

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DANIEL B. GOPMAN,)
)
 Petitioner,)
)
 vs.) Case No. 05-3583
)
 DEPARTMENT OF EDUCATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on November 14 and 15, 2006; January 30, 2007; and June 19, 2007, at sites in Tallahassee and Miami, Florida.

APPEARANCES

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For Respondent: Margaret O'Sullivan Parker, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner is eligible for a Bright Futures scholarship even though he did not take foreign language classes in high school.

PRELIMINARY STATEMENT

The procedural history of this case is somewhat involved and need not be recounted in full here. Anyone who is interested in all the details can visit the website of the Florida Division of Administrative Hearings ("DOAH"), whose address is <http://www.doah.state.fl.us/internet>, and retrieve the docket by performing a "case search."

The essential background is as follows. In or around July 2003, Respondent Florida Department of Education determined that Petitioner Daniel B. Gopman, then a recent high school graduate, was ineligible for a Bright Futures scholarship because he had not taken any foreign language courses in high school. Consequently, the Department denied Mr. Gopman's application for an award. He timely requested that this decision be reconsidered by the Department's Reevaluation Committee, which was done. The end result, however, was the same. By letter dated October 10, 2003, the Department notified Mr. Gopman that the Reevaluation Committee had upheld the original determination of ineligibility, on the same grounds: namely, failure to achieve at least a 3.5 weighted grade point average in 15 credits of college-preparatory academic courses, including two credits of a foreign language.

Mr. Gopman timely appealed the Reevaluation Committee's decision to an Appeals Committee within the Department. The

Appeals Committee affirmed the previous determination of ineligibility, entering a Final Order on January 27, 2004. Mr. Gopman sought judicial review of this Final Order in the First District Court of Appeal. In July 2005, the appellate court held that Mr. Gopman was entitled to a formal hearing at DOAH, which he then requested, giving rise to the instant proceeding.

The final hearing took place over the course of several days, the first of which was August 21, 2006, and the last of which was June 19, 2007. There were a number of reasons for the protracted nature of the hearing but, again, telling them in this Order would serve no useful purpose.

Mr. Gopman testified on his own behalf and called no other witnesses. He offered Petitioner's Exhibits 1 through 24, which were received in evidence.

The Department called the following witnesses: Jack Heinemann, guidance counselor; George A. Nunez, high school principal; Teresa Antworth, State Programs Director, Department of Education, Office of Student Financial Assistance; and Joann Peterson McGonagill, Director of Initial Eligibility, Florida Bright Futures Scholarship Program. In addition, the Department introduced Respondent's Exhibits 1, 2, 3A, 3, 4A, 4, 5, and 6, which were admitted.

The deadline for filing Proposed Recommended Orders—originally December 14, 2007—was enlarged to January 4, 2008, at Mr. Gopman's request. The Department timely filed a Proposed Recommended Order. By letter dated January 3, 2008, Mr. Gopman's counsel informed the undersigned that he would not be submitting a Proposed Recommended Order.

FINDINGS OF FACT

1. At the time of the final hearing, Petitioner Daniel B. Gopman ("Gopman") was a fulltime college student enrolled in the Harriet L. Wilkes Honors College of Florida Atlantic University ("FAU").

2. Respondent Department of Education ("Department") administers the Florida Bright Futures Scholarship Program ("Bright Futures"), among other responsibilities.

3. Before graduating from Dr. Michael M. Krop Senior High School ("Krop") in June 2003, Gopman had applied for a Bright Futures scholarship. Specifically, Gopman had sought a Florida Academic Scholars Award, which is the most generous—and selective—of the several types of scholarship available under Bright Futures. The Department had found him ineligible for a Bright Futures scholarship because Gopman had not earned two high-school credits in a foreign language.¹

4. To his credit, Gopman had taken many academically challenging courses in high school, including honors and

advanced placement courses, and had done quite well, despite having a learning disability that had resulted in his being provided special education services pursuant to an individual education plan ("IEP"). He had not, however, taken any foreign language courses in high school. Instead, after graduating from high school (and before beginning his studies at FAU), Gopman successfully completed two courses of Russian at Miami-Dade Community College ("M-DCC").

