C. Mihok, Esq.  
Florida Bar No. 555851  
[mmihok@cplspa.com](mailto:mmihok@cplspa.com)  
[courtefiling@cplspa.com](mailto:courtefiling@cplspa.com)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA  
OFFICE OF SCHOOL PERFORMANCE & ACCOUNTABILITY

*Valerie S. Wanza, Ph.D.*  
*Chief Officer*

Phone: 754-321-3838

Facsimile: 754-321-3886

DATE: June 13, 2018

TO: Sheila Lewis, Assistant Principal  
Floranada Elementary

FROM: Valerie S. Wanza, Ph.D.  
Chief School Performance and Accountability Officer

SUBJECT: **EMPLOYMENT STATUS FOR 2018-2019 FISCAL YEAR**

Reappointments for continued employment are done annually prior to June 30<sup>th</sup> of each year. I must inform you that you will not be reappointed as an assistant principal for the 2018-2019 Fiscal Year. Your last day of employment as an assistant principal will be Thursday, June 28, 2018.

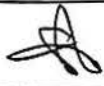
Effective July 1, 2018, you will be reassigned to the position of **Teacher** for the 2018-2019 school year. Your specific assignment will be based on your assigned area of certification and the alignment of available vacancies in the District.

For questions about possible retirement options and/or if you are currently enrolled in DROP, please contact the Retirement Section of the Benefits & Employment Services Department at 754-321-3100 to prevent your DROP from being voided.

The Human Resources & Equity Division is coordinating information sessions and professional enhancement activities to assist employees not reappointed for the 2018-2019 Fiscal Year. Employment resource flyers outlining the scheduled dates, times, and locations will be made available at [www.employment-resource.blogspot.com](http://www.employment-resource.blogspot.com).

We thank you for the service you have provided to the District. If the Talent Acquisition & Operations (Non-Instructional) Department can be of assistance to you in any way, please feel free to contact Mr. Eric M. Chisem, Director at 754-321-1815.

My signature acknowledges that I have received this letter. This fully executed document must be returned to Eric M. Chisem, Director, Talent Acquisition & Operations (Non-Instructional) via email to [Eric.Chisem@browardschools.com](mailto:Eric.Chisem@browardschools.com) no later than 4:00 pm on **Monday, June 18, 2018**.

 6/18/18

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**Employee Signature/Date**

c: Employee  
Personnel File

**PROFESSIONAL SERVICE CONTRACT OF EMPLOYMENT  
FOR INSTRUCTIONAL PERSONNEL OF THE PUBLIC SCHOOLS**

The SCHOOL BOARD of BROWARD COUNTY hereby issues a PROFESSIONAL SERVICE CONTRACT,  
as provided in Section 1012.33(3)(a), Florida Statutes, to:

Name	LEWIS, SHEILA K		Personnel No.	School Year
			00024072	2007-2008
Teachers's Certificate	Type	Degree Level	DOE Number	Valid To
	Professional - 5 year	Entitle Doc In/ Fid	0000622175 License Number None	06/30/2011
Contract Term	Begin Date	End Date	Salary	Bi-Weekly Payments
	06/14/2007	06/06/2008	78,300	
Position	Title	School Name	School No.	
	Teacher	HPD	09754000	

→ Party of the Second Part, hereinafter called the Teacher ←

The School Board has determined that the Teacher has satisfactorily completed all requirements of law for a Professional Service Contract, and the School Board has appointed the Teacher to an instructional position for the above school year.

Upon signing this Professional Service Contract, the Teacher shall be bound to give up provided in Section 1012.33(2), Florida Statutes.

The Teacher shall not be dismissed during the term of this contract, except for just cause, which includes, but is not limited to those causes set forth in Section 1012.33(1)(a), Florida Statutes, or for unsatisfactory performance pursuant to Section 1012.34(3)(d), Florida Statutes.

This Professional Service Contract shall be renewed each year in accordance with and subject to the provisions of Section 1012.33(1)(c) Florida Statutes.

This Professional Service Contract shall be deemed amended to comply with all laws, all lawful rules of the State Board of Education, all lawful rules and actions of the School Board and all terms of an applicable ratified collective bargaining agreement.

Accepted 10/1/07  
The School Board of Broward County  
HEREBY as follows:

Witness: 10/1/07 07

*[Signature]*  
Duly Authorized Agent of School Board

Witness:

*[Signature: Sheila K. Lewis]*  
Teacher



## Melissa Mihok

---

**From:** Douglas G. Griffin [doug.griffin@browardschools.com]  
**Sent:** Saturday, June 29, 2019 5:27 AM  
**To:** Melissa Mihok; Juanika R. Saget  
**Cc:** Andrea S. Joyner  
**Subject:** Re: Broward County School Board v. Sheila Lewis; 3442-1

Ms. Lewis did not sign her contract.

Doug Griffin  
Assistant General Counsel  
The School Board of Broward County, Florida  
K.C. Wright Administration Building  
600 S.E. Third Avenue, 11th Floor  
Fort Lauderdale, FL 33301  
Telephone (754) 321-2050 Facsimile (754) 321-2705

---

**From:** Melissa Mihok <MMihok@cplspa.com>  
**Sent:** Friday, June 28, 2019 1:45 PM  
**To:** Juanika R. Saget  
**Cc:** Douglas G. Griffin; Andrea S. Joyner  
**Subject:** RE: Broward County School Board v. Sheila Lewis; 3442-1

Good afternoon-

The annual contract you sent appears to be a template. Do you have an annual contract for 2018-2019 signed by Ms. Lewis?

**CPLS**<sub>P.A.</sub>

Attorneys | Mediators  
Executive Consultants



**Melissa Mihok, Attorney**

201 E. Pine St., Ste. 445, Orlando, FL 32801 | T: 407.647.7887 | F: 407.647.5396 | W: www.cplspa.com | B: CPLS Blog

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**From:** Juanika R. Saget [mailto:juanika.saget@browardschools.com]  
**Sent:** Thursday, June 27, 2019 10:19 AM  
**To:** Melissa Mihok  
**Cc:** Douglas G. Griffin; Andrea S. Joyner  
**Subject:** Broward County School Board v. Sheila Lewis; 3442-1

Good Morning Ms. Mihok,

At Mr. Griffin's request, please find the attached documents in response to your inquiry below.

Should you have any questions, please feel free to reach out to our office.

Sincerely,

*Juanika Saget*

Office of the General Counsel  
The School Board of Broward County, Florida  
600 SE 3rd Avenue, 11th Floor  
Fort Lauderdale, Florida 33301  
754-321-2043 (direct)  
754-321-2705 (fax)  
[juanika.saget@browardschools.com](mailto:juanika.saget@browardschools.com)



Educating Today's Students to  
Succeed in Tomorrow's World

Under Florida law, e-mail addresses, and all forms of communications, including e-mail communications, made or received in connection with the transaction of School Board business are public records, which must be retained as required by law and must be disclosed upon receipt of a public records request, except as may be excluded by federal or state laws. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone.

The School Board of Broward County, Florida expressly prohibits bullying, including cyberbullying, by or towards any student or employee. See Policy 5.9: Anti-Bullying for additional information.

**Please note: Due to the implementation of the mandatory 2019 Summer 4-Day Work Week, all schools and administrative offices are closed each Friday during the summer beginning the week of June 10, 2019 through August 2, 2019.**

**From:** Melissa Mihok [mailto:MMihok@cplspa.com]

**Sent:** Monday, June 24, 2019 5:27 PM

**To:** Sharon L. Bozetski <sharon.bozetski@browardschools.com>; Andrea S. Joyner <andrea.joyner@browardschools.com>

**Cc:** Douglas G. Griffin <doug.griffin@browardschools.com>; Jeffrey S. Moquin <jeffrey.moquin@browardschools.com>; Judith M. Marte <judith.marte@browardschools.com>; Valerie S. Wanza <valerie.wanza@browardschools.com>; Barbara J. Myrick <barbara.myrick@browardschools.com>; Susan T. Rockelman <srockelman@browardschools.com>; Dorothy W. Davis <dorothy.davis@browardschools.com>; Craig W. Kowalski <craig.kowalski@browardschools.com>; Samantha M. Gordon <samantha.gordon@browardschools.com>; Sandi A. Joshua <sandi.joshua@browardschools.com>; Juanika R. Saget <juanika.saget@browardschools.com>; Christine Ward <christine.ward@browardschools.com>; Cynthia R. Allen <cynthia.allen@browardschools.com>; Colette Azael <colette.azael@browardschools.com>; Joanne C. Fritz <joanne.fritz@browardschools.com>; Laura K. Bolte <lori.bolte@browardschools.com>; Yeni Y. Flores Ortiz <yeni.floresortiz@browardschools.com>; Tiffany A. Thompson <tiffany.archer@browardschools.com>; Susan B. Benak <susan.benak@browardschools.com>

**Subject:** RE: Broward County School Board v. Sheila Lewis; 3442-1

Thank you for the response. If Ms. Rockelman or Benak could please confirm that they can provide the requested documents within the timeframe, it would be much appreciated.

Have a good evening.

