STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TY FISCHER AND JODY FISCHER, AS PARENTS, LEGAL GUARDIANS, AND NEXT FRIENDS OF ERICA FISCHER, A MINOR, AND LUCAS FISCHER, A MINOR; STEPHEN W. ZEISE AND JOANNE ZEISE, AS PARENTS, LEGAL GUARDIANS, AND NEXT FRIENDS OF DIANE ELIZABETH ZEISE, A MINOR, AND MELISSA CHRISTINE ZEISE, A MINOR; ET AL.,	)	
Petitioners,	)	
vs.	)	Case No. 07-2760RU
ORANGE COUNTY SCHOOL BOARD,	)	
Respondent.	)	

FINAL ORDER

On November 28 through 30, 2007, a formal administrative hearing in this case was held in Orlando, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioners: James A. Gustino, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether the adoption of a rule by the Orange County School Board (Respondent) creating and revising high school attendance zones is an invalid exercise of delegated legislative authority.

PRELIMINARY STATEMENT

On June 20, 2007, a Petition/Request for Determination of Invalidity of Rule ("Petition") was filed by: Ty Fischer and Jody Fischer, as parents, legal guardians, and next friends of Erica Fischer, a minor, and Lucas Fischer, a minor; Stephen W. Zeise and Joanne Zeise, as parents, legal guardians, and next friends of Diane Elizabeth Zeise, a minor, and Melissa Christine Zeise, a minor; Steve Eisinger and Sherri Eisinger, as parents, legal guardians, and next friends of Robert Eisinger, a minor; Tambra Blevins and Michael Blevins, as parents, legal guardians, and next friends of Zachary Blevins, a minor, and Austin Blevins, a minor; Jack Claiborne and Deanne Claiborne, as parents, legal guardians, and next friends of Austin Robert Claiborne, a minor, and Garrett Randall Claiborne, a minor; John Farley and Joanne Farley, as parents, legal guardians, and next friends of Samantha Farley, a minor, and Jennifer Farley, a minor; Robert D. Neal and Dennine Neal, as parents, legal

guardians, and next friends of Jordan Neal, a minor; James Frey and Catherine Frey, as parents, legal guardians, and next friends of Jason Frey, a minor; Robert Knecht and Rhonda Knecht, as parents, legal guardians, and next friends of Connor August Knecht, a minor; Frank Henry and Joni Henry, as parents, legal guardians, and next friends of Jolie Henry, a minor; Ginger Sigmon Hefner, as parent, legal guardian and next friend of Ashly Hefner, a minor; Debra Durgins, as parent, legal guardian and next friend of Johnny Brinson, a minor, Ashley Thomas, a minor, and Rudy Thomas, a minor; Susan Marie Kirwan, as parent, legal guardian and next friend of Victoria Catherine Kirwan, a minor, and Shawna Marie Kirwan, a minor; Eduardo J. Cardenas, Sr., and Dulce M. Cardenas, as parents, legal guardians, and next friends of Isabel Cardenas, a minor; Tina Bean, as parent, legal guardian and next friend of Chelsea Bean, a minor, and Erin Bean, a minor; Scott Meeks and Kim Meeks, as parents, legal guardians, and next friends of Emily Meeks, a minor; Danny Burnett and Diane Burnett, as parents, legal guardians, and next friends of Abigayle Burnett, a minor; Jeffrey Ingram and Lisa Ingram, as parents, legal guardians, and next friends of Tyler Ingram, a minor; Nancy A. Rocker, as parent, legal guardian and next friend of Cyle Emerson, a minor, and Caitlyn Emerson, a minor; Michael D. Eddy and Sonja Wolfe-Eddy, as parents, legal guardians, and next

friends of Breggin Eddy, a minor; Tim MacAllister and Kim MacAllister, as parents, legal guardians, and next friends of Matthew MacAllister, a minor; Billy R. Word and Andrea Welch Word, as parents, legal guardians, and next friends of Kayla Welch, a minor, and Kaytlynne Welch, a minor; Daniel Leno and Linda Leno, as parents, legal guardians, and next friends of Jessica Leno, a minor, and Danny Leno, a minor; and Kenneth Wear and Catherine R. Wear, as parents, legal guardians, and next friends of Carol-Ann Wear, a minor.

On June 21, 2007, the case was assigned to the undersigned Administrative Law Judge and, by Notice of Hearing issued on that date, the hearing was scheduled to commence on July 17, 2007, pursuant to Subsection 120.56(1)(c), Florida Statutes (2007).[1] The case was twice continued on the basis of joint requests by the parties and eventually was heard on November 28 through 30, 2007.

At the hearing, the Petitioners presented the testimony of seven witnesses and had Exhibits numbered 1 through 11 admitted into evidence. The Respondent presented the testimony of three witnesses and had Exhibits numbered 12, 20, 21, 28 through 30, 43, 44, and 48 through 51 admitted into evidence. One joint exhibit was also admitted into evidence.

Petitioners' Exhibit 2 and Respondent's Exhibit 12 were the same document, and the parties stipulated, after the Petitioners'

exhibit had been admitted, to the use of the Respondent's exhibit; accordingly, Petitioners' Exhibit 2 is not included in the record.

The parties waived the deadline set forth at Subsection 120.56(1)(d), Florida Statutes, that requires this Final Order be issued within 30 days after conclusion of the hearing. The six-volume Transcript of the hearing was filed on January 14, 2008. By agreement of the parties, Proposed Final Orders were filed on February 11, 2008.

It should be noted that although this rule challenge was initially identified by the Division of Administrative Hearings (DOAH) as being directed towards an unpromulgated rule, the challenge was filed against a school rezoning plan that had been formally adopted by the Respondent.