5. In the present case, Gopman has suggested that his failure to study a foreign language in high school was due, wholly or in part, to (a) taking the courses prescribed in his IEP, which, coupled with other subjects required for graduation, completely filled his scholastic schedule every semester; and (b) never receiving from school district personnel complete or accurate information concerning the need to take foreign language courses as a condition of qualifying for a Bright Futures scholarship.

6. Lending some support to the first of these purported impediments is a "To Whom It May Concern" letter dated May 30, 2003, which George Nunez, then the principal of Krop, sent to the Department around that time. In this letter, Mr. Nunez urged the Department to grant Gopman an "academic waiver" of the foreign language requirement, arguing that Gopman's failure to take "a second year of a foreign language"—actually, he had not

taken even a first year—"was not due to a conscious oversight on [Gopman's] part" but happened because "the mandates of his IEP" had required him to take an "additional elective" instead "of what would have been other academic electives including the second year of his foreign language."

7. Even if scheduling conflicts had made it impossible for Gopman to take foreign language courses in high school, however, and even if he had been given poor advice regarding the requirements for a Bright Futures award (which Mr. Nunez pointedly did not suggest had occurred), Gopman's eligibility to receive a scholarship would be unchanged, for legal reasons that will be discussed below. In any event, though, the evidence in its entirety does not support Gopman's claims in this regard; rather, it disproves them.

8. Based on the greater weight of the persuasive evidence, it is found that Gopman could have taken two foreign language classes in high school, special education services notwithstanding, had he wanted to do that.² It is found, as well, that Gopman was not misinformed or misled regarding the requirements to qualify for a Bright Futures award. To the contrary, his guidance counselor advised Gopman, in the tenth grade, to start taking foreign language classes soon, while there was still time to complete two years of study before graduating from high school. Gopman told the guidance counselor

that, because he planned to attend an out-of-state college, he would not need foreign language credits for admission (as is generally required for admission to a Florida state university) and was not concerned with Bright Futures eligibility.

CONCLUSIONS OF LAW

9. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2007).

10. The burden of establishing the grounds which demonstrate his eligibility for a Bright Futures award falls on Gopman, who, as the applicant for benefits, must prove that he met the requirements for a scholarship by a preponderance of evidence. See Florida Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981)(burden of proof is usually upon party asserting the affirmative of the issue); see also § 120.57(1)(j), Fla. Stat.

11. Gopman's position comprises the following principal contentions: (1) Gopman met all of the statutory eligibility criteria, which do not include a foreign language requirement. (2) The Department's "policy" of requiring two foreign language credits is an unadopted rule upon which the Department cannot lawfully base its determination of Gopman's substantial interests. (3) Even if the Department's "policy" were enforceable, Gopman still would be eligible for an award because

(a) he earned the requisite foreign language credits at M-DCC;
(b) as a student who received special education services that limited his ability to take electives, he is entitled to a waiver of the foreign language requirement (or some other special treatment, e.g. accepting his M-DCC credits in lieu of high-school credits); and/or (c) school district personnel failed properly to inform him of the scholarship requirements, warranting some sort of special treatment.

12. The general requirements for a Bright Futures scholarship, applicable to all three levels of award, are set forth in Section 1009.531, Florida Statutes (2002),³ as follows:

- (1) To be eligible for an initial award from any of the three types of scholarships under the Florida Bright Futures Scholarship Program, a student must:
 - (a) Be a Florida resident as defined in s. 1009.40 and rules of the State Board of Education.
 - (b) Earn a standard Florida high school diploma or its equivalent as described in s. 1003.43 or s. 1003.45 unless:
 1. The student is enrolled full time in the early admission program of an eligible postsecondary education institution or completes a home education program according to s. 1002.41; or
 2. The student earns a high school diploma from a non-Florida school while living with a parent or guardian who is on military or public service assignment away from Florida.
 - (c) Be accepted by and enroll in an eligible Florida public or independent postsecondary education institution.
 - (d) Be enrolled for at least 6 semester credit hours or the equivalent in quarter hours or clock hours.