**CPLS**, P.A.

Attorneys | Mediators  
Executive Consultants



**Melissa Mihok, Attorney**

201 E. Pine St., Ste. 445, Orlando, FL 32801 | T: 407.647.7887 | F: 407.647.5396 | W: [www.cplspa.com](http://www.cplspa.com) | B: CPLS Blog

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**From:** Sharon L. Bozetski [mailto:sharon.bozetski@browardschools.com]  
**Sent:** Monday, June 24, 2019 8:03 AM  
**To:** Melissa Mihok; Andrea S. Joyner  
**Cc:** Douglas G. Griffin; Jeffrey S. Moquin; Judith M. Marte; Valerie S. Wanza; Barbara J. Myrick; Susan T. Rockelman; Dorothy W. Davis; Craig W. Kowalski; Samantha M. Gordon; Sandi A. Joshua; Juanika R. Saget; Christine Ward; Cynthia R. Allen; Colette Azael; Joanne C. Fritz; Laura K. Bolte; Yeni Y. Flores Ortiz; Tiffany A. Thompson; Susan B. Benak  
**Subject:** Re: Broward County School Board v. Sheila Lewis; 3442-1

Good Morning,

Due to process changes in the way "Contracts" are distributed and maintained, our office cannot provide the requested documents to Ms. Mihok. I believe either Susan Rockelman or Susan Benak should be able to either provide the requested documents ((1) Ms. Lewis' AP contract; 2) Ms. Lewis' latest annual contract; and 3) Ms. Lewis' last professional services contract), or point her in the right direction.

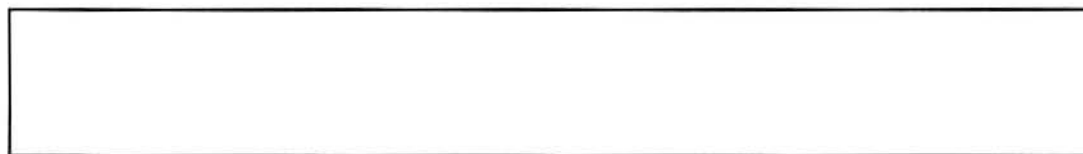
The employee's personnel number is 24072 and she has a retirement date of 6/15/19.

Please note: Due to the implementation of the mandatory 2019 Summer 4-Day Work Week, all schools and administrative offices are closed each Friday during the summer beginning the week of June 10, 2019 through August 2, 2019.

Thanks,  
Sharon L. Bozetski, Human Resources Administrator III  
Broward County Public Schools, Florida  
HR Support Services (formerly Personnel Records)  
754-321-0100 (Main Office Line)  
754-321-0900 (FAX)



Educating Today's Students to  
Succeed in Tomorrow's World



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"Broward County Schools is the largest fully accredited school district in the United States."

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The School Board of Broward County, Florida, prohibits any policy or procedure which results in discrimination on the basis of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation. Individuals who wish to file a discrimination and/or harassment complaint may call the Director, Equal Educational Opportunities/ADA Compliance Department at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.

Individuals with disabilities requesting accommodations under the Americans with Disabilities Act Amendments Act of 2008, (ADAAA) may call Equal Educational Opportunities/ADA Compliance Department at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.

---

**From:** Melissa Mihok <MMihok@cplspa.com>

**Sent:** Friday, June 21, 2019 7:24 PM

**To:** Andrea S. Joyner

**Cc:** Douglas G. Griffin; Jeffrey S. Moquin; Judith M. Marte; Valerie S. Wanza; Barbara J. Myrick; Susan T. Rockelman; Dorothy W. Davis; Craig W. Kowalski; Samantha M. Gordon; Sandi A. Joshua; Juanika R. Saget; Christine Ward; Cynthia R. Allen; Colette Azael; Joanne C. Fritz; Laura K. Bolte; Yeni Y. Flores Ortiz; Tiffany A. Thompson; Sharon L. Bozetski

**Subject:** RE: Broward County School Board v. Sheila Lewis; 3442-1

Good evening-

In order to properly respond, I will need a copy of the following: 1) Ms. Lewis' AP contract; 2) Ms. Lewis' latest annual contract; and 3) Ms. Lewis' last professional services contract.

Please advise if I need to request through public records; and if so, whether you would object to an extension of time to respond until after I receive the above-described contracts.

Thanks much and have a good weekend.

**CPLS**<sub>P.A.</sub>

Attorneys | Mediators  
Executive Consultants



**Melissa Mihok, Attorney**

201 E. Pine St., Ste. 445, Orlando, FL 32801 | T: 407.647.7887 | F: 407.647.5396 | W: [www.cplspa.com](http://www.cplspa.com) | B: CPLS Blog

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---

**From:** Andrea S. Joyner [<mailto:andrea.joyner@browardschools.com>]

**Sent:** Thursday, June 20, 2019 4:17 PM

**To:** Melissa Mihok



**Cc:** Douglas G. Griffin; Jeffrey S. Moquin; Judith M. Marte; Valerie S. Wanza; Barbara J. Myrick; Susan T. Rockelman; Dorothy W. Davis; Craig W. Kowalski; Samantha M. Gordon; Sandi A. Joshua; Juanika R. Saget; Christine Ward; Cynthia R. Allen; Colette Azael; Joanne C. Fritz; Laura K. Bolte; Yeni Y. Flores Ortiz; Tiffany A. Thompson; Sharon L. Bozetski  
**Subject:** Broward County School Board v. Sheila Lewis

Good afternoon Ms. Mihok,

Please see attached correspondence.

Thank you.

Andrea S. Joyner, CP  
Certified Paralegal  
Office of the General Counsel  
Broward District Schools  
600 S.E. Third Avenue, 11th Floor  
Fort Lauderdale, Florida 33301  
Phone: (754) 321-2050  
Fax: (754) 321-2705  
[andrea.joyner@browardschools.com](mailto:andrea.joyner@browardschools.com)

**Please note: Due to the implementation of the mandatory 2019 Summer 4-Day Work Week, all schools and administrative offices are closed each Friday during the summer beginning the week of June 10, 2019 through August 2, 2019.**

Under Florida law, e-mail addresses, and all communications, including e-mail communications, made or received in connection with the transaction of School Board business are public records, which must be retained as required by law and must be disclosed upon receipt of a public records request, except as may be excluded by federal or state laws. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

THIS MESSAGE IS INTENDED ONLY FOR THE INDIVIDUAL TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS ATTORNEY WORK PRODUCT, PRIVILEGED, CONFIDENTIAL AND/OR EXEMPT FROM DISCLOSURE UNDER FLORIDA'S PUBLIC RECORDS LAW OR FERPA. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND DELETE THE ORIGINAL MESSAGE.

**Broward County Public Schools**  
**Reappointment Notification for the 2019-2020 School Year**

DATE: 5/17/2019

Name LEWIS

SHEILA K 24072

Date 5/17/2019

Location 69752000 TEACHER PROFESSIONAL LEARNING & GROWTH

Contract/Certification Codes:

**Not Recommended for Reappointment - Release**

I regret to inform you that your contract with The School Board of Broward County, Florida, will not be renewed for the 2019-2020 school year. You are either a probationary or annual contract teacher. Florida Statute 1012.335 indicates that probationary contract employees may be dismissed without cause. The Collective Bargaining Agreement between the Broward Teacher's Union and The School Board of Broward County, Florida, Article 18(C), allows for the non-renewal of an annual contract teacher if a funded position for which you qualify does not exist at your location or you received less than effective instructional Practice Score.

However, you are eligible to seek another teaching position and may want to attend the **Teacher Recruitment Fair on May 18, 2019**. The fair is being held at Western High School: 1200 S W 136 Avenue, Davie, FL 33325. Listed below are the registration times for candidates. You must report during the designated registration time, if you are interested in attending. Bring a copy of this letter for entry.

Secondary Schools: 7:30 am  
Elementary Schools: 11:30 am

In addition, it is recommended that you apply for a transfer by completing the Transfer Request Form available at <http://www.broward.k12.fl.us/teacher/current/transfer.html> and apply for specific positions via Applitrack. If you secure a position at the fair or a transfer by June 9, 2019, you will continue your employment and be reappointed.

If you do not secure a transfer by June 9, 2019, and want to continue to search for positions, you will need to update your Applitrack application. Access your online Applitrack application at <http://www.applitrack.com/broward/onlineapp>. After you sign in, select "Edit" and then select "2 Current Employment Status" and then choose, "I am applying for a new position with Broward County Public Schools". This action will allow you to update your application and your most recent employment. You should upload an updated resume and a reference. The reference should be from your current principal or a copy of your Instructional Practice Score report printed from iObservation.

If you do not obtain a full-time teaching position and are interested in substitute teaching complete the survey at <https://www.surveymonkey.com/r/subbroward> by **June 10, 2019**. Additional information will be sent to you. Becoming a substitute teacher will not preclude you from applying for unemployment compensation. By becoming a substitute teacher, you will be eligible to work as a substitute and attend District training. If you do not complete the survey by June 10, 2019, your employment and any additional position(s) you hold will be terminated. If you are terminated and want to be reemployed by the district in any capacity, you must be re-fingerprinted, pay the appropriate fees and attend any applicable training sessions.

**Benefits:** If you do not secure another teaching position, your benefits will remain in effect through June 30, 2019. You will receive COBRA information at your home address (verify address in ESS). If you have questions prior to receiving COBRA information, contact the Benefits Department at 754-321-3100.

Thank you for the service you have provided to the District and the students of Broward County. We are hopeful that we will be able to offer you employment again. Should you have any questions regarding your status, contact Talent Acquisition & Operations (Instructional) via [teach@browardschools.com](mailto:teach@browardschools.com) using the message subject line "Teacher Employment Question."