The challenged rule was subsequently implemented by the Respondent. Except for the student-Petitioners involved in this case, the students residing within the revised attendance zones at issue in this proceeding are attending the schools assigned under the new rezoning plan, or are attending schools under school board policies whereby students are permitted to attend schools outside their assigned zones. The student-Petitioners in this case were permitted by the Respondent to continue attending their previously-assigned school during the pendency of this dispute.

FINDINGS OF FACT

1. The Respondent is responsible for operation of the public school system in Orange County, Florida.

2. Specifically relevant to this dispute, such responsibilities include planning all aspects of physical plant operations sufficient to accommodate student enrollment and creation of student attendance zones to populate new and existing school facilities.

3. School facility planning is a multi-year process in Orange County, due to significant population growth historically experienced in the metropolitan Orlando area.

4. The Respondent has developed a standard prototype high school facility designed to accommodate 2,776 students. The development and deployment of the prototype facility is not at issue in this proceeding.

5. In projecting the need to construct new schools, the Respondent's planning staff generally relies upon population growth projections supplied by various local government agencies including the local municipalities within an affected area. In this case, the information reviewed included the general routine data including growth projections received from the City of Ocoee.

6. Western Orange County, including the municipalities of Ocoee and Wekiva, has been a rapidly-growing part of the county, primarily because of the availability of undeveloped land in that portion of the county. The number of schools in the area doubled within the past six years. Three additional new schools

are included in the Respondent's ten-year planning horizon for the area.

7. Ocoee High School was constructed to relieve overcrowding at Apopka and West Orange High Schools, and to accommodate 2,776 students. Despite having opened only two years ago, 3,236 students were enrolled at Ocoee High School for the 2006-2007 school year, and the student population was projected at 3,300 to 3,400 students for the 2007-2008 school year.

8. In 2006, the staff of the Orange County School District began the process of creating a school zoning plan intended to populate Wekiva High School, a new facility opening for the start of the 2007-2008 school year. Wekiva High School was constructed to address excess student enrollment at Ocoee and Apopka High Schools and to accommodate projected growth in the vicinity of the school.

9. The Respondent eventually adopted a rezoning plan (the "initial plan") intended to populate the new school with students from other area schools.

10. The Petitioners are parents and students residing in an area previously zoned for attendance at Ocoee High School. (During the rezoning process, the Petitioners' residential area was identified as "Area Z.") Under the initial plan, the student-Petitioners would have been assigned to attend Wekiva

High School, approximately five miles from Area Z.

11. The initial plan was the subject of a legal challenge by many of the same Petitioners involved in the instant case. On April 10, 2007, the Respondent rescinded the initial plan.

12. Following the rescission of the initial plan, the Respondent immediately adopted a new 13-step School Attendance Rezoning Process to govern future school rezoning efforts. The rezoning process took effect upon adoption and has not been challenged in this proceeding.

13. On April 11, 2007, the Respondent initiated a second attempt to create a zoning plan to populate Wekiva High School and, ultimately, adopted the plan at issue in this proceeding (the "current plan").

14. Under the current plan, the students residing in Area Z were again assigned to attend Wekiva High School.

15. The Petitioners have asserted that the current plan is an invalid exercise of delegated legislative authority in that it is "(a) arbitrary and capricious, (b) not supported by competent or substantial evidence grounded in the specific variables identified by School Board policy as controlling in

such matters, and (c) is the product of procedural errors that render the Rezoning Ruling unfair and/or incorrect."

16. Four of the Petitioners testified at the hearing on behalf of themselves and their children: Joanne Zeise, Tambra Blevins, James Frey, and Tim MacAllister.

17. Joanne Zeise is the mother of two daughters. One daughter is a senior at Ocoee High School and was not affected by this rezoning proposal. There is no senior class at Wekiva High School. Seniors were allowed to remain in, and graduate from, their previously assigned schools.

18. Ms. Zeise's other daughter is in the 7th grade and, under the current plan, will go to Wekiva High School. The child has not yet attended any high school. Ms. Zeise had hoped that her younger daughter would be assigned to Ocoee High School.

19. Ms. Zeise was previously very involved with Ocoee High School activities. She assisted in setting up the school library, including unpacking and shelving books. She and other parents were apparently instrumental in establishing the school's aquatics program. Her participation in school activities waned as she became involved in the effort to keep her neighborhood assigned to the Ocoee High School attendance zone.

20. Ms. Zeise is opposed to all of the proposed rezoning options that affected her neighborhood. She helped organize neighbors to oppose the rezoning, conducted meetings in her home, and helped raise funds to obtain legal counsel. She attended community and School Board meetings, the Bi-Racial Advisory Committee meeting addressed herein, and met individually with some, if not all, members of the School Board to discuss her opposition to the rezoning.

21. Ms. Zeise is concerned about the alteration to school "feeder patterns" further addressed herein. She testified that her neighborhood had been rezoned previously and that she expected it to be rezoned again, if and when the school district implements improvements to Evans High School, which lies to the east of her neighborhood.

22. Although Ms. Zeise testified as to curriculum differences between Ocoee and Wekiva High Schools, specifically as to upper level math and art classes, the evidence fails to establish that such classes will not be available at Wekiva High School to her younger daughter, who has not yet entered high school. Further, there is no evidence that such classes will remain available to students at Ocoee High School.

23. Ms. Zeise testified that she requested demographic data of assorted residential areas at various meetings so that she could propose additional zoning options, but stated that the requests were verbal and undocumented.

24. School district staff testified that they responded to all formal information requests. The evidence is insufficient to establish that the Respondent failed to comply with any requests for information.