(e) Not have been found guilty of, or plead nolo contendere to, a felony charge, unless the student has been granted clemency by the Governor and Cabinet sitting as the Executive Office of Clemency.

There has never been any dispute that Gopman met all of the foregoing general requirements.

13. In addition to the general requirements, a student must meet scholarship-specific requirements to be eligible for a specific type of award. As relevant to this case, the specific requirements for the Academic Scholars Award are the following:

(1) A student is eligible for a Florida Academic Scholars award if the student meets the general eligibility requirements for the Florida Bright Futures Scholarship Program and the student:

(a) Has achieved a 3.5 weighted grade point average as calculated pursuant to s. 1009.531, or its equivalent, in high school courses that are designated by the State Board of Education as college-preparatory academic courses

§ 1009.534, Fla. Stat. (2002).

14. It is undisputed that Gopman achieved at least a 3.5 weighted grade point average ("GPA") in duly designated college-preparatory academic courses ("C-PAC"). He contends that this suffices to make him eligible for an award (all other criteria having been satisfied) because Section 1009.534 does not require either (a) that the requisite GPA be computed based on any particular number of C-PAC credits⁴ or, more importantly, (b) that such C-PAC credits as the applicant has earned, however

many that might be, be distributed among any particular academic subjects. (The State Board of Education has designated dozens, if not hundreds, of high school courses as C-PAC, as will be discussed below.) Gopman maintains further that Section 1003.43, Florida Statutes, which prescribes the general requirements for high school graduation, controls the credit-distribution issue—not Section 1009.534.

15. Section 1003.43, Florida Statutes (2002), provides in pertinent part as follows:

- (1) Graduation requires successful completion of either a minimum of 24 academic credits in grades 9 through 12 or an International Baccalaureate curriculum. The 24 credits shall be distributed as follows:
 - (a) Four credits in English, with major concentration in composition and literature.
 - (b) Three credits in mathematics. Effective for students entering the 9th grade in the 1997-1998 school year and thereafter, one of these credits must be Algebra I, a series of courses equivalent to Algebra I, or a higher-level mathematics course.
 - (c) Three credits in science, two of which must have a laboratory component. The State Board of Education may grant an annual waiver of the laboratory requirement to a district school board that certifies that its laboratory facilities are inadequate, provided the district school board submits a capital outlay plan to provide adequate facilities and makes the funding of this plan a priority of the district school board. Agriscience Foundations I, the core course in secondary Agriscience and Natural Resources programs, counts as one of the science credits.
 - (d) One credit in American history.

(e) One credit in world history, including a comparative study of the history, doctrines, and objectives of all major political systems.

(f) One-half credit in economics, including a comparative study of the history, doctrines, and objectives of all major economic systems. The Florida Council on Economic Education shall provide technical assistance to the department and district school boards in developing curriculum materials for the study of economics.

(g) One-half credit in American government, including study of the Constitution of the United States. For students entering the 9th grade in the 1997-1998 school year and thereafter, the study of Florida government, including study of the State Constitution, the three branches of state government, and municipal and county government, shall be included as part of the required study of American government.

(h)1. One credit in practical arts career and technical education or exploratory career and technical education. Any career and technical education course as defined in s. 1003.01 may be taken to satisfy the high school graduation requirement for one credit in practical arts or exploratory career and technical education provided in this subparagraph;

2. One credit in performing fine arts to be selected from music, dance, drama, painting, or sculpture. A course in any art form, in addition to painting or sculpture, that requires manual dexterity, or a course in speech and debate, may be taken to satisfy the high school graduation requirement for one credit in performing arts pursuant to this subparagraph; or

3. One-half credit each in practical arts career and technical education or exploratory career and technical education and performing fine arts, as defined in this paragraph.