My signature acknowledges receipt of this letter: \_\_\_\_\_

**Teacher's Signature**

**Date**

School/location: Original is sent to Employment Services; Copy goes to teacher and a copy maintained at location.

Exhibit 4

*S. K. Lewis*      5/17/19

BEFORE THE SCHOOL BOARD  
OF BROWARD COUNTY, FLORIDA

SHEILA LEWIS, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 ROBERT W. RUNCIE, as )  
 Superintendent, )  
 )  
 Respondent )  
 )  
 \_\_\_\_\_ )

NOTICE OF FILING CASES IN SUPPORT OF SUPPLEMENT TO AMENDED  
REQUEST FOR ADMINISTRATIVE HEARING

Petitioner, SHEILA LEWIS, hereby gives notices of filing the following cases, cited in support of her Supplement to Amended Request for Administrative Hearing:

1. *Gabriele v. School Board of Manatee County*, 114 So. 3d 477 (Fla. 2d DCA 2013)
2. *Orange County School Board v. Rachman*, 87 So. 3d 48 (Fla. 5th DCA 2012)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing document was served on July 8, 2019 via fax and U.S. Mail upon: Robert W. Runcie, Superintendent, Broward County School District, 600 3rd Ave., Ft. Lauderdale, FL 33301 and to via email to Douglas Griffin, Office of the General Counsel, 600 3rd Ave., Ft. Lauderdale, FL 33301 (doug.griffin@browardschools.com).

**CPLS, P.A.**

Attorneys|Consultants|Mediators

201 East Pine St., Suite 445

Orlando, Florida 32801

(407) 647-7887

(407) 647-5396 Fax

CPLS File No. 3442-1

*Attorneys for Petitioner*

A handwritten signature in black ink, appearing to read "Melissa C. Mihok", with a long horizontal flourish extending to the right.

---

Melissa C. Mihok, Esq.

Florida Bar No. 555851

[mmihok@cplspa.com](mailto:mmihok@cplspa.com)

[courtefiling@cplspa.com](mailto:courtefiling@cplspa.com)



**User Name:** Melissa Mihok

**Date and Time:** Friday, June 21, 2019 6:55:00 PM EDT

**Job Number:** 91494904

## Document (1)

1. *Gabriele v. Sch. Bd. of Manatee County, 114 So. 3d 477*

**Client/Matter:** Lewis

**Search Terms:** Gabriele v. manatee county school board

**Search Type:** Natural Language

**Narrowed by:**

**Content Type**  
Cases

**Narrowed by**  
-None-



Cited

As of: June 21, 2019 10:55 PM Z

## Gabriele v. Sch. Bd. of Manatee County

Court of Appeal of Florida, Second District

June 7, 2013, Opinion Filed

Case No. 2D12-2424

### Reporter

114 So. 3d 477 \*; 2013 Fla. App. LEXIS 9053 \*\*; 35 I.E.R. Cas. (BNA) 1622; 38 Fla. L. Weekly D 1259; 2013 WL 2451349

MICHELLE GABRIELE, Appellant, v. SCHOOL BOARD OF MANATEE COUNTY, FLORIDA, Appellee.

school boards with the authority to return a member of the instructional staff to annual contract status when it wished to do so. Under § 1012.33(6), the legislature omitted language that would authorize school boards to return employees under professional service contracts to annual contract status.

**Subsequent History:** Released for Publication June 24, 2013.

**Prior History:** [**\*\*1**] Appeal from the School Board of Manatee County.

### Outcome

The judgment was reversed and remanded insofar as it returned the teacher to an annual contract. In all other respects, the judgment was affirmed.

### Core Terms

annual, school board, professional services, teachers, staff, contract status, instructional, continuing contract, contracts, suspended, discipline, district school, just cause, Recommended, school year, Statutes

### LexisNexis® Headnotes

### Case Summary

#### Procedural Posture

Appellant teacher sought review of the decision of appellee, the School Board of Manatee County (Board) (Florida), which suspended her employment for 15 days without pay and returned her from a professional service contract to an annual contract.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Governments > Legislation > Interpretation

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

#### Overview

The teacher appealed a final order entered by the Board, which suspended her employment for 15 days without pay and returned her from a professional service contract to an annual contract. The appellate court held that the Board lacked the authority to discipline her by changing her contract status from a professional service contract to an annual contract and thus, that portion of the order was reversed. The remainder of the judgment was affirmed. The Board's power to suspend or dismiss a teacher under a professional service contract for just cause did not include the power to return such a teacher to annual contract status. Section 1012.33(4), Fla. Stat. (2010) proved that the legislature knew how to provide

#### HN1 [↓] Standards of Review, De Novo Review


Issues involving questions of statutory interpretation are reviewed de novo.

Education Law > Faculty & Staff > Tenure in Elementary & Secondary Schools > Attainment of Tenure

Education Law > Administration & Operation > Elementary & Secondary School Boards > General Overview

Education Law > Faculty & Staff > Employment

## Contracts

**HN2**  **Tenure in Elementary & Secondary Schools, Attainment of Tenure**

Chapter 1012, Fla. Stat. addresses personnel issues. Chapter 1012 recognized three types of written contracts under which school boards might employ members of their instructional staffs: (1) an annual contract, (2) a continuing contract, and (3) a professional service contract, § 1012.33, Fla. Stat. (2010). Annual contracts expire at the end of the school year. Accordingly, a teacher employed under an annual contract has no right to reemployment. Instructional staff employed under annual probationary contracts have no right to future employment after their annual contract expires. Tenure is no longer available for members of a school board's instructional staff hired on or after July 1, 2011.

Education Law > Faculty & Staff > Employment Contracts

**HN3**  **Faculty & Staff, Employment Contracts**

Continuing contracts are limited to those employees who obtained their contract status before July 1, 1984, § 1012.33(4)(a), Fla. Stat. (2010). A continuing contract applies only to instructional staff attaining their contract status before July 1984. A professional service contract is a continuous contract which renews automatically, and can only be terminated for just cause pursuant to § 1012.33, Fla. Stat. (2010), or based upon uncorrected performance deficiencies pursuant to § 1012.34, Fla. Stat. (2010).

Education Law > Faculty & Staff > Employment Contracts

**HN4**  **Faculty & Staff, Employment Contracts**

See § 1012.22(1)(f), Fla. Stat. (2010).

Education Law > Faculty & Staff > Employment Contracts

**HN5**  **Faculty & Staff, Employment Contracts**

The general grant of authority set forth in §

1012.22(1)(f), Fla. Stat. (2010) must be read in conjunction with § 1012.33, Fla. Stat. (2010). Section 1012.33 sets forth detailed provisions regulating and limiting a school board's authority over teacher discipline. Notably, the types of discipline authorized under § 1012.33 differ depending on whether the member of the instructional staff is employed under a continuing contract or a professional service contract. Thus a careful reading of § 1012.33 is essential to the analysis of the issue presented.

Education Law > Faculty & Staff > Employment Contracts

**HN6**  **Faculty & Staff, Employment Contracts**

See § 1012.33(1)(a), Fla. Stat. (2010).

Education Law > Administration & Operation > Elementary & Secondary School Boards > Authority of School Boards

Education Law > Faculty & Staff > Employment Contracts

**HN7**  **Elementary & Secondary School Boards, Authority of School Boards**

With regard to the authority of a school board to return a member of the instructional staff to annual contract status, § 1012.33, Fla. Stat. (2010) draws a sharp distinction between those teachers with continuing contracts and those with professional service contracts. A teacher employed under a continuing contract may be dismissed or returned to annual contract status for another 3 years in the discretion of the school board, at the end of the school year, for good and sufficient reasons, § 1012.33(4)(b). In contrast, § 1012.33(6)(a) provides that teachers not under a continuing contract, i.e., teachers under a professional service contract, may only be suspended or dismissed for just cause. The statute does not grant school boards the authority to return an employee under a professional service contract to an annual contract at any time.

Education Law > Administration & Operation > Elementary & Secondary School Boards > Authority of School Boards

Governments > Legislation > Interpretation

Education Law > Faculty & Staff > Employment  
Contracts

### **HN8** Elementary & Secondary School Boards, Authority of School Boards

The specific language of § 1012.33(4), Fla. Stat. (2010) proves that the legislature knew how to provide school boards with the authority to return a member of the instructional staff to annual contract status when it wished to do so. In § 1012.33(4), the legislature expressly granted school boards the authority to return teachers under continuing contracts to annual contract status. In the same statutory section, the legislature omitted language that would authorize school boards to return employees under professional service contracts to annual contract status, § 1012.33(6). Courts cannot overlook or disregard the statute's disparate treatment of teachers under continuing contracts and teachers under professional service contracts. When the legislature has used a term in one section of the statute but omits it in another section of the same statute, courts will not imply it where it has been excluded. The legislative use of different terms in different portions of the same statute is strong evidence that different meanings were intended. The plain and definite language of the statute controls the task of statutory interpretation.

**Counsel:** Melissa C. Mihok of Kelly & McKee, P.A., Tampa, for Appellant.

Thomas M. Gonzalez and Erin G. Jackson of Thompson, Sizemore, Gonzalez & Hearing, P.A., Tampa, for Appellee.

**Judges:** WALLACE, Judge. ALTENBERND and CRENSHAW, JJ., Concur.

## **Opinion**

[\*478] WALLACE, Judge.