25. Tambra Blevins is the mother of a 9th grade son who will transfer from Ocoee High School to Wekiva High School under the current plan. Ms. Blevins testified that he is unhappy and emotional with the prospect of being severed from school friends by the rezoning, but acknowledged that his academic performance has been stable. There was no evidence offered that the change in schools would impact his academic opportunities or performance.

26. Ms. Blevins was also involved with organizing the effort to oppose the rezoning plan and helping to raise funds and to distribute information to persons who were expected to oppose the plan.

27. There is no credible evidence that Ms. Blevins requested information or data from the Respondent which was not provided.

28. James Frey is the father of a son, a student in the 10th grade at Ocoee High School, who will transfer to Wekiva High School under the current plan. Mr. Frey testified that his son was feeling emotionally stressed by the rezoning changes, but that his grades remained high and that he had a good attitude.

29. Mr. Frey noted that there are curriculum differences between the two schools. The evidence fails to establish that the academic curriculum at either school is superior to the other.

30. Mr. Frey testified that his son wanted to remain at Ocoee High School to take advantage of a building construction program offered there, and which is not offered at Wekiva High School. His son has not yet enrolled in the building construction program. Mr. Frey testified that his son had been unable to enroll because the classes were filled.

31. Mr. Frey testified that his son's application to remain at Ocoee High School had been denied by the Respondent. The basis for the application was unclear; but, according to the letter of denial dated May 23, 2007, the Respondent denied the application "because the Orange County School Board has been placed under a court order by the United States District Court and the United States Fifth Circuit Court of Appeals, which does

not permit us to grant an exemption on the basis of your request."

32. Mr. Frey also testified that his son was interested in the Japanese language program at Ocoee High School; but, at the time of the hearing, his son was enrolled in Spanish language classes that are offered at both Ocoee and Wekiva High Schools. He has not enrolled in the Japanese language courses. There is no evidence that the Ocoee High School Japanese classes were unavailable to Mr. Frey's son.

33. Mr. Frey also noted that his son was involved in a freshman mentoring program that was part of his son's work towards becoming an Eagle Scout and that his son was very interested in achieving his goal.

34. Although Wekiva High School apparently had no similar extracurricular program at the time of the hearing, it is reasonable to presume that extracurricular activities will be available at Wekiva High School in response to student interests.

35. There is no credible evidence that Mr. Frey requested information or data from the Respondent which was not provided.

36. Tim MacAllister is the father of a son attending 9th grade at Ocoee High School who will transfer to Wekiva High School under the current plan. Prior to this school year,

Mr. MacAllister's son had not entered high school and had never attended Ocoee High School.

37. Mr. MacAllister's son is enrolled in honors classes at Ocoee High School and is enrolled in the Japanese language course that is not offered at Wekiva High School.

38. The Respondent has a policy that permits students to obtain academic transfers from an assigned school to another school in order to complete course sequences not available at the assigned school. There is no evidence as to whether Mr. MacAllister's son has applied for an academic transfer to remain at Ocoee High School.

39. Mr. MacAllister noted that there were curriculum differences between the two schools; but, other than the Japanese class, his son has not enrolled in any courses that are unavailable at Wekiva High School.

40. Mr. MacAllister's son wants to continue on to college after graduating from high school, and his family supports his interest. There is no evidence suggesting that graduating from either Ocoee or Wekiva High Schools would affect a student's college admission prospects.

41. Mr. MacAllister's son is eligible for transportation by bus to either Ocoee or Wekiva High schools. Mr. MacAllister testified that he takes his son to school, and that Ocoee High School is on his way to work, whereas Wekiva High School is not.

42. Wekiva High School is closer to the MacAllister home than is Ocoee High School, and, although Mr. MacAllister opined that the traffic makes travel to Wekiva High School less safe that to Ocoee High, there was no empirical support for his opinion.

43. There is no credible evidence that Mr. MacAllister requested information or data from the Respondent which was not provided.

44. No evidence was presented as to the Petitioners who did not testify at the hearing.

45. As set forth previously, the Respondent, after rescinding the initial rezoning plan, adopted a revised rezoning process. The 13 steps of the revised process are as follows:

> Step 1: Superintendent commences the rezoning process for the affected schools.
>
> Step 2: Pupil Assignment Department prepares a master calendar identifying provisional dates for the rezoning process, including a community information meeting, Bi-Racial Advisory Committee meeting, Rule Development Workshop and Final Public Hearing with their corresponding public notice deadlines.
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> Step 3: Pupil Assignment Department distributes the rezoning master calendar to each Board Member, Superintendent, area superintendents and potentially affected school principals. The master calendar shall be posted at the Educational Leadership Center and at the affected schools, as well as conspicuously posted at

the potentially affected schools in the front office.

Step 4: Pupil Assignment Department commences its school rezoning analysis for purposes of developing one or more proposed rezoning options. Pupil Assignment staff may consult with each Board member, individually; the affected area superintendents and school principals; and the transportation Department, in order to acquire relevant information and technical assistance needed to formulate suitable attendance zone options. Each rezoning option devised by staff must comply with the applicable desegregation orders. Staff may consider any of the following factors in developing each rezoning option:

- Anticipated growth and development within the attendance zone
- Facility design capacities for each affected school
- Distances and duration of student travel
- School feeder patterns
- Adverse impacts to neighborhoods, residential subdivisions or other discrete residential area

Step 5: The Director of Pupil Assignment shall certify that each proposed rezoning option is compliant with current desegregation orders; is not arbitrary; and is supported by staff consideration and analysis of one or more of the factors enumerated in Step 4.

