

STATE OF FLORIDA
DEPARTMENT OF EDUCATION

FILED
2007 MAY -9 P 1:09
DIVISION OF
ADMINISTRATIVE
HEARINGS

JOHN WINN¹
AS COMMISSIONER OF EDUCATION
Petitioner,

vs.

Case No. 06-5074
DOE Case No.

MUSKATEER'S ACADEMY,
Respondent,

FINAL ORDER

The Commissioner of the Florida Department of Education hereby enters this Final Order pursuant to Sections 120.569 and 120.57, F.S.

PRELIMINARY STATEMENT

This cause is before the Department of Education on review of a Recommended Order issued by the assigned Administrative Law Judge, John G. Van Laningham, of the Division of Administrative Hearings (DOAH). On April 2, 2007, the Administrative Law Judge submitted his recommended order to the Department, a copy of which is attached hereto and incorporated by reference. Respondent filed an exception to the recommended order on April 17, 2007. Petitioner filed a response to the exception on April 27, 2007.

¹ Commissioner Winn has been succeeded by Commissioner Blomberg; however for ease of reference, the style of the case has not been changed.

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DEPT. OF EDUCATION
TALLAHASSEE FLA

EXCEPTION

Respondent contends that the Recommended Order departs from the essential requirements of law in finding that Muskateer's Academy intentionally engaged in fraudulent activity by reporting that students OF, NP, and CM were attending the Academy during the 2006-2007 school year. Petitioner contends that the Recommended Order departs from the essential requirements of law because the students were attending the Academy in the 2006-2007 school year. Respondent relies upon testimony of three witnesses, Michael Nelson, CM and CM's father, as well as several documents identified as OF's folder and exams, NP's folder and the attendance records for NP and CM.

The nature of the exception is a challenge to factual findings made by the Administrative Law Judge. The standard of review imposed upon an agency when reviewing factual findings made by an administrative law judge does not allow the agency to reject or modify a finding unless a review of the complete record demonstrates that such finding is not based upon competent, substantial evidence. See, McDonald v. Dep't of Banking and Finance, 346 So.2d 569 (Fla. 1st DCA 1977); Freeze v. Dep't of Business Regulation, 556 So.2d 1204 (Fla. 5th DCA 1990). An agency may not reweigh the evidence, resolve conflicts in the evidence or judge the credibility of the witnesses, as those are evidentiary matters within the province of the administrative law judge as the trier of fact. Prysi v. Dep't of Health, 823 So.2d 1823 (Fla. 1st DCA 2002).

Thus, without relying upon those matters that fall within the province of the Administrative Law Judge, the burden on the party filing an exception to a factual finding is to demonstrate that the finding is not based upon competent, substantial evidence

presented at the hearing. In meeting this burden, the party filing an exception specifically identifies the portion of the recommended order excepted to by page number or paragraph and supports the exception with specific citations to the record. In this regard, Section 120.57(1)(k) provides in part that

an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

The exception filed by the Respondent does not identify the disputed portion of the recommended order by page number or paragraph and also fails to include any citations to the record for the testimony or documentary evidence relied to support the exception. Based upon the failure to include appropriate and specific citations to the record and to identify the portions of the Recommended Order excepted to by the Respondent, the agency declines to rule on the exception on the merits and adopts the Recommended Order.


CONCLUSION

Accordingly, it is ORDERED and ADJUDGED that the Recommended Order of the hearing officer is adopted. It is further ORDERED that payment of McKay Scholarship funds to Respondent Muskateer's Academy for the 2006-2007 school years is suspended. It is further ORDERED that participation by Respondent Muskateer's Academy in the McKay Scholarship Program is revoked. It is further ORDERED that the relief requested in Respondent's Exceptions to the April 2, 2007 Recommended Order Issued by Administrative Law Judge John G. Van Laningham is DENIED.

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. PURSUANT TO 120.68 (2), FLORIDA STATUTES, JUDICIAL REVIEW OF THIS PROCEEDING MAY BE INSTITUTED BY FILING A NOTICE OF APPEAL IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. SUCH NOTICE OF APPEAL MUST BE FILED WITH THE DISTRICT COURT OF APPEAL WITHIN THIRTY (30) CALENDAR DAYS OF THE DATE THIS ORDER IS FILED IN THE OFFICIAL RECORDS OF THE DEPARTMENT OF EDUCATION, AS INDICATED IN THE CERTIFICATE OF THE AGENCY CLERK BELOW, OR FURTHER REVIEW WILL BE BARRED.

DONE AND ORDERED this 4 day of May, 2007, in Tallahassee, Florida.

STATE OF FLORIDA
DEPARTMENT OF EDUCATION


Jeanine Blomberg, Commissioner
Department of Education

CERTIFICATE OF THE AGENCY CLERK

I HEREBY CERTIFY that the above FINAL ORDER has been filed with the Agency Clerk of the Department of Education this 4 day of May, 2007, and that a true and correct copy has been furnished by U.S. mail to the following:

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STATE OF FLORIDA
DEPARTMENT OF EDUCATION

A handwritten signature in cursive script, appearing to read "Lynn Abbott", written over a horizontal line.

LYNN ABBOTT,
Agency Clerk