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**DRAFT MEMORANDUM**

To: Honorable Members of the Clay County School Board  
Mr. Addison G. Davis, Superintendent of Schools

From: David J. D'Agata, School Board Attorney

Date: \_\_\_\_\_, 2017

Re: Collective Bargaining Executive Session Attendees

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**QUESTION PRESENTED**

May an assistant superintendent who is considered an "ex-officio member" of the Board's collective bargaining committees properly take part in collective bargaining executive sessions under section 447.605(1) of the Florida Statutes?

**SHORT ANSWER**

Yes, an assistant superintendent's participation in executive sessions would comport with section 447.605(1) of the Florida Statutes such that they may join other bargaining representatives in private meetings with the Board to determine and adequately represent the Board's positions on current or pending bargaining issues.

**DISCUSSION**

Known as *Florida's Public Employee Relations Act* ("PERA"), Chapter 447 of the Florida Statutes provides a host of collective bargaining rights and obligations for both public employees and employers. Its overarching purpose is to promote "harmonious and cooperative relationships between the government and its employees." § 447.201, Fla. Stat.

Under PERA, the chief executive officer ("CEO") of a public agency employer is responsible for representing the agency in labor negotiations. See § 447.203(9), Fla. Stat. With respect to Florida's public schools, the district superintendent is considered the CEO who is "required by statute to advise and counsel with the School Board and to make recommendations regarding numerous matters of policy and administration." *Liberty County NEA/FTP-NEA v. School Board of Liberty County and Laquita Shuler*, 6 FPER para. 11012 p. 17.

With limited statutory exemptions, Florida's "sunshine law" mandates that school board meetings are open to the public, and even collective bargaining negotiations with board employees must remain open to public scrutiny. See §§ 286.011, 447.605(2), Fla. Stat. However, section 447.605(1) of the Florida Statutes expressly permits private meetings/"executive sessions" between the CEO or his/her representative(s) and the governing body which concern current or impending labor negotiations. That serves the

central purpose of a Chapter 447 executive session: to allow negotiating representatives to privately seek direction and information from the public employer relative to its position on issues. See AGO 99-27 (1999). Thus, the Florida Legislature has divided collective bargaining sunshine policy into two parts: (1) when the public employer is meeting with its own side, it is exempt from the Sunshine Law; (2) when the public employer is meeting with the other side, it is not exempt from and must therefore comply with section 286.011 of the Florida Statutes. See *City of Fort Myers v. News-Press Publishing Company, Inc.*, 514 So. 2d 408, 412 (Fla. 2d DCA 1987).

In Fla. AGO 98-06 (1998), then Attorney General Bob Butterworth opined that a superintendent who appointed members to a negotiating committee and completely delegated his collective bargaining duties to the committee could not thereafter take part in executive sessions. One year later, however, Butterworth narrowly circumscribed AGO 98-06 to "the factual circumstances of that opinion" in holding that a city manager could take part in executive sessions between the city commission and "a number of city employees" to whom the city manager turned for help on bargaining issues within their particular knowledge. See Fla. AGO 99-27 (1999). In reaching this conclusion, the AG construed the term "chief executive officer" to mean not only an individual but a group of individuals who were delegated negotiating responsibilities. This broad interpretation of the term "chief executive officer" has been applied in other cases. See, e.g., Fla. AGO 85-99 (1985) (similarly interpreting the term and finding that negotiating committee of city which lacked city administrator could participate in private executive session with city council); *City of Fort Myers, supra*, at 412-13.

It would therefore appear that a public agency CEO, while carrying out statutorily-imposed labor negotiation responsibilities, is authorized to enlist the help of personnel with special knowledge of a collective bargaining issue and include them in an executive session without offending sections 286.011 or 447.605 of the Florida Statutes. Conversely, I have not unearthed any binding or even persuasive legal authority which holds otherwise.

Here, it is my understanding that: (i) the Superintendent and outside labor counsel seek to include CCDS Assistant Superintendent of Business Affairs ("A.S.") in upcoming 447.605(1) executive sessions with the Board concerning pending collective bargaining negotiations; (ii) two committees were previously formed and appointed to represent the Board in such collective bargaining; (iii) the Superintendent has not completely delegated his bargaining responsibilities to either committee; (iv) the Superintendent and the A.S. were identified as "ex officio members" of the committees during this Board's May and June 2017 meetings; and (v) the A.S. has particular knowledge about certain pending bargaining issues which I presume to be related to specific financial and budgeting matters.

## CONCLUSION

In light of these facts and the foregoing legal authority, it is my opinion that the Assistant Superintendent's attendance at collective bargaining executive sessions would comport with section 447.605(1) of the Florida Statutes. Clearly, the Board is authorized to meet

privately with “its own side” – including a currently-serving assistant superintendent – to discuss collective bargaining issues. And it appears that the A.S.’s participation would materially assist the Superintendent/CEO and other negotiating representatives in “seeking direction and information from [the Board] regarding its position on the pending collective bargaining issues.” AGO 99-27. Finally, to the extent that the Board may or may not recognize A.S. as a “full” committee member but rather as an “ex officio member,” the law does not distinguish between the two insofar as § 447.605 is concerned, and it appears that a public agency CEO such as the Superintendent is authorized to enlist the help of any personnel with particular knowledge of the issues pertinent to negotiations and include such personnel in executive sessions without offending 447.605(1).

**DRAFT**