Step 6: Pupil Assignment staff shall convey the proposed rezoning options to the Bi-Racial Advisory Committee with a request that the Committee consider and make recommendations to the Superintendent concerning any aspect of the proposed attendance zones. The Bi-Racial Advisory Committee is required under the desegregation orders to review proposed changes to school attendance zones.

Step 7: Pupil Assignment staff will schedule, notice and attend community meetings. At the community meetings staff will explain the rezoning process, discuss factors considered for each proposed attendance zone, engage in discussion as to each proposal's attributes and obtain community feedback.

Step 8: The Director of Pupil Assignment will present each proposed rezoning option to the Superintendent with his or her recommendation, along with the Bi-Racial Committee's recommendations and a report on the community's response to the rezoning options. The Superintendent may reject any or all proposals submitted by the Director of Pupil Assignment and direct that staff undertake an additional review for the purposes of devising alternate options. The Superintendent shall select those proposals to be advertised for a Rule Development Workshop that, in his or her discretion, reasonably balance the factors described above, any Bi-Racial Committee recommendations and community interests.

Step 9: School Board Services shall prepare a Notice of Public Rule-Development Workshop ("Workshop Notice") identifying each attendance zone proposal for the affected schools as required by Florida Statutes Sections 120.54(2) and 120.81(d).

Step 10: Members of the public shall have an opportunity to speak at the workshop. During the workshop the Board may make modifications to the proposed attendance zones recommended by staff and any recommendations for implementation of those attendance zones. School Board Services Department shall then schedule a public hearing for the formal adoption of a proposed attendance zone.

Step 11: Notice of Public Hearing on Proposed Board Action concerning School

> Attendance Zone Changes will be prepared by Pupil Assignment Department for advertisement in a newspaper of general circulation not less than 28 days prior to the date of the public hearing. The notice shall contain information required by Florida Statutes Sections 120.54(3) and 120.81(1)(d).
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> At the conclusion of the public hearing, the School board may take action to either: (1) adopt one of the recommended options; (2) direct staff to re-advertise for public hearing any substantive modification to a recommended option in accordance with step 11 or (3) reject recommended options and direct that staff undertake an additional review for the purpose of devising alternative attendance zone options.
>
> Step 12: Pupil Assignment shall compile a rulemaking record which shall include those materials identified in Florida Statute section 120.54(8), in addition to the following:
> A. Written comments and/or questionnaire responses received in connection with the community meetings.
> B. Written comments and recommendations received by the Bi-Racial Committee.
>
> Step 13: Pupil Assignment shall cause to be filed a certified copy of the proposed attendance zones, the rulemaking record and other relevant materials in the office of Pupil Assignment and make such materials available for public inspection upon request.

46. The Petitioners presented no credible evidence that the Respondent materially failed to comply with any of the steps in the rezoning process.

47. As required by Step 1, the superintendent commenced the rezoning process by approval of a memo dated April 11, 2007, from Sandra R. Simpson, director of Pupil Assignment. The memo included a proposed timeline which formed the basis for the master calendar required in Step 2.

48. The master calendar was distributed to various school officials and posted at the Educational Leadership Center and in various locations at the affected schools as required by Step 3.

49. Additionally, the schedule of meetings and workshops identified in the master calendar was published in a series of legal notices contained in the April 15, 2007, issue of the Orlando Sentinel. The publication included notice of the Bi-Racial Advisory Committee meeting scheduled for April 30, 2007; notice of a community meeting scheduled for May 1, 2007; and notice of the Rule Development Workshop scheduled for May 2, 2007.

50. The notice for the rule development workshop provided an explanation of school zoning and set forth the purpose of the proposed rezoning (i.e., to populate the new school and "equitably and efficiently" redistribute current student populations at existing schools.) The notice specifically identified the new school to be opened and identified the school zones which could be potentially altered by rezoning.

51. As required by Step 4, the Respondent's Pupil Assignment staff eventually developed eight proposed options intended to populate Wekiva High School and reduce student populations at Ocoee and Apopka High Schools.

52. In developing the school zones, the staff utilized information collected during the initial rezoning effort. There is no credible evidence that the information was invalid or unreliable at the time that the options were developed.

53. The analysis began with a review of the two-mile radius surrounding Wekiva High School to identify the number of students residing therein. Approximately 1,100 eligible students resided within the specified area.

54. A two-mile radius was considered because students residing within two miles of the school would not be eligible to ride a school bus to the school, thereby reducing the Respondent's transportation costs.

55. The staff then began to alter the zones to reach an acceptable population level for the three grades, 9 through 11, to be available during the first year of operation at Wekiva High School.

56. In designing the zones, the staff relied upon a highly specialized computer software program that utilizes demographic data capable of identifying individual students residing in specific homes. Some of the data used was sufficiently detailed

to provide personal information, including race, grades and FCAT scores, and economic status applicable to individual students. Essentially, the software allowed the staff to create various proposals and review the specific demographic characteristics for each.

57. In relevant part, each option placed approximately 1,750 students in grades 9 through 11 at Wekiva High School, taken from a varying mix of Apopka, Evans, Edgewater, and Ocoee High School zones. All of the affected zones were contiguous to the Wekiva High School zone.

58. The relatively-similar rezoning options differed essentially as to which zone students residing in three specific areas (identified on maps as Areas "X," "Y," and "Z") were assigned.

59. The Petitioners have asserted that the Respondent failed to provide the data upon which the zones were created. The evidence fails to establish that the school board staff refused to assist any person requesting to use the software to devise alternative attendance zones. It is reasonable for the disclosure of the detailed demographic data to be restricted so as to protect information related to individual students.

60. The Petitioners have asserted that the Respondent ignored feeder patterns and issues related to neighborhoods in

the rezoning process. The evidence fails to support the assertion.