Such credit for practical arts career and technical education or exploratory career and technical education or for performing fine arts shall be made available in the 9th grade, and students shall be scheduled into a 9th grade course as a priority.

(i) One-half credit in life management skills to include consumer education, positive emotional development, marriage and relationship skill-based education, nutrition, prevention of human immunodeficiency virus infection and acquired immune deficiency syndrome and other sexually transmissible diseases, benefits of sexual abstinence and consequences of teenage pregnancy, information and instruction on breast cancer detection and breast self-examination, cardiopulmonary resuscitation, drug education, and the hazards of smoking. Such credit shall be given for a course to be taken by all students in either the 9th or 10th grade.

(j) One credit in physical education to include assessment, improvement, and maintenance of personal fitness. Participation in an interscholastic sport at the junior varsity or varsity level, for two full seasons, shall satisfy the one-credit requirement in physical education if the student passes a competency test on personal fitness with a score of "C" or better. The competency test on personal fitness must be developed by the Department of Education. A district school board may not require that the one credit in physical education be taken during the 9th grade year. Completion of one semester with a grade of "C" or better in a marching band class or in a physical activity class that requires participation in marching band activities as an extracurricular activity shall satisfy a one-half credit requirement in physical education. This one-half credit may not be used to satisfy the personal fitness requirement or the requirement for adaptive

physical education under an individual educational plan (IEP) or 504 plan.
(k) Eight and one-half elective credits.

District school boards may award a maximum of one-half credit in social studies and one-half elective credit for student completion of nonpaid voluntary community or school service work. Students choosing this option must complete a minimum of 75 hours of service in order to earn the one-half credit in either category of instruction. Credit may not be earned for service provided as a result of court action. District school boards that approve the award of credit for student volunteer service shall develop guidelines regarding the award of the credit, and school principals are responsible for approving specific volunteer activities. A course designated in the Course Code Directory as grade 9 through grade 12 that is taken below the 9th grade may be used to satisfy high school graduation requirements or Florida Academic Scholars award requirements as specified in a district school board's student progression plan. A student shall be granted credit toward meeting the requirements of this subsection for equivalent courses, as identified pursuant to s. 1007.271(6), taken through dual enrollment.

As is clear on the face of the Section 1003.43, foreign language credits are not required for high school graduation.

16. Gopman reasons, therefore, that in determining whether an applicant has satisfied the GPA requirement under Section 1009.534(1)(a), Florida Statutes (2002), the Department must look only at the C-PAC on the applicant's transcript, which need not necessarily include foreign language credits. The logical

implication of Gopman's argument (although he did not actually say this) is that any applicant having at least two C-PAC on his final transcript would meet the GPA requirement of Section 1009.534(1)(a) if his GPA in those courses were 3.5 or better, regardless of which C-PAC subject(s) (e.g. English, math, science, etc.) the student had taken. Gopman did not need to press the argument quite this far, however, because he himself had at least 13 credits of C-PAC, and his GPA in those courses was higher than 3.5.

17. Gopman's reading of Section 1009.534(1)(a) reflects a plausible understanding, at least, of the statute's plain language. Yet, on closer examination, it becomes apparent that if the statute were implemented according to this literal interpretation, the results might be unreasonable, even unjust. Imagine, for example, a student who took just three C-PAC in high school, achieving a 4.0 GPA in them. Imagine another student who took the same three C-PAC as the first, achieving a 4.0 GPA in them, but who also earned 12 more credits in C-PAC, in which his grades were not consistently as good, so that his overall GPA in C-PAC was 3.4—respectable, certainly, but short of the Section 1009.534(1)(a) mark. According to Gopman, the first student would be eligible for an Academic Scholars Award (provided he met all the other requirements), while the second one would not be, even though (indeed, probably because) his

high school career was the more academically challenging one. Not only might this seem unfair, but also it would provide an incentive for students to take fewer C-PAC as a rational strategy for improving their chances of meeting the eligibility requirements for the top Bright Futures award, which latter almost certainly was not the legislature's intent.