Michelle Gabriele, a teacher, appeals a Final Order entered by the School Board of Manatee County (the School Board), suspending her employment for fifteen days without pay and returning her from a professional service contract to an annual contract. On this appeal, Ms. Gabriele challenges only the authority of the School Board to return her to annual contract status. Because

the School Board lacks the statutory authority to return Ms. Gabriele from a professional service contract to an annual contract, we reverse the Final Order to the extent that it purports to change Ms. Gabriele's contract status.

### **I. THE FACTUAL AND PROCEDURAL BACKGROUND**

The School Board has employed Ms. Gabriele as a teacher for more than ten years. During the 2010-2011 school year, Ms. Gabriele was a member of the instructional staff and was employed under a professional service contract. Thus the School Board could not suspend Ms. [\*2] Gabriele or terminate her employment except for good cause. See § 1012.33(1)(a), (6)(a), Fla. Stat. (2010).

On June 3, 2011, the School Board's superintendent sent Ms. Gabriele a letter notifying her that he intended to recommend to the School Board that she be suspended without pay for fifteen days and that she be returned to an annual contract. The superintendent detailed his reasons for the recommended discipline in an administrative complaint that he attached to the letter. Ms. Gabriele timely requested a formal administrative hearing on the administrative complaint, and the superintendent [\*479] referred the matter to the Division of Administration Hearings.

After a formal hearing, the Administrative Law Judge (ALJ) entered a Recommended Order finding that the School Board had just cause to discipline Ms. Gabriele. The ALJ also recommended that the School Board enter a Final Order suspending Ms. Gabriele for fifteen days without pay and returning her to an annual contract. On April 9, 2012, the School Board entered a Final Order that (1) denied Ms. Gabriele's exceptions to the Recommended Order, (2) adopted the Recommended Order as the School Board's Final Order, (3) suspended Ms. Gabriele's [\*3] employment for fifteen days without pay, and (4) returned Ms. Gabriele to an annual contract. This appeal followed.

### **II. FRAMING THE ISSUE**

On appeal, Ms. Gabriele does not challenge the finding that the School Board had just cause for imposing discipline or the fifteen-day suspension without pay. Instead, Ms. Gabriele challenges the School Board's authority under the applicable statutes to change her



contract status from a professional service contract to an annual contract. Accordingly, the issue before us is whether the School Board had the statutory authority to discipline a member of its instructional staff, who is employed under a professional service contract, by returning the teacher to annual contract status. Because the HN1 issue presented involves a question of statutory interpretation, we apply a de novo standard of review. Arnold, Matheny & Eagan, P.A. v. First Am. Holdings, Inc., 982 So. 2d 628, 632 (Fla. 2008).

### III. DISCUSSION

Florida has a detailed plan for education known as "the Florida K-20 education system." This plan is statutory in nature. The legislature has codified the plan in chapters 1000 through 1013 of the Florida Statutes as the "Florida K-20 Education Code." § 1000.01(1), Fla. Stat. [\*\*4] (2010).

HN2 Chapter 1012 of the Code addresses personnel issues. During the time period pertinent to this case, chapter 1012 recognized three types of written contracts under which school boards might employ members of their instructional staffs: (1) an annual contract, (2) a continuing contract, and (3) a professional service contract.<sup>1</sup> § 1012.33; Lee Cnty. Sch. Bd. v. Silveus, Case No. 04-4096, 2005 Fla. Div. Adm. Hear. LEXIS 904 \*17 (Fla. DOAH Mar. 16, 2005), adopted in pertinent part, Case No. 05-0003 (Lee Cnty. Sch. Bd. June 14, 2005). Annual contracts expire at the end of the school year. See MacPherson v. Sch. Bd. of Monroe Cnty., 505 So. 2d 682, 683 n.1 (Fla. 3d DCA 1987) (citing Lake Cnty. Educ. Ass'n v. Sch. Bd. of Lake Cnty., 360 So. 2d 1280 (Fla. 2d DCA 1978)). Accordingly, a teacher employed under an annual contract has no right to reemployment. *Id.*; see also Buckner v. Sch. Bd. of Glades Cnty., 718 So. 2d 862, 866 (Fla. 2d DCA 1998) ("[I]nstructional staff employed under annual probationary contracts have no right to future employment after their annual contract expires.").

<sup>1</sup>The legislature repealed paragraphs (a), (b), and (c) of subsection (3) of section 1012.33 effective [\*\*5] July 1, 2011. Ch. 2011-37, § 19, at 504, Laws of Fla. As a result, school boards are no longer authorized to issue professional service contracts. Instead, the only contracts school boards are authorized to issue to members of their instructional staffs are probationary contracts for new hires and annual contracts for all others. Ch. 2011-1, § 5, at 54-56, Laws of Fla. To put it simply, tenure is no longer available for members of a school board's instructional staff hired on or after July 1, 2011.

[\*480] The remaining two types of contracts do not expire at the end of the school year. However, HN3 continuing contracts are limited to those employees who obtained their contract status before July 1, 1984. § 1012.33(4)(a); Dietz v. Lee Cnty. Sch. Bd., 647 So. 2d 217, 218 (Fla. 2d DCA 1994) (Blue, J., specially concurring) ("A continuing contract applies only to instructional staff attaining their contract status before July 1984."). Ms. Gabriele was a long-time employee, and she was employed under a professional service contract. "[A] professional service contract is a continuous contract which renews automatically, and can only be terminated for just cause pursuant to section 1012.33, Florida Statutes, [\*\*6] or based upon uncorrected performance deficiencies pursuant to section 1012.34, Florida Statutes." Orange Cnty. Sch. Bd. v. Rachman, 87 So. 3d 48, 49 n.1 (Fla. 5th DCA 2012).

The authority of school boards to suspend, dismiss, and return teachers to annual contract status is controlled by statute. Section 1012.22(1)(f) confers a general grant of authority to school boards as follows:

HN4 *Suspension, dismissal, and return to annual contract status.*—The district school board shall suspend, dismiss, or return to annual contract members of the instructional staff and other school employees; however, no administrative assistant, supervisor, principal, teacher, or other member of the instructional staff may be discharged, removed, or returned to annual contract except as provided in this chapter.

(Emphasis added.) However, HN5 the general grant of authority set forth in section 1012.22(1)(f) must be read in conjunction with section 1012.33.

Section 1012.33 sets forth detailed provisions regulating and limiting a school board's authority over teacher discipline. Notably, the types of discipline authorized under section 1012.33 differ depending on whether the member of the instructional staff is employed [\*\*7] under a continuing contract or a professional service contract. Thus a careful reading of section 1012.33 is essential to the analysis of the issue presented.

Section 1012.33 provides, in pertinent part, as follows:

HN6 (1)(a) Each person employed as a member of the instructional staff in any district school system . . . shall be entitled to and shall receive a

written contract as specified in this section. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, the following instances, as defined by rule of the State Board of Education: immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude.

....

(3)(a) *Each district school board shall provide a professional service contract as prescribed herein.* Each member of the instructional staff who completed the following requirements prior to July 1, 1984, shall be entitled to and shall be issued a *continuing [\*\*8] contract* in the form prescribed by rules of the state board pursuant to s. 231.36, Florida Statutes (1981). Each member of the instructional staff who completes the following requirements on or after July 1, 1984, shall be entitled to and shall be issued a *professional service contract* in the form [\*\*481] prescribed by rules of the state board as provided herein:

....

(e) *A professional service contract shall be renewed each year unless the district school superintendent, after receiving the recommendations required by s. 1012.34, charges the employee with unsatisfactory performance and notifies the employee of performance deficiencies as required by s. 1012.34.*

...

....

(4)(a) An employee who had continuing contract status prior to July 1, 1984, shall be entitled to retain such contract and all rights arising therefrom as prescribed by rules of the State Board of Education adopted pursuant to s. 231.36, Florida Statutes (1981), unless the employee voluntarily relinquishes his or her continuing contract.

(b) Any member of the district administrative or supervisory staff and *any member of the instructional staff*, including any school principal, *who is under continuing contract may be dismissed [\*\*9] or may be returned to annual contract status for another 3 years* in the discretion of the district school board, at the end of the school year, when a recommendation to that effect is submitted in

writing to the district school board on or before April 1 of any school year, giving good and sufficient reasons therefor, by the district school superintendent, by the school principal if his or her contract is not under consideration, or by a majority of the district school board. . . .

(c) Any member of the district administrative or supervisory staff and *any member of the instructional staff*, including any school principal, *who is under continuing contract may be suspended or dismissed* at any time during the school year; however, the charges against him or her must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or being convicted or found guilty of, or entering a plea of guilty to, regardless of adjudication of guilt, any crime involving moral turpitude, as these terms are defined by rule of the State Board of Education. . . .

....

(6)(a) *Any member of the instructional staff, excluding an employee specified in subsection (4), [\*\*10] may be suspended or dismissed at any time during the term of the contract for just cause as provided in paragraph (1)(a).*

(Emphasis added.) HN7<sup>↑</sup> With regard to the authority of a school board to return a member of the instructional staff to annual contract status, section 1012.33 draws a sharp distinction between those teachers with continuing contracts and those with professional service contracts. A teacher employed "under [a] continuing contract may be dismissed or . . . returned to annual contract status for another 3 years in the discretion of the . . . school board, at the end of the school year, . . . [for] good and sufficient reasons." § 1012.33(4)(b); *Burns v. Sch. Bd. of Palm Beach Cnty.*, 283 So. 2d 873, 875 (Fla. 4th DCA 1973) (construing section 231.36(4), the predecessor to section 1012.33(4)). In contrast, section 1012.33(6)(a) provides that teachers not under a continuing contract, i.e., teachers under a professional service contract, may only be suspended or dismissed for just cause. The statute does not grant school boards the authority to return an employee under a professional service contract to an annual contract at any time.