61. The staff considered the factors set forth in Step 4 of the rezoning process, including existing and anticipated school feeder patterns, neighborhood integrity concerns, various types of transportation barriers, and projected growth within the attendance zones, in developing the rezoning options. To the extent that factors conflicted, those conflicts were reflected within the various proposals eventually submitted to the superintendent for review.

62. The staff did not limit its review to the factors set forth in Step 4. For example, the staff also considered FCAT scores. Students attending poorly performing schools (commonly referred to as "F-Schools") are permitted by law to transfer out of their assigned schools and into other schools.

63. Ocoee High School is a "C-School." Evans High School is an "F-School." The Evans High School zone is immediately adjacent and to the east of the Ocoee High School zone. Staff reasonably presumed that rezoning students from the C-School zone into the closer F-School, rather than into the Wekiva High School zone, would not adequately address issues of overcrowding at Ocoee High School because the newly-transferred students would transfer back from Evans to Ocoee.

64. By federal court order dated September 2, 1980, Orange County was required to revise school attendance zones to desegregate the school system. The court order specifically addressed procedures of modification of school attendance zones. The court order has been amended at various times and was still in effect at the time of the hearing.

65. Minority students comprise 28 percent of the Orange County student population. The Respondent attempted to create attendance zones reflective of the county's general racial demographics. In creating the proposed zones, the staff reviewed matters of racial and economic diversity in order to meet the requirements of a federal court order related to desegregating the Orange County School System.

66. As required by Step 5, Pupil Assignment Director Simpson certified by memo dated April 26, 2007, that each zoning option complied with the desegregation order and was prepared after a logical analysis of the factors set forth in Step 4.

67. As required by Step 6, the eight options were presented to the members of the Bi-Racial Advisory Committee by school board staff on April 30, 2007. The purpose of the committee meeting was to review the rezoning proposals to determine whether any appeared to result in re-segregation of the school system. Some committee members took the opportunity to comment on the proposals at the meeting, while others

submitted additional comments to staff on May 1, 2007. All comments were provided to the School Board members at the rule development workshop on May 2, 2007.

68. As required by Step 7, the Pupil Assignment staff attended a previously noticed community meeting held on May 1, 2007, at the Educational Leadership Center and presented the options to the various attending members of the public. Persons in attendance were provided an opportunity to submit oral or written comments regarding the proposed options, and some took advantage of the opportunity. Staff email addresses were also provided to attendees, and more than 40 emails were eventually received by staff. A petition signed by opponents to the plans was also presented to and received by the staff. All communications from the public were summarized and provided to School Board members at the rule development workshop.

69. The Petitioners have asserted that the Respondent failed to comply with the Step 7 requirement that the staff attend community "meetings" because only one meeting occurred. At the hearing, Ms. Simpson testified that she believed it was within her discretion to conduct a single meeting under the rezoning process.

70. Although the requirement does not appear to provide for such discretion, the failure to conduct more than one community meeting is immaterial to this dispute. There is no

statutory requirement that a "community meeting" be conducted as part of rulemaking. Additionally, there is no evidence that any potentially-affected person was unaware of the rezoning proposals or was denied an opportunity to review the proposals, to engage in discussion regarding the proposals, or to provide feedback to the Respondent.

71. As required by Step 8, Pupil Assignment Director Simpson met with the superintendent on May 2, 2007, to present the options to him. The superintendent was also provided with the comments from the Bi-Racial Advisory Committee. The staff recommended that Options 1 and 3 be presented to the School Board members at the workshop.

72. The staff disfavored Options 2, 5, 7, and 8 because all four required the purchase of additional school buses to transport eligible students, resulting in increased initial and subsequent operating costs to the Respondent.

73. The staff disfavored Options 4 and 6 because they did not resolve excess population concerns at Ocoee High School.

74. Although the superintendent agreed with the staff, he directed that all eight options be presented to the School Board members at the scheduled workshop.

75. The Notice of Public Rule-Development Workshop required by Step 9 had been published with the other legal notices on April 15, 2007. The notice adequately identified

each potentially impacted attendance zone and properly included all information required by statute.

76. The Petitioners have asserted that the Respondent failed to provide notice by mail of various meetings, including the workshop, to persons requesting such notice as required by statute. There is no credible evidence that any person formally requested advance notice of the workshop or other proceedings. In any event, any failure by the Respondent in this regard is immaterial. There is no allegation or evidence that any person potentially affected by proposed rezoning was unaware of the workshop or was denied an opportunity to participate at the workshop based on lack of sufficient notice.

77. The Rule Development Workshop referenced in Step 10 occurred as scheduled on May 2, 2007. The eight options were presented to the Respondent by staff who answered various questions from board members. An opportunity for public comment was provided and a number of persons, including several Petitioners and their legal counsel, spoke at the meeting regarding the options. The Petitioners' legal counsel suggested an additional rezoning option to the Respondent. Ocoee City Commissioner Joel Keller, within whose district the Petitioners reside and who testified at the administrative hearing, made an extended presentation at the meeting.

78. Following a period of discussion, the board members decided to move forward with the proposed "Option 3" rezoning plan and scheduled the public hearing to consider formally adopting the option for June 12, 2007.

79. As required by Step 11, notice of the public hearing (titled "Notice of Intended Action on School Attendance Zone Changes") was published in the May 13, 2007, edition of the Orlando Sentinel. The notice clearly included the information required by Subsections 120.54(3) and 120.81(1)(d), Florida Statutes. The notice was also posted at the Educational Leadership Center and at the potentially affected schools.

80. Approximately two weeks prior to the public hearing, Pupil Assignment Director Simpson prepared a draft resolution for consideration by the board. Ms. Simpson detailed the staff analysis of the process and the various factors considered in the eventual recommendation.