18. Whether to avoid the foregoing problems or for other reasons, the State Board of Education decided that, for Bright Futures purposes, the applicant's GPA must be computed on no fewer than 15 (and no more than 19⁵) credits of C-PAC. It decided further that those 15 credits must be distributed among specific academic subjects, including two sequential foreign language courses. Taken together, these decisions comprise a set of "C-PAC credit-distribution requirements" of which the foreign language requirement is merely a component.

19. Gopman contends that the foreign language requirement is an unadopted rule (or rule-by-definition)—that is, an agency statement of general applicability that meets the definition of the term "rule" but has not been properly adopted as a rule according to the Administrative Procedure Act. Gopman would be on firm legal ground here except for one thing: the State Board of Education has adopted its C-PAC credit-distribution requirements as rule.

20. Florida Administrative Code (2002) Rule 6A-1.09441(5) provides as follows:

The "Course Code Directory and Instructional Personnel Assignments 2002-2003" is hereby incorporated by reference and made a part of this rule. The Commissioner may publish the document in appropriate and useful formats such as printed copy, electronic database access, or electronic disc. The directory may be obtained from the Division of Public Schools and Community Education, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399. The Commissioner of Education may approve additional courses for which funding could be generated through the Florida Education Finance Program. Such additional course listings will be made available as approved.

(Emphasis added.)

21. The Course Code Directory and Instructional Personnel Assignments 2002-2003 ("CCD"), incorporated by reference into Rule 6A-1.09441 and hence adopted in its entirety as part of the Rule, contains an abundance of detailed information relating to the curricula and courses available in Florida's public schools. Among many other things, the CCD lists every course that can be taken for credit toward high school graduation, together with a designation of each course's relative degree of difficulty (e.g. remedial, regular, college preparatory, honors, etc.). It also sets forth the standards governing Bright Futures, providing in pertinent part as follows:

<i>Requirements</i>	<i>Florida Academic Scholars Award (FAS)</i>
Grade Point Average (GPA) * * *	<ul style="list-style-type: none"> • 3.5 weighted GPA using the credits listed below . . .
Required Credits * * *	<p>Courses must include 15 credits of [C-PAC].</p> <p>4 English . . . 3 Mathematics . . . 3 Natural Sciences . . . 3 Social Science 2 Foreign Language (in the same <u>language</u>) 15 Credits</p> <p>* * *</p>

CCD (Section 1: Graduation Requirements and Special Program Requirements), at 17-18.

22. It is permissible for an agency to incorporate extrinsic material into a rule and thereby make the extrinsic material part of the rule. See § 120.54(1)(i)1., Fla. Stat.; Fla. Admin. Code R. 1S-1.005. The foreign language requirement is, therefore, an existing, adopted rule.

23. As an adopted rule, the foreign language requirement is considered "presumptively valid, or merely voidable, and must be given legal effect [unless and] until invalidated in a section 120.56 rule challenge proceeding." State Bd. of

Optometry v. Florida Soc. of Ophthalmology, 538 So. 2d 878, 889 (Fla. 1st DCA 1988); see also § 120.56(3)(b), Florida Statutes (rule declared invalid by ALJ becomes void when time for taking appeal expires). Because Rule 6A-1.09441, of which the foreign language requirement is a part, has not been invalidated pursuant to Section 120.56, Florida Statutes, the undersigned and the Department must give full effect to such Rule—and follow it. E.g. Vantage Healthcare Corp. v. Agency for Health Care Admin., 687 So. 2d 306, 308 (Fla. 1st DCA 1997)(an agency must follow its rules).

