

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITRUS OAKS HOMEOWNERS)
ASSOCIATION, INC., AND JOY)
HUTCHISON, as parent, legal)
guardian and next friend of)
JAMIE PETROV, a minor and)
KRISTA PETROV, a minor,)
)
Petitioners,)
)
vs.) Case No. 05-0160RU
)
ORANGE COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

This matter came on for consideration upon the Joint Motion for Second Amended Final Order (Joint Motion) filed on November 8, 2005, with the Division of Administrative Hearings (DOAH). For the reasons stated herein, the Joint Motion is denied.

Pursuant to Section 120.56, Florida Statutes (2005), the undersigned conducted a three-day administrative hearing of this case on behalf of DOAH and entered a Final Order on July 28, 2005. On August 1, 2005, the undersigned entered an Amended Final Order superseding the Final Order.

On August 2, 2005, Respondent appealed the Amended Final Order to the Fifth District Court of Appeal. On October 14,

2005, the court granted the parties' Joint Motion to Relinquish Jurisdiction to Effect Settlement. In relevant part, the court's Order provides:

[J]urisdiction is relinquished to the Division of Administrative Hearings, Administrative Law Judge Daniel Maury [sic], to and including December 22, 2005, for the purpose requested.

DOAH has jurisdiction over the Joint Motion pursuant to the Order of the Fifth District Court of Appeal.

On November 4, 2005, the parties filed with DOAH an Introduction to Second Amended Final Order and a Second Amended Final Order. On November 8, 2005, the parties filed the Joint Motion. On November 21, 2005, the parties filed a redline version of the Introduction to Second Amended Final Order and Second Amended Final Order.

The Introduction to Second Amended Final Order and the Second Amended Final Order comprise one composite document. For convenience, the two documents are referred to hereinafter as the Second Amended Final Order. The redline version of the Introduction to Second Amended Final Order and redline version of the Second Amended Final Order are referred to as the redline version of the Second Amended Final Order. The redline version of the Second Amended Final Order is attached to this Order.

The entry of this Final Order was delayed because the DOAH clerk's office did not forward the redline version of the Second

Amended Final Order to the undersigned. The administrative secretary for the undersigned unsuccessfully attempted to locate the redline version of the Second Amended Final Order in the clerk's office and made several unsuccessful attempts to obtain a duplicate copy from the parties. The DOAH clerk's office eventually located the document and forwarded it to the undersigned.

The Joint Motion, in relevant part, requests the trier of fact to change findings in the Amended Final Order in nine paragraphs numbered 35-37, 39, 45, 48, 51, 66, and 69. However, the Joint Motion contains no new evidence to support the proposed findings.

With one exception in paragraph 66 of the Amended Final Order, the findings at issue may be summarized for context in the following manner. The director of pupil assignment (Director) for the Orange County School District (District) and the Director's staff conducted several months of public rulemaking workshops and formulated a proposed rule to establish high school attendance zones for some high schools within the District. The Director and her staff recommended a rule to the Superintendent and his Cabinet, and the Superintendent and Cabinet recommended the rule for adoption by the Orange County School Board (Board).

Thereafter, one member of the Board engaged in non-public conferences with staff members who had conducted the public workshops and authored the recommended rule. The Board member developed various proposals to amend the recommended rule, and the Board eventually adopted a rule that included changes effected by the individual Board member. The Amended Final Order found the non-public conferences of the individual Board member and the Director's staff to be private rule development workshops that violated the rulemaking procedures in Subsection 120.54(2), Florida Statutes (2004).

The Joint Motion, in relevant part, seeks to replace findings that the non-public conferences were rulemaking workshops with findings that the non-public conferences were not workshops, but were conferences to "evaluate" the recommended rule and to "explore" other options that the Board "might" adopt. However, the evidence shows that the Board member used the non-public conferences to effect changes in the recommended rule, and that the Board adopted a rule that included the changes effected in the non-public conferences. The Joint Motion does not submit any new evidence to support the proposed findings.

The Joint Motion seeks to change factual findings in paragraphs 36, 45, and 51 into factual allegations by

Petitioners. However, the Joint Motion does not submit any new evidence to support the proposed findings.

The Joint Motion seeks to replace a finding in paragraph 48 that the private rulemaking workshops began on October 26, 2004, with a finding that the activity began on November 29, 2004. However, the Joint Motion does not submit any new evidence to support the proposed findings.

The exception in paragraph 66 proposes a new finding that the individual Board member did not have a conflict of interest under state law. However, neither party raised the issue of a conflict of interest under state law in the administrative hearing.

The issue presented in the administrative hearing was limited to a conflict of interest under the Board's local written policy. The trier of fact found a deemed conflict of interest to exist under the local policy because the individual Board member lived in a neighborhood proximate to a neighborhood affected by the Board member's changed attendance zone, had children enrolled in high school in the affected attendance zone, and voted to adopt a rule that included those changes.

The trier of fact based relevant findings in the Amended Final Order, in part, on the weight of competing evidence in the record of the administrative hearing. The parties have submitted no new evidence to support their proposed findings.

The legislature limits the grounds for changing any fact found in the Amended Final Order to those the legislature prescribes in Subsection 120.68(10), Florida Statutes (2005). DOAH cannot change a finding of fact in the Amended Final Order on any other ground.

The parties may "effect settlement" without an order granting the Joint Motion. The parties are free to agree on any terms of settlement that do not violate applicable law, including Subsection 120.68(10), Florida Statutes (2005).

ORDER

Based on the foregoing reasons, it is

ORDERED that the Joint Motion for Second Amended Final Order is DENIED. DOAH has no further jurisdiction in this matter, and the DOAH file is closed.

DONE AND ORDERED this 19th day of December, 2005, in Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 19th day of December, 2005.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.