81. The public hearing was conducted on June 12, 2007. The selected option was presented to the board members by the staff, and all of the zoning options and supporting demographic information was available for their review.

82. Another opportunity for public comment was provided, and a number of Petitioners, in addition to other speakers, again advised the board members of their objections. Petitioners' legal counsel again made the same proposal as had

been presented at the workshop, and elected officials from the City of Ocoee also spoke to the board.

83. Staff members responded to questions from both speakers and school board members. Following the conclusion of the comment and question session, board members discussed the issue and then adopted Option 3 (the rezoning option challenged in this proceeding) on a vote of 5 to 1.

84. There is no assertion or evidence that the Respondent failed to comply with Steps 12 and 13 of the rezoning process.

85. As stated previously herein, the Petitioners have asserted that the current plan is an invalid exercise of delegated legislative authority in that it is "(a) arbitrary and capricious, (b) not supported by competent or substantial evidence grounded in the specific variables identified by School Board policy as controlling in such matters, and (c) is the product of procedural errors that render the Rezoning Ruling unfair and/or incorrect."

86. The Petitioners presented no credible evidence that the Respondent's adoption of the current plan was arbitrary or capricious.

87. The evidence offered in support of the assertion that the adoption of the rezoning plan was arbitrary or capricious essentially focused on two other high schools in the Orange County School System, Olympia and Evans. The Petitioners asserted that the Petitioners were treated arbitrarily by the Respondent's application of the prototype high school population

of 2,776 to this rezoning, while allowing the Olympia High School population to substantially exceed 2,776 and leaving Evans High School operating under capacity. The evidence fails to support the assertion.

88. The Respondent previously attempted to rezone Olympia High School, which was operating in excess of the facility's original attendance design capacity, prior to the rezoning at issue in this proceeding. The Olympia rezoning plan was the subject of a successful legal challenge, and the rezoning did not occur. Permanent modular classroom buildings were placed on the Olympia campus to accommodate the excess student capacity.

89. The Petitioners suggest that the capacity of Ocoee High School be increased in a similar manner. There are more than 20 modular classroom buildings already on the Ocoee High School campus.

90. There is no evidence that the Respondent attempted to rezone Olympia High School for the purpose of expanding the student population beyond 2,776 students. The increase in the authorized capacity at Olympia occurred subsequently to the successful legal challenge and reflected the necessity to accommodate the student population remaining thereafter.

91. The purpose of the current plan is to populate Wekiva High School and relieve the overcrowding at Ocoee and Apopka High Schools. There is no evidence that the purpose of the current rezoning plan is unreasonable. There is no evidence that the Respondent's adoption of the current rezoning plan was arbitrary or capricious.

92. Evans High School has historically operated with a student population significantly less than the facility can accommodate, primarily because many of the approximately 4,000 students living within the Evans zone do not attend school on the Evans campus. Evans High School has a predominately African-American student population. Students in a racial majority at a specific school are permitted to transfer into a school where they are in a racial minority and an apparent significant number exercise the option.

93. Evans is scheduled to be redesigned and relocated during the 2009-2010 school year. School officials believe that in addition to offering "magnet" programs at Evans, the relocation and redesign will increase enrollment and encourage students living within the Evans zone to attend school at the new facility. The Respondent's plans for the Evans High School project are not at issue in this proceeding. There is no credible evidence that the Evans proposal has any relevance to the current rezoning plan.

94. The Petitioners presented no credible evidence to support the assertion that the Respondent failed to comply with "controlling" variables as required by the policy. The specific

policy being implemented indicates that the variables, specifically those identified in Step 4, "may" be considered by the staff in developing each rezoning option. The evidence establishes that the staff considered the variables to the extent necessary to develop the options and that the relevant information was available for the Respondent's review of the options prior to adoption of the current plan.

95. The Petitioners assert that the current plan disrupts school "feeder" patterns. A feeder pattern is based on attendance zones whereby students attending a specified school move as a group to another school as their education progresses.

96. The concept of feeder patterns is one of the factors that the Pupil Assignment staff may consider during Step 4 of the rezoning process. The evidence establishes that the staff considered the feeder patterns impacted by the current plan. The policy does not prohibit the Respondent from altering feeder patterns when school attendance zones are created or revised.

97. In addition to consideration of feeder patterns, Step 4 identifies other factors which staff may consider in developing proposals for rezoning. The evidence establishes that the staff considered the factors relevant to each option. To the extent that there was conflict between various factors, the conflicts were recognized, and the information was communicated by staff to the Respondent.

98. The Petitioners presented no credible evidence that the current plan "is the product of procedural errors that render the Rezoning Ruling unfair and/or incorrect." There was no evidence that there were any material procedural errors committed during the adoption of the current plan.

99. Because the Respondent was intent on having the rezoning plan in place by June 2007 so that Wekiva High School could be populated by August 2007, the rezoning process was accelerated, but there is no evidence that the Respondent failed to comply with any deadline set forth within the rezoning process or within the applicable rulemaking provisions of Florida Statutes.

100. The Petitioners generally assert that the Respondent failed to provide "the full panoply of public notice protections mandated by law." There is no credible evidence that the Respondent did not comply with the public notice provisions set forth in Florida Statutes and within the Respondent's new rezoning procedure.

101. The evidence fails to support any assertion that the notice provided by the Respondent was insufficient. The evidence clearly establishes that Petitioners were aware of, and opposed to, the proposed changes to school attendance zones and that they participated throughout the full course of public events. There is no evidence that any potentially-affected person was unaware of the rezoning process.