24. Gopman argued at hearing that the Department had surprised him by invoking Rule 6A-1.09441 late in the proceeding, long after the litigation had started. While this might be true, it is also irrelevant. The law, after all, is the law. The Department is entitled to rely on Rule 6A-1.0944—indeed is bound to follow it—even if the Department were slow to discover the Rule. And, of course, the undersigned is obligated to follow applicable law, whether the parties refer him to it or not.

25. It is therefore concluded that, contrary to Gopman's contentions, the foreign language requirement is not an unadopted rule. Rather, to repeat for emphasis, it is an existing, adopted, presumptively valid rule, which accordingly must be given the full force and effect of law.

26. Because the foreign language requirement is enforceable, it must next be decided whether Gopman met the requirement or, alternatively, should be excused from complying therewith.

27. In asserting that he did, in fact, satisfy the foreign language requirement, Gopman points to the credits of Russian that he earned at M-DCC and argues that, because the statutes do not require that all of the scholarship eligibility criteria be met prior to high school graduation, these college credits should count as fulfilling the foreign language requirement.

28. Gopman is correct that some of the eligibility requirements concern matters that necessarily occur after high school graduation. For example, to receive a scholarship, the applicant actually must be "enrolled for at least 6 semester credit hours or the equivalent in quarter hours or clock hours" at an eligible postsecondary institution. See § 1009.531(1)(c), (d), Fla. Stat. (2002). Gopman errs, however, in reasoning from this premise to the conclusion that any academic criterion may be satisfied after high school graduation.

29. First of all, as the statute makes clear, the GPA requirement (to which the foreign language requirement is secondary) must be met in connection with "high school courses." See § 1009.534(1)(a), Fla. Stat. (2002). This is unambiguous language. As used in common, everyday discourse, the phrase

"high school courses" plainly refers to courses which are taken for high school credit (including dual enrollment courses), completed while enrolled in high school, and awarded a grade that becomes part of a student's high school record. Courses taken after high school graduation at a community college or other postsecondary institution, exclusively for college credit, are not "high school courses" under any reasonable understanding of these words.

30. Confirming the correctness of this commonsense implementation of Section 1009.534(1)(a), Florida Statutes, is a second statutory provision, namely Section 1009.531(5), which provides as follows:

A student who wishes to qualify for a particular award within the Florida Bright Futures Scholarship Program, but who does not meet all of the requirements for that level of award, may, nevertheless, receive the award if the principal of the student's school or the district superintendent verifies that the deficiency is caused by the fact that school district personnel provided inaccurate or incomplete information to the student. The school district must provide a means for the student to correct the deficiencies and the student must correct them, either by completing comparable work at the postsecondary institution or by completing a directed individualized study program developed and administered by the school district. If the student does not complete the requirements by December 31 immediately following high school graduation, the

student is ineligible to participate in the program.

(Emphasis added.)

31. Section 1009.531(5), Florida Statutes (2002), affords a grace period of up to approximately six months after graduation from high school to cure a deficiency in the applicant's academic record, an accommodation that is neither automatic nor widely available. Of course, such a grace period would be superfluous if high school graduation were not the deadline for completing the academic requirements for a Bright Futures award. Section 1009.531(5) plainly takes for granted that where the academic requirements for a scholarship were not satisfied by high school graduation, which was precisely Gopman's deficiency, the applicant will be found ineligible in the run of cases; indeed, without this presupposition, the statute would make little or no sense.

32. It is concluded, therefore, that Gopman's M-DCC credits, earned after his graduation from high school, cannot be counted as fulfilling the foreign language requirement for a Bright Futures scholarship.

33. Gopman contends that his M-DCC credits should be counted (or the foreign language requirement waived) either because he received special education services in high school that precluded his taking foreign language classes, or because

school district personnel failed fully to apprise him that he would be ineligible for a Bright Futures award unless he graduated with two credits of a foreign language on his high school transcript.