The School Board argues that its power to [\*\*11] suspend or dismiss a teacher under a professional service contract for just cause necessarily includes the power [\*\*482] to return such a teacher to annual contract status. We disagree. HN8<sup>↑</sup> The

specific language of section 1012.33(4) proves that the legislature knew how to provide school boards with the authority to return a member of the instructional staff to annual contract status when it wished to do so. In section 1012.33(4), the legislature expressly granted school boards the authority to return teachers under continuing contracts to annual contract status. In the same statutory section, the legislature omitted language that would authorize school boards to return employees under professional service contracts to annual contract status. § 1012.33(6). We cannot overlook or disregard the statute's disparate treatment of teachers under continuing contracts and teachers under professional service contracts. "When the legislature has used a term, as it has here, in one section of the statute but omits it in another section of the same statute, we will not imply it where it has been excluded." Leisure Resorts, Inc. v. Frank J. Rooney, Inc., 654 So. 2d 911, 914 (Fla. 1995). "The legislative use [\*\*12] of different terms in different portions of the same statute is strong evidence that different meanings were intended." State v. Mark Marks, P.A., 698 So. 2d 533, 541 (Fla. 1997) (quoting Dep't of Prof'l Regulation v. Durrani, 455 So. 2d 515, 518 (Fla. 1st DCA 1984)). In addition, we must reject the School Board's argument based on its claim of implied authority because the plain and definite language of the statute controls our task of statutory interpretation. See Tropical Coach Line, Inc. v. Carter, 121 So. 2d 779, 782 (Fla. 1960).

The School Board suggests that the result we reach improperly limits it from imposing a lesser form of discipline—a return to annual contract status—in lieu of suspension or dismissal for teachers employed under a professional service contract. Thus the result we reach here may actually work to the disadvantage of such teachers. However, it seems likely that the discipline of most teachers by returning them to annual contract status eventually results in failure to renew the teacher's contract at the end of one or more contract terms. Under these circumstances, termination of the teacher's employment remains the ultimate consequence. In any event, considerations [\*\*13] such as these are for the legislature, not the courts. We base our decision on the pertinent statutory language.

#### IV. CONCLUSION

For the foregoing reasons, we hold that the School Board lacked the authority to discipline Ms. Gabriele by changing her contract status from a professional service contract to an annual contract. We reverse the Final

Order to the extent that it returned Ms. Gabriele to an annual contract. In all other respects, we affirm the Final Order.

In its administrative complaint, the School Board did not seek to dismiss Ms. Gabriele. Accordingly, on remand, the School Board shall restore Ms. Gabriele to her professional service contract. In addition, the School Board shall reimburse Ms. Gabriele for any reduction in pay and undo any other adverse consequences resulting from its unauthorized attempt to return her to an annual contract.

Affirmed in part, reversed in part, and remanded with directions.

ALTENBERND and CRENSHAW, JJ., Concur.

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**User Name:** Melissa Mihok

**Date and Time:** Friday, June 21, 2019 7:10:00 PM EDT

**Job Number:** 91495445

## Document (1)

1. *Orange County Sch. Bd. v. Rachman, 87 So. 3d 48*

**Client/Matter:** Lewis

**Search Terms:** principal or administrator to teacher annual contract 1012

**Search Type:** Natural Language

**Narrowed by:**

**Content Type**  
Cases

**Narrowed by**  
Court: Florida



## Orange County Sch. Bd. v. Rachman

Court of Appeal of Florida, Fifth District

April 13, 2012, Opinion Filed

CASE NO. 5D11-3310

### Reporter

87 So. 3d 48 \*; 2012 Fla. App. LEXIS 5641 \*\*; 37 Fla. L. Weekly D 877

ORANGE COUNTY SCHOOL BOARD, Appellant, v.  
LEONA RACHMAN AND JONATHAN SCHUMAN,  
Appellees.

**Subsequent History:** Rehearing denied by, Rehearing, en banc, denied by Orange County Sch. Bd. v. Rachman, 2012 Fla. App. LEXIS 9233 (Fla. Dist. Ct. App. 5th Dist., May 9, 2012)

**Prior History:** **[\*\*1]** Appeal from the Circuit Court for Orange County, Lisa T. Munyon, Judge.

### Core Terms

professional services, retirement, **contracts**, renewed, **teacher**, **annual**, rehire, automatically, well-reasoned, deficiencies, requirements, extensively, uncorrected, continuous, terminated, affording, pleadings, concedes, eligible, securing, appeals, applies, revised, argues, rights, vested

**Counsel:** John C. Palmerini, Associate General Counsel for Orange County School Board, Orlando, for Appellant.

Tobe M. Lev of Egan, Lev & Siwica, P.A., Orlando, for Appellees.

**Judges:** MONACO, LAWSON and EVANDER, JJ., concur.

### Opinion

PER CURIAM.

The Orange County School Board (the "Board") timely appeals a final judgment on the pleadings in favor of **teachers** Leona Rachman and Jonathan Schuman, plaintiffs below, arguing that the trial court erred in its interpretation and application of section

121.091(9)(b)1.a., Florida Statutes (2010). That statute allows a school district to rehire a retired **teacher** in the year immediately following his or her retirement on an **annual contract**. **[\*49]** The Board argues that this statute bars it from ever affording Appellees a longer professional service **contract** pursuant to section 1012.33(3)(a), Florida Statutes (2010).<sup>1</sup> Appellees argue that section 121.091(9)(b)1.a., only applies at the time of their initial rehire (following retirement), such that they can ultimately be awarded a professional services **contract** if they meet the requirements of section 121.091(9)(b)1.a. We agree with the trial court's well-reasoned **[\*\*2]** analysis and conclude that section 121.091(9)(b)1.a. does not preclude Appellees from ultimately securing a professional service **contract**.

AFFIRMED.

MONACO, LAWSON and EVANDER, JJ., concur.

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<sup>1</sup> Whereas an **annual contract** must be renewed every year, a professional service **contract** is a continuous **contract** which renews automatically, and can only be terminated for just cause pursuant to section 1012.33, Florida Statutes, or based upon uncorrected performance deficiencies pursuant to section 1012.34, Florida Statutes. We note that section 1012.33(3)(a), Florida Statutes (2010), has been extensively revised so that as of July 1, 2011, a district school board can no longer issue professional service **contracts**. Ch. 2011-1, § 13, Laws of Fla. Appellees, however, assert rights that they contend vested prior to the effective date of section 1012.335, Florida Statutes (2011). The Board concedes in this case that but for its interpretation of section 121.091(9)(b)1.a., Appellees would have been eligible to be considered for professional service **contracts**.

**THE BROWARD COUNTY SCHOOL BOARD, FLORIDA**

THE BROWARD COUNTY SCHOOL BOARD<sup>1</sup>,

Petitioner,

v.

SHEILA LEWIS,

Respondent.

**SUPERINTENDENT'S RESPONSE TO LEWIS' SUPPLEMENT TO AMENDED  
REQUEST FOR ADMINISTRATIVE HEARING**

THIS CAUSE concerns the request for the AMENDED REQUEST FOR ADMINISTRATIVE HEARING ("Amended Request") filed by SHEILA LEWIS ("Lewis") with the Broward County School Board (hereinafter "School Board").

1. On or about June 4, 2019, Sheila Lewis filed her Amended Request.
2. In accordance with statutory requirements, the undersigned notified Lewis' counsel that the Superintendent would recommend that the School Board dismiss the Amended Request and invited Lewis to submit any amendments to the request or other response that she wanted the School Board to consider in making its decision. A copy of the Superintendent's recommendation for dismissal was attached.
3. On or about July 8, 2019, Lewis filed a Supplement to Amended Request for Administrative Hearing ("Supplement"). That Supplement includes certain statements of law which require a response.
4. The Superintendent's recommendation to dismiss the Amended Request is based on

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<sup>1</sup> The style of the case has been changed to reflect the governing agency pursuant to 28-106.2015 (4) F.A.C. 2019.

the simple proposition that Lewis lost her **professional service contract** as a teacher when she accepted her position as an Assistant Principal in 2008, citing Bd. Of Ed of Levy v. Terrell, 967 So. 2d 394 (Fla. 1st DCA 2007).