102. The evidence also clearly establishes that local officials from the City of Ocoee, including Commissioner Keller, were aware of the rezoning proposals. The commissioner engaged in discussions at city meetings, attended various school board meetings and made a significant public presentation to the school board members, submitted written information, and met with individual school board officials regarding opposition to the rezoning plan.

103. The Petitioners asserted that the Respondent failed to comply with applicable rulemaking requirements set forth in Chapter 120, Florida Statutes. There is no evidence that the Respondent materially failed to comply with any statutory requirement related to the adoption of the current plan.

104. The Petitioners asserted that the Respondent violated Subsection 120.54(3), Florida Statutes, by failing to publish a written analysis that would have permitted the "affected public" to challenge the options and formulate a "superior" proposal. The cited statute does not require such publication.

105. The Petitioners asserted that the accelerated process undertaken by the school board in adopting the current plan prohibited them from gathering data and proposing alternative zoning plans to the Respondent. The assertion is not supported by the evidence.

106. The Petitioners have been actively involved in the issue from the beginning of the Respondent's rezoning efforts. There is little apparent substantive difference between the initial plan and the current plan insofar as the rezoning is

applicable to the Petitioners.

107. During various presentations and meetings with the Respondent, the Petitioners and their legal counsel made proposals to transfer other neighborhoods in lieu of Area Z into the Wekiva High School zone.

108. The Petitioners assert that the Respondent denied access to data that would have permitted the Petitioners to propose alternative zones. Although the Respondent is required to have sufficient data to support the ultimate outcome of the rezoning process, there is no requirement that the Respondent provide such data to persons seeking to devise alternative zoning plans. There is no evidence that such data was sought through discovery as part of this proceeding. Nonetheless, the Respondent presented evidence that school board staff would accommodate public requests to assist in utilization of the Respondent's software to generate proposals.

109. The Petitioners asserted that the Respondent violated Subsection 120.54(3), Florida Statutes, by failing to publish an analysis of the federal court order's relevance to and impact upon the proposed options. The cited statute does not require such publication.

110. The Petitioners asserted that the Respondent violated Subsection 120.54(3), Florida Statutes, by failing to include a summary of the agency's statement of estimated regulatory costs per Subsection 120.54(3)(a), Florida Statutes. The referenced requirement is only applicable if such a statement has been prepared. There is no evidence that such a statement was prepared in this case. There is no evidence that there are any "regulatory costs" involved in the rezoning plan.

111. The Petitioners asserted that the Respondent violated Subsection 120.54(3)(a)1., Florida Statutes, by failing to include in the published notice of rulemaking a reference to the date and place where the notice of rule development appeared.

112. The evidence establishes that the Notice of Intended Action dated May 13, 2007, stated that the rule development workshop was "advertised on April 15, 2007" and "was conducted at the Educational Leadership Center on May 2," but failed to state that the advertisement was published in the Orlando Sentinel, as were all legal notices relevant to this proceeding.

113. The failure to identify the place of publication is immaterial under the facts and circumstances of this dispute. There is no evidence that the Respondent's failure to note that the advertisement appeared in the Orlando Sentinel resulted in any potentially-affected person being denied an opportunity to participate in the process.

114. The Petitioners asserted that the Respondent failed to comply with Subsections 120.54(3)(a)4. and 120.54(3)(e), Florida Statutes, which require the filing of specified materials with the Administrative Procedures Committee. The Respondent is exempted from such requirements by Subsection 120.81(1)(e), Florida Statutes.

115. The Petitioners asserted that the Respondent violated Subsections 120.54(1)(a)2. and 120.54(2), Florida Statutes, by failing to publish a "complete and readily comprehensive summary of proposed rezoning action in newspaper of general circulation to alert and apprise the average reader of the Respondent's contemplated decision and the public's ability to formulate alternative proposals based upon the same pertinent data." The cited statutes do not require such publication.

116. The Petitioners asserted that the Respondent violated Subsection 120.54(1)(d), Florida Statutes, by failing to "select the rezoning alternative that does not impose regulatory costs on Petitioners and/or Orange County that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives." There is no evidence that there are any regulatory costs at issue in this proceeding.

117. The Petitioners asserted that the Respondent violated notice requirements by failing to publish all notices required by Chapter 120, Florida Statutes, on the Respondent's website, but there is no statutory notice provision that requires publication on the Respondent's website.

118. The Petitioners asserted that the Respondent failed to provide, by mail, advance notices related to the rezoning to persons requesting such information be provided. There is no evidence that the Respondent disregarded any formal request for information. There is no credible evidence that the Respondent disregarded any informal request for information. To the extent that the Respondent potentially failed to comply with any informal request, there is no evidence that such failure resulted in any potentially affected person being denied an opportunity to participate in the proceeding, and such alleged failure is immaterial.

119. The Petitioners asserted that the Respondent failed to comply with the requirements of the rezoning process, but as discussed previously, the Respondent followed the process and materially complied with the requirements included therein.

120. The Petitioners asserted that the data used by the staff in drafting the proposed zones was flawed. The evidence establishes that there were minor errors, including transposition of numerals in an initial calculation, which were corrected after it was brought to the staff's attention by Commissioner Keller. There is no credible evidence that the data was erroneous at the time the Respondent began considering the proposed zoning options, or when the Respondent adopted the current plan.

121. The Petitioners asserted that the planning projections utilized by the Respondent were erroneous and overestimated the need for facility construction, in turn resulting in unnecessary student transfers caused by rezoning. The Petitioners suggested that the projections include a substantial quantity of residential units either existing or planned in the areas affected by the current rezoning plan, which are unoccupied and unnecessary to accommodate the current residential population.