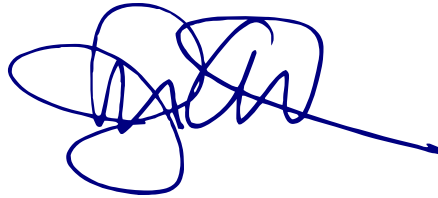
34. There is no statutory warrant, however, for granting Gopman special treatment along these lines. The only provision in the law that permits the Bright Futures requirements to be bent is Section 1009.531(5), Florida Statutes (2002), which was quoted above. Gopman did not qualify for the limited grace period available under this statute as a remedy for "misadvisement" because, as a matter of fact, neither the principal of his high school nor the district superintendent ever verified that school district personnel had provided him inaccurate or incomplete information, which latter in fact had not happened. Absent such verification, resort to Section 1009.531(5) cannot be had.

35. The undersigned is not inclined to fashion a remedy that the policymakers have not seen fit to enact. Finding no statutory (or rule based) authorization for waiving, or granting a variance from, the applicable requirements for an award, the undersigned concludes that such relief is unavailable, and that Gopman is not entitled to special treatment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED Daniel B. Gopman's application for a Bright Futures scholarship be denied because he failed to meet the foreign language requirement, and that the Department enter a final order consistent herewith.

DONE AND ENTERED this 25th day of January, 2008, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of January, 2008.

ENDNOTES

^{1/} Gopman was found ineligible, based on the absence of foreign language credits, for both the Florida Academic Scholars Award and the Florida Merit Scholars Award, which latter, being less selective, provides a lower level of funding. The Department also determined that Gopman was not eligible to receive a Florida Gold Seal Vocational Scholars Award because he was missing, not foreign language credits (which are not required for this level of award), but other required credits (not needed

for either the Academic Scholars Award or the Merit Scholars Award). Gopman has challenged here the "foreign language requirement" as it relates to the Academic Scholars Award, but his arguments would apply with equal force to the eligibility criteria for the Merit Scholars Award, which criteria include the same foreign language requirement. If, however, it were concluded that Gopman is eligible to receive a Bright Futures scholarship despite his failure to take a foreign language in high school, then he would qualify for the Academic Scholars Award—the highest level of award available. That being the case, the undersigned will concentrate, as the parties have focused, on the requirements for an Academic Scholars Award, without further mentioning or examining the parallel requirements for a Merit Scholars Award. Moreover, because Gopman has not raised any issues concerning the Department's decision that he was ineligible for the Gold Seal Vocational Scholars Award, the undersigned will not discuss the requirements for that particular level of award, just as the parties have not discussed them either.

^{2/} Mr. Nunez's letter of May 30, 2003, is some evidence contrary to this finding, to be sure, but it is not, in the undersigned's judgment as the fact-finder, persuasive evidence on the matter; to the extent inconsistent with the findings herein, Mr. Nunez's letter is rejected as being against the weight of the evidence.

^{3/} Neither party took a firm position concerning which version of the statutes governs the instant dispute. As it happens, the governing law is the same today, in relevant part, as it was during the 2002-03 school year, which means that the same conclusions will be reached in this case whichever statute-year is chosen as controlling. The undersigned has determined that, because a student must apply for a Bright Futures scholarship no later than high school graduation and have met all the academic requirements for an initial award by that time (or shortly thereafter), the applicable law is that which was in effect at the time Gopman graduated from high school in June 2003.

^{4/} Because the statute specifies that the minimum GPA of 3.5 must be based on grades earned in "high school courses" (plural), and because it would not make sense to refer to a grade point "average" if only one grade were sufficient, the undersigned assumes Gopman would agree (although he did not actually take this position) that more than one C-PAC must be taken to meet the GPA requirement.

^{5/} The maximum number of credits was later reduced to 18. This change would not have affected Gopman's eligibility.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.