5. Lewis attempts to circumvent that inescapable legal conclusion by suggesting that the Terrell decision was based on a provision that had once been included in a collective bargaining agreement<sup>2</sup>, but was later repealed. The Superintendent strongly disagrees.
6. First, rights under a professional services contract exist by operation of law, under § 1012.33, Fla. Stat., and may not be eliminated by a collective bargaining agreement or policy. Just as this School Board lacks the authority to take away a teacher's statutory professional service contract rights by contract or policy, the Board in Terrell lacked such authority too. As a result, Lewis' suggestion that Terrell is premised on the idea that the Board in that case took some action to eliminate the former administrator's professional service contract rights is fundamentally misplaced.
7. Second, in claiming that she is entitled to return as a teacher under her previous professional service contract which she earned before leaving teaching to serve as an Administrator, Lewis fails to recognize the fundamental difference between her former **professional service contract** and a **continuing contract**.
8. The law changed to prohibit the issuance of any new continuing contracts after 1984, although teachers who already held such a contract retained all of their previously vested rights. Lewis does not have a continuing contract.
9. Until 1981, § 231.36, Fla. Stat.,<sup>3</sup> contained an express provision stating:

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<sup>2</sup> While Lewis suggests that the claim of the employee in Terrell was based on a former "collective bargaining agreement," the employees claim in that case was based on a former board policy. Such misstatement appears innocent and is immaterial to the analysis below.

<sup>3</sup> § 231.36, Fla. Stat., was later transferred to § 1012.33, Fla. Stat., when the whole Education Code was renumbered.

(3)(F) Continuing contract status earned by any member of the instructional staff prior to assuming a position as supervisor or principal shall be retained in the position it was attained. Upon release from a position as supervisor or principal, the employee shall be entitled to reassignment to the same or similar position in which continuing contract status was attained, at the classification level and salary range that would have been earned had the position been held continuously.

(see Exhibit A)

As a result, there is no dispute that, if Lewis had held a continuing contract, she would have been entitled to return to her continuing contract as a teacher after her release as an Assistant Principal. Lewis, however, did not have a continuing contract. She had a professional service contract.

10. In 1982, the Legislature fundamentally altered the teacher tenure law by prohibiting any new continuing contracts for any teachers first hired after July 1, 1982, and establishing requirements for the school boards to start issuing new professional service contracts, instead. In the process, the Legislature eliminated several rights that teachers, superintendents, administrators and even board members previously enjoyed.

(see Exhibit B)

11. Importantly, one of the changes made by the Legislature was to completely eliminate the language from subsection (3)(F) quoted above. By doing so, the Legislature made it clear that teachers under professional service contracts would no longer enjoy the right to return under a previously acquired professional service contract after being released from employment as an administrator. Had the Legislature intended for that right to continue, it would not have taken affirmative action to eliminate the language-giving rise to that right.

12. Accordingly, the issue in Terrell was not whether the employee still had a vested



professional service contract that never expired. That issue was fully resolved when the Legislature eliminated the statutory language granting that right in 1982. The fundamental issue in Terrell was whether that Board's previous policy had guaranteed the employee a right to return to a **new** professional service contract after being released as an administrator.

13. At the time of the Terrell case, the law expressly allowed school boards to issue professional service contracts to newly hired teachers, based on previous teaching experience. In 2011, however, the law changed again to prohibit school boards from issuing any new professional service contracts after July 1, 2011. As a result, the School Board is prohibited by law from issuing Lewis a new professional service contract.

14. In sum, Lewis is attempting to suggest that, under her professional service contract, she enjoys the same rights previously enjoyed by teachers with continuing contract. The Legislature acted decisively, however, in 1982 to terminate that right for teachers under professional service contracts, like Lewis.

### CONCLUSION

For the reasons stated herein, the Superintendent respectfully recommends that the School Board dismiss Lewis' Amended Request for Administrative Hearing, as supplemented.<sup>4</sup>

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<sup>4</sup> In her supplement, Lewis also mistakenly suggest that, even if there are no disputed issues of material fact, she should be granted an "informal hearing" under § 120.57(2), Fla. Stat. Sections 120.567 and 120.57, Fla. Stat., only apply to decisions affecting substantial interests. Lewis had no substantial interests that were affected when her annual contract was not renewed. Lewis' efforts to mischaracterize her employment status at the time of such non-renewal doesn't create a substantial interest requiring a hearing.

Date: July 10, 2019

Respectfully submitted,  
By: /s/ Douglas G. Griffin  
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Attorney for Petitioner THE BROWARD COUNTY  
SCHOOL BOARD

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document was furnished this 10th day of July 2019, by electronic delivery to all counsel of record listed in the Service List below:

By: /s/ Douglas G. Griffin  
Douglas G. Griffin  
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school board at least 4 weeks prior to the close of each successive school year unless the superintendent or such teacher shall, not later than 3 months prior to the close of the school year, request the school board to reconsider the annual contract. The school board may reconsider any annual contract on its own motion and shall take whatever action that it deems necessary and proper as authorized by this or any other section.

*History.*—s. 1, ch. 63-316; s. 179, ch. 65-239; s. 1, ch. 69-300; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318.

*Note.*—Repealed effective October 1, 1982, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

### '231.36 Contracts with instructional staff.—

(1) Each person employed as a member of the instructional staff in any district school system or as supervisor or principal shall be properly certificated and shall be entitled to and shall receive a written contract as specified in chapter 230. A supervisor or principal may receive a written contract for an initial period not to exceed 3 years, subject to annual review and renewal. After the first 3 years, the contract may be renewed for a period not to exceed 3 years and shall contain provisions for dismissal only for just cause, in addition to such other provisions as are prescribed by the school board. Periods of service as a supervisor or principal prior to July 1, 1974, or such service in another district or state, may be recognized by the school board to satisfy the requirements of the initial written contract referred to herein.

(2) Any person so employed on the basis of a written offer of a specific position by a duly authorized agent of the school board for a stated term of service at a specified salary and who accepted such offer by telegram or letter or by signing the regular contract form who shall violate the terms of such contract or agreement by leaving his position without first being released from his contract or agreement by the school board of the district in which he is employed shall be subject to the disciplinary process of the Education Practices Commission acting as a committee of the whole. The school board shall take official action on such violation and shall furnish a copy of the proceedings to the certification section of the State Department of Education and to the Education Practices Commission.

(3)(a) The school board of each district shall provide continuing contracts as prescribed herein. Each member of the instructional staff, excluding supervisors and principals, in each district school system, except in districts operating under local, special or general tenure laws with stated population application, who:

1. Holds a regular certificate based at least on graduation from a standard 4-year college, or as otherwise provided by law;
2. Has completed 3 years of service in the same district of the state during a period not in excess of 5 successive years, such service being continuous except for leave duly authorized and granted;
3. Has been reappointed for the fourth year; and
4. Has been recommended by the superintendent for such continuing contract based on successful performance of duties and demonstration of professional competence

shall be entitled to and shall be issued a continuing contract in such form as may be prescribed by regulations of the state board.

(b) The continuing contract shall be effective at the beginning of the school fiscal year following the completion of all requirements or, starting on July 1, 1968, at the beginning of the school fiscal year in which all requirements are completed on or before September 1 or before January 1, 1981, for persons who have had no opportunity to meet the teacher-examination requirements for regular certification.

(c) The period of service provided herein may be extended to 4 years when prescribed by the school board and agreed to in writing by the employee at the time of reappointment or as provided by s. 231.351.

(d) A school board may issue a continuing contract to a new member of the instructional staff provided such individual has previously held a continuing contract in the same or another district within this state.

(e) Each person to whom a continuing contract has been issued as provided herein shall be entitled to continue in his position or in a similar position in the district at the salary schedule authorized by the school board without the necessity for annual nomination or reappointment until such time as the position is discontinued, the person resigns, or his contractual status is changed as prescribed below.

(f) Continuing contract status earned by any member of the instructional staff prior to assuming a position as supervisor or principal shall be retained in the position in which it was attained. Upon release from a position as supervisor or principal, the employee shall be entitled to reassignment to the same or a similar position in which continuing contract status was attained, at the classification level and salary range that would have been earned had the position been held continuously.

(g) Any person who has previously earned continuing contract status as a supervisor or principal in the school district shall be continued in that status until such time as the position is discontinued, the person resigns, or his contractual status is changed by mutual agreement or as prescribed below.

(h) School boards are authorized to enter into continuing contracts with principals and supervisors who were employed as principals or supervisors on or before July 1, 1974, and who otherwise meet the requirements of paragraph (a). However, this authorization shall expire July 1, 1977. If a district school board elects not to exercise the authority in this paragraph, no showing of just cause shall be required.

(4) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, who is under continuing contract, may be dismissed or may be returned to annual contract status for another 3 years in the discretion of the school board, when a recommendation to that effect is submitted in writing to the school board on or before April 1 of any school year, giving good and sufficient reasons therefor, by the superintendent, or by the principal if his contract is not under consideration, or by a majority of the school board. The employee whose contract is under consid-

EXHIBIT

tabbles

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eration shall be duly notified in writing by the party or parties preferring the charges at least 5 days prior to the filing of the written recommendation with the school board, and such notice shall include a copy of the charges and the recommendation to the school board. The school board shall proceed to take appropriate action. Any decision adverse to the employee shall be made by a majority vote of the full membership of the school board. Any such decision adverse to the employee may be appealed by him in writing to the Department of Education, through the Commissioner of Education, for review; provided such appeal is filed within 30 days after the decision of the school board, and provided further that the decision of the department shall be final as to sufficiency or insufficiency for discontinuation of the continuing contract status.

(5) Should the school board have to choose from among its personnel who are on continuing contracts as to which should be retained, among the criteria to be considered shall be educational qualifications, efficiency, compatibility, character, and capacity to meet the educational needs of the community. Whenever a school board is required to or does consolidate its school program at any given school center by bringing together pupils theretofore assigned to separated schools, the school board may determine on the basis of the foregoing criteria from its own personnel, and any other certificated teachers, which teachers shall be employed for service at this school center, and any teacher no longer needed may be dismissed. The decision of the board shall not be controlled by any previous contractual relationship. In the evaluation of these factors the decision of the school board shall be final.