122. There is no evidence that the Respondent's use of standard population growth data was inappropriate. There is no evidence that at the time the Respondent began planning the construction of the Wekiva High School facility, the Respondent had any reason to presume that projected student population figures may have overstated the need for school facilities. The

Petitioners offered no credible evidence that the quantity of residential units in the relevant areas, constructed and unoccupied, is of such significance to be relevant to this dispute. There is no evidence that the Respondent has constructed unnecessary school facilities.

CONCLUSIONS OF LAW

123. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.56, Fla. Stat.

124. The Respondent is an "educational unit" and an "agency" as the term is defined by Subsections 120.52(1)(b)7. and 120.52(6), Florida Statutes.

125. The Respondent is responsible for operation and control of the public schools within Orange County. See Article IX, § 4(b), Fla. Const.; §§ 1001.32 and 1001.33, Fla. Stat.

126. Subsection 1001.41(6), Florida Statutes, specifically assigns to each district school board the power to assign students to schools after consultation with the district school superintendent.

127. The adoption by a district school board of school attendance zones constitutes rulemaking. Polk v. School Board of Polk County, 373 So. 2d 960 (Fla. 2nd DCA 1979).

128. The issue in the case is whether the adopted attendance zones constitute an invalid exercise of delegated legislative authority.

129. In relevant part, Subsection 120.52(8), Florida Statutes, defines the phrase "invalid exercise of delegated legislative authority" as follows:

> "Invalid exercise of delegated legislative authority" means action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:
>
> (a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;
>
> (b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;
>
> (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;
>
> (d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;
>
> (e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or
>
> (f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

130. This is a challenge to an adopted rule that was implemented by the Respondent after the challenge was filed, apparently pursuant to an agreement with the Petitioners. The Petitioners have the burden of proving by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority. See § 120.56(3)(a), Fla. Stat. The burden has not been met.

131. Subsection 120.56(1)(b), Florida Statutes, requires that a petition challenging the validity of a rule must "state with particularity the provisions alleged to be invalid with sufficient explanation of the facts or grounds for the alleged invalidity and facts sufficient to show that the person challenging a rule is substantially affected by it, or that the person challenging a proposed rule would be substantially affected by it."

132. Subsection 120.56(2)(a), Florida Statutes, further requires that in challenging a proposed rule, the Petition must "state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority."

133. The Petition filed in this case cites to Subsection 120.56(1), Florida Statutes, as authority for the hearing and asserts that the rule is an invalid exercise of delegated legislative authority in that it is "(a) arbitrary and capricious; (b) not supported by competent or substantial evidence grounded in the specific variables identified by School

Board policy as controlling in such matters; and (c) is the product of procedural errors that render the Rezoning Ruling unfair and/or incorrect."

134. The Petitioners presented no credible evidence that the Respondent's adoption of the current rezoning plan was arbitrary or capricious. "A capricious action is one which is taken without thought or reason or irrationally. An arbitrary decision is one not supported by facts or logic, or despotic." Agrico Chemical Co. vs. State Dep't. of Env. Reg., 365 So. 2d 759, 763 (Fla. 1st DCA 1978), cert. den., 376 So. 2d 74 (Fla. 1979).

135. There is no evidence that the Respondent acted without thought or reason or irrationally in adopting the current rezoning plan. There is no evidence that the Respondent adopted the plan without reviewing supporting facts or logic, or acted despotically in doing so. In fact, to the contrary, the evidence establishes that the current plan was adopted by the Respondent after full consideration of the factors identified within the rezoning process, as well as consideration of historical and anticipated future rezoning plans.

136. The Petitioner asserted that the adoption of the current plan was "not supported by competent or substantial evidence grounded in the specific variables identified by School Board policy as controlling in such matters."

137. The language of the referenced School Board policy clearly states that consideration of such variables is discretionary, rather than "controlling."

138. There is no evidence that the Respondent adopted the current rezoning plan without reviewing the substantive information provided by staff prior to and during the rezoning meetings. There is no evidence that the data upon which the Respondent based the decision was not competent.

139. The Petitioners presented no credible evidence that the Respondent's staff failed to consider the specific variables identified at Step 4 of the rezoning process. The consideration and balancing of the referenced factors is clearly within the discretion of the Respondent and, absent flagrant abuse of their discretion, should not be revisited. See Cortese v. Sch. Bd. of Palm Beach County, 425 So. 2d 554, 558 (Fla. 4th DCA 1982); Polk, 373 So. 2d at 962.

140. As to the alleged "procedural errors that render the Rezoning Ruling unfair and/or incorrect," the Petition lacked specificity related to the issue of whether the rezoning was an "invalid exercise of delegated legislative authority." The Petitioners essentially asserted that the Respondent failed to follow the applicable rulemaking procedures or requirements set forth in the Administrative Procedures Act, that the Respondent's adoption of the attendance zones was arbitrary or capricious, and that the adoption of the attendance zone imposes regulatory costs on a regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

141. The asserted procedural errors were identified through discovery propounded by the Respondent and related to the alleged

failure to provide "the full panoply of public notice protections mandated by law." Such alleged procedural errors have been addressed herein.

142. The Respondent has asserted that the Petitioners are without standing to challenge the rezoning plan. The evidence fails to establish that any Petitioner is substantially affected by the school attendance rezoning plan at issue in this case.

143. Subsection 120.56(1)(a), Florida Statutes, provides that "[a]ny person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority." (Emphasis supplied)

144. Accordingly, in order to establish standing, each Petitioner must demonstrate that they are "substantially affected" by the rule; i.e., that the application of the rule will result in a real and sufficiently immediate injury in fact and that the alleged interest is arguably within the zone of interest to be protected. As to the requirement that the Petitioner establish that