(6) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, may be suspended or dismissed at any time during the school year; provided that the charges against him must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude. Whenever such charges are made against any such employee of the school board, the school board may suspend such person without pay, but if charges are not sustained he shall be immediately reinstated, and his back salary shall be paid. In cases of suspension by the school board or by the superintendent, the school board shall determine upon the evidence submitted whether the charges have been sustained and, if said charges are sustained, either to dismiss said employee or fix the terms under which said employee may be reinstated. If such charges are sustained by a majority vote of the full membership of the school board and such employee is discharged, his contract of employment shall be thereby canceled. If the employee is under continuing contract, any such decision adverse to him may be appealed by him in writing to the Department of Education, through the Commissioner, for review; provided such appeal is filed within 30 days after the decision of the school board, and provided further that the decision of the department shall be final as to sufficiency of the grounds for dismissal.

(7) The school board of any given district may, at its own discretion:

(a) Grant to a person who has served as superintendent in that district, at the completion of his service as superintendent, a continuing contract as a classroom teacher. Service as superintendent shall be construed as continuous teaching service in the public schools of this state.

(b) Grant to a classroom teacher holding a continuing contract status who has served as school board member in that district, at the completion of his service as school board member, a continuing contract as classroom teacher. Service as school board member shall be construed as continuous teaching service in the public schools of this state.

(8) Notwithstanding any other provision of law, any member who has retired may interrupt retirement and be reemployed in any public school. Any member so reemployed by the same district from which he retired may be employed on the same contractual basis that existed immediately prior to retirement; however, he shall not be eligible to renew membership in the teacher retirement system.

(9) Any teacher who is employed in a cooperative education program in this state may be immediately placed on continuing contract with the school board wherein the cooperative education program is produced if, at the time of employment, such person is on a continuing contract in a district which is participating in support of the particular cooperative education program in which the person is employed; provided that if at the time of reappointment of personnel, during the first 3 years, said person is not recommended for continued employment in the cooperative education program, he shall automatically revert to continuing contract status in the district of immediate prior employment; and provided further, that in meeting the requirements for a continuing contract prescribed herein prior successive years of service rendered in any district participating in the support of the particular cooperative education program may be counted as years of probationary service for a continuing contract with the school board wherein the cooperative education program is produced.

**History.**—s. 536, ch. 19355, 1939; CGL 1940 Supp. 892(140); s. 21, ch. 23726, 1947; s. 2, ch. 25363, 1949; s. 1, ch. 29890, 1955; s. 1, ch. 31391, 1956; s. 8, ch. 59-371; s. 1, ch. 59-252; s. 1, ch. 59-359; s. 1, ch. 59-421; s. 3, ch. 61-263; s. 12, ch. 63-376; s. 63, ch. 65-239; s. 2, ch. 65-424; s. 2, ch. 67-184; s. 6, ch. 67-387; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 72-21; s. 2, ch. 72-215; s. 38, ch. 73-338; ss. 3, 4, ch. 74-351; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-95; ss. 4, 11, ch. 80-190; s. 8, ch. 80-325; s. 9, ch. 80-378; ss. 2, 3, ch. 81-318.

**Note.**—Repealed effective October 1, 1982, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

### **231.361 Vocational teachers; status.—**

(1) Vocational teachers and other teachers who qualify for certificates on the basis of nonacademic preparation shall be entitled to all the contractual rights and privileges now granted to other instructional personnel holding equivalent certificates.

(2) A holder of a certificate based on nonacademic preparation which entitled him to employment to teach classes in vocational or adult education shall not be assigned to teach in a regular academic field of the kindergarten through grade 12 school program.

**History.**—s. 1, ch. 29625, 1955; s. 3, ch. 67-181; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 5, ch. 78-423; ss. 2, 3, ch. 81-318.

**Note.**—Repealed effective October 1, 1982, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

vide assistance in helping to correct such deficiencies within a reasonable, prescribed period of time.

(4) A complete statement of the assessment criteria shall include, but shall not be limited to, the following:

- (a) Ability to maintain appropriate discipline.
- (b) Educational qualifications.
- (c) Knowledge of subject matter, provided the current instructional assignment is in a field for which certification is held.
- (d) Efficiency.
- (e) Student progress toward instructional goals, based on student ability.
- (f) Satisfactory use of assessment criteria and procedures by the individual having assessment responsibilities.

(5) The individual responsible for the supervision of the employee shall make the assessment of the employee and forward such assessment to the superintendent for the purpose of reviewing the employee's contract.

(6) Nothing in this section shall be construed to grant a probationary employee a right to continued employment beyond the term of his contract.

(7) The personnel file of each employee shall be open to inspection only by the school board, the superintendent, the principal, the employee himself, and such other persons as the employee or the superintendent may authorize in writing.

*History.*—s. 529, ch. 19355, 1939; CGL 1940 Supp. 892(133); s. 1, ch. 61-286; s. 18, ch. 65-420; s. 1, ch. 67-369; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 85, ch. 72-221; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 80-295; ss. 2, 3, ch. 81-318; ss. 13, 28, 31, ch. 82-242.

<sup>1</sup>Note.—Expires October 1, 1992, pursuant to s. 31, ch. 82-242, and is scheduled for review pursuant to s. 11.61 in advance of that date.

<sup>2</sup>Note.—The words "comply with" were substituted by the editors for the word "include."

<sup>3</sup>Note.—The word "requirements" was inserted by the editors.

### 231.30 Payment of fees.—

(1) The State Board of Education shall have the authority to adopt rules providing for the payment of fees:

- (a) For a certificate;
- (b) For a reissued temporary certificate, a part-time certificate, or a substitute certificate;
- (c) For extension of a regular certificate; and
- (d) For a duplicate certificate or a name change.

(2) The proceeds from the collection of certification fees shall be remitted by the Department of Education to the Treasurer and shall be kept by him in a separate fund to be known as the "Educational Certification and Service Trust Fund" and disbursed for the payment of expenses incurred by the Educational Standards Commission, by the Educational Practices Commission, and in the printing of forms and bulletins and the issuing of certificates, upon vouchers approved by the department.

*History.*—s. 530, ch. 19355, 1939; CGL 1940 Supp. 892(134); s. 7, ch. 22858, 1945; s. 17, ch. 26869, s. 5, ch. 26894, 1951; s. 1, ch. 57-330; s. 2, ch. 61-119; s. 61, ch. 65-239; s. 4, ch. 67-440; ss. 15, 35, ch. 69-106; s. 8, ch. 72-333; s. 5, ch. 75-302; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-423; ss. 3, 11, ch. 80-190; ss. 2, 3, ch. 81-318; ss. 14, 28, 31, ch. 82-242.

<sup>1</sup>Note.—Expires October 1, 1992, pursuant to s. 31, ch. 82-242, and is scheduled for review pursuant to s. 11.61 in advance of that date.

**231.3505 Employment of directors of vocational education in school districts and community colleges.**—[The repeal of this section by s. 2, ch. 81-318, was nullified by s. 28, ch. 82-242. Repealed effective October 1, 1992, by s. 31, ch. 82-242,

and scheduled for review pursuant to s. 11.61 in advance of that date.]

### 231.36 Contracts with instructional staff, supervisors, and principals.—

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certificated and shall be entitled to and shall receive a written contract as specified in chapter 230. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

(b) A supervisor or principal shall be properly certified and shall receive a written contract as specified in chapter 230. Such contract may be for an initial period not to exceed 3 years, subject to annual review and renewal. After the first 3 years, the contract may be renewed for a period not to exceed 3 years and shall contain provisions for dismissal during the term of the contract only for just cause, in addition to such other provisions as are prescribed by the school board.

(2) Any person so employed on the basis of a written offer of a specific position by a duly authorized agent of the school board for a stated term of service at a specified salary, and who accepted such offer by telegram or letter or by signing the regular contract form, who violates the terms of such contract or agreement by leaving his position without first being released from his contract or agreement by the school board of the district in which he is employed shall be subject to the jurisdiction of the Education Practices Commission. The school board shall take official action on such violation and shall furnish a copy of its official minutes to the Commissioner of Education.

(3)(a) The school board of each district shall provide a professional service contract as prescribed herein. Each member of the instructional staff, excluding supervisors and principals, in each district school system who is employed with an effective date of initial employment subsequent to July 1, 1982, who:

- 1. Holds a regular certificate as prescribed by s. 231.17 and rules of the State Board of Education;
- 2. Has completed 3 years of probationary service in the district, 1 year of which shall be the beginning teacher program where required, during a period not in excess of 5 successive years, such service being continuous except for leave duly authorized and granted; and
- 3. Has been recommended by the superintendent for such professional service contract and reappointed by the school board based on successful performance of duties and demonstration of professional competence

shall be issued a professional service contract in such form as may be prescribed by rules of the state board.

(b) The professional service contract shall be effective at the beginning of the school fiscal year following the completion of all requirements<sup>2</sup> therefor.

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(c) The period of service provided herein may be extended to 4 years when prescribed by the school board and agreed to in writing by the employee at the time of reappointment.

(d) A school board may issue a professional service contract to any employee who has previously held a professional service contract or continuing contract in the same or another district within this state.

(e) A professional service contract shall be renewed each year unless the superintendent, after receiving the recommendations required by s. 231.29(5), charges the employee with unsatisfactory performance as determined under the provisions of s. 231.29 and notifies the employee in writing, no later than 6 weeks prior to the end of the post-school conference period, of performance deficiencies which may result in termination of employment, if not corrected during the subsequent year of employment (which shall be granted for an additional year in accordance with the provisions in subsection (1)). Except as otherwise hereinafter provided, this action shall not be subject to the provisions of chapter 120, but the following procedures shall apply:

1. On receiving notice of unsatisfactory performance, the employee, on request, shall be accorded an opportunity to meet with the superintendent or his designee for an informal review of the determination of unsatisfactory performance.

2. An employee notified of unsatisfactory performance may request an opportunity to be considered for a transfer to another appropriate position, with a different supervising administrator, for the subsequent year of employment.

3. During the subsequent year, the employee shall be provided assistance and inservice training opportunities to help correct the noted performance deficiencies. The employee shall also be evaluated periodically so that he will be kept apprised of progress achieved.

4. Not later than 6 weeks prior to the close of the post-school conference period of the subsequent year, the superintendent, after receiving and reviewing the recommendation required by s. 231.29(5), shall notify the employee, in writing, whether the performance deficiencies have been corrected. If so, a new professional service contract shall be issued to the employee. If the performance deficiencies have not been corrected, the superintendent may notify the school board and the employee, in writing, that the employee shall not be issued a new professional service contract; however, if the recommendation of the superintendent is not to issue a new professional service contract, and if the employee wishes to contest such recommendation, the employee will have 15 days from receipt of the superintendent's recommendation to demand, in writing, a hearing. In such hearing, the employee may raise as an issue, among other things, the sufficiency of the superintendent's charges of unsatisfactory performance. Such hearing shall be conducted at the employee's election in accordance with one of the following procedures:

a. A direct hearing conducted by the school board within 45 days of receipt of the written appeal. The hearing shall be conducted in accordance with the provisions of s. 120.57(1)(a)1. A majority vote of the

membership of the school board shall be required to sustain the superintendent's recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment; or

b. A hearing conducted by a hearing officer assigned by the Division of Administrative Hearings of the Department of Administration. The hearing shall be conducted within 45 days of receipt of the written appeal in accordance with chapter 120. The recommendation of the hearing officer shall be made to the school board. A majority vote of the membership of the school board shall be required to sustain or change the hearing officer's recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment.

(4)(a) An employee who has continuing contract status prior to July 1, 1984, shall be entitled to retain such contract and all rights arising therefrom in accordance with existing laws, rules of the State Board of Education, or any laws repealed by this act, unless the employee voluntarily relinquishes his continuing contract.

(b) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, who is under continuing contract may be dismissed or may be returned to annual contract status for another 3 years in the discretion of the school board, at the end of the school year, when a recommendation to that effect is submitted in writing to the school board on or before April 1 of any school year, giving good and sufficient reasons therefor, by the superintendent, by the principal if his contract is not under consideration, or by a majority of the school board. The employee whose contract is under consideration shall be duly notified in writing by the party or parties preferring the charges at least 5 days prior to the filing of the written recommendation with the school board, and such notice shall include a copy of the charges and the recommendation to the school board. The school board shall proceed to take appropriate action. Any decision adverse to the employee shall be made by a majority vote of the full membership of the school board. Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68.

(c) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, who is under continuing contract may be suspended or dismissed at any time during the school year; however, the charges against him must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of a crime involving moral turpitude. Whenever such charges are made against any such employee of the school board, the school board may suspend such person without pay; but, if the charges are not sustained, he shall be immediately reinstated, and his back salary shall be paid. In cases of suspension by the school board or by the superintendent, the school board shall determine upon the evidence submitted whether the charges have been sustained and, if the charges are sustained, shall determine either to dis-

miss the employee or fix the terms under which he may be reinstated. If such charges are sustained by a majority vote of the full membership of the school board and such employee is discharged, his contract of employment shall be thereby canceled. Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the school board.

(5) Should a school board have to choose from among its personnel who are on continuing contracts or professional service contracts as to which should be retained, such decisions shall be made pursuant to the terms of a collectively bargained agreement, when one exists. If no such agreement exists, the district school board shall prescribe rules to handle reductions in work force.

(6)(a) Any member of the instructional staff, excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the contract; however, the charges against him must be based on just cause as provided in paragraph (1)(a). Whenever such charges are made against any such employee of the school board, the school board may suspend such person without pay; but, if the charges are not sustained, he shall be immediately reinstated, and his back salary shall be paid. When an employee is notified in writing of such charges, he will have 15 days from receipt of the notice to demand, in writing, a hearing to be conducted at his election in accordance with either subparagraph a. or sub-subparagraph b. of subparagraph (3)(e)4. Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the school board.

(b) Any member of the district administrative or supervisory staff, including any principal but excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the contract; however, the charges against him must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude. Whenever such charges are made against any such employee of the school board, the school board may suspend him without pay; but, if the charges are not sustained, he shall be immediately reinstated, and his back salary shall be paid. In cases of suspension by the school board or by the superintendent, the school board shall determine upon the evidence submitted whether the charges have been sustained and, if the charges are sustained, shall determine either to dismiss the employee or fix the terms under which he may be reinstated. If such charges are sustained by a majority vote of the full membership of the school board and such employee is discharged, his contract of employment shall be thereby canceled. Any such decision adverse to him may be appealed by him pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the school board.

(7) The school board of any given district shall grant continuing service credit for time spent performing duties as a member of the Legislature to any district employee who possesses a professional ser-

vice contract, multiyear contract, or continuing contract.

(8) Notwithstanding any other provision of law, any member who has retired may interrupt retirement and be reemployed in any public school. Any member so reemployed by the same district from which he retired may be employed on a probationary contractual basis as provided in subsection (1); however, no regular retirement employee shall be eligible to renew membership under a retirement system created by chapter 121 or chapter 238.

*History.*—s. 536, ch. 19355, 1939; CGL 1940 Supp. 892(140); s. 21, ch. 23726, 1947; s. 2, ch. 25363, 1949; s. 1, ch. 29890, 1955; s. 1, ch. 31391, 1956; s. 8, ch. 59-371; s. 1, ch. 59-252; s. 1, ch. 59-359; s. 1, ch. 59-421; s. 3, ch. 61-263; s. 12, ch. 63-376; s. 63, ch. 65-239; s. 2, ch. 65-424; s. 2, ch. 67-184; s. 6, ch. 67-387; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 72-21; s. 2, ch. 72-215; s. 38, ch. 73-338; ss. 3, 4, ch. 74-351; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-95; ss. 4, 11, ch. 80-190; s. 8, ch. 80-325; s. 9, ch. 80-378; ss. 2, 3, ch. 81-318; ss. 15, 28, 31, ch. 82-242.

\*Note.—Expires October 1, 1992, pursuant to s. 31, ch. 82-242, and is scheduled for review pursuant to s. 11.61 in advance of that date.

\*Note.—The word "therefor" was inserted by the editors.

\*Note.—The words "membership of the" were inserted by the editors.

**231.361 Vocational teachers; status.**—[The repeal of this section by s. 2, ch. 81-318, was nullified by s. 28, ch. 82-242. Repealed effective October 1, 1992, by s. 31, ch. 82-242, and scheduled for review pursuant to s. 11.61 in advance of that date.]

**231.381 Transfer of sick leave and annual leave.**—In implementing the provisions of ss. 230.23(4)(n) and 402.22(1)(d), educational personnel in Department of Health and Rehabilitative Services residential care facilities who are employed by a district school board may request, and the district school board shall accept, a lump-sum transfer of accumulated sick leave for such personnel to the maximum allowed by policies of the district school board, notwithstanding the provisions of s. 110.122. Educational personnel in Department of Health and Rehabilitative Services residential care facilities who are employed by a district school board under the provisions of s. 402.22(1)(d) may request, and the district school board shall accept, a lump-sum transfer of accumulated annual leave for each person employed by the district school board in a position in the district eligible to accrue vacation leave under policies of the district school board.

*History.*—ss. 3, 5, ch. 80-240; s. 2, ch. 81-318; ss. 17, 28, 31, ch. 82-242.

\*Note.—Expires October 1, 1992, pursuant to s. 31, ch. 82-242, and is scheduled for review pursuant to s. 11.61 in advance of that date.

**231.39 Provisions for leaves of absence.**—All leaves of absence for all district school board employees, except those leaves prescribed by law, shall be granted with or without compensation pursuant to rules adopted by the district school board. Such leaves authorized by the school board shall include, but not be limited to, professional leave and extended professional leave, personal leave, military leave granted in compliance with chapter 115, and maternity leave.

*History.*—s. 539, ch. 19355, 1939; s. 5, ch. 20970, 1941; CGL 892(143); s. 14, ch. 63-376; s. 3, ch. 65-424; s. 7, ch. 67-387; s. 1, ch. 69-300; s. 1, ch. 73-253; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 80-295; ss. 2, 3, ch. 81-318; ss. 18, 28, 31, ch. 82-242.

\*Note.—Expires October 1, 1992, pursuant to s. 31, ch. 82-242, and is scheduled for review pursuant to s. 11.61 in advance of that date.

**231.40 Sick leave.**—

(1) **ELIGIBILITY.**—Any member of the instructional staff or any other employee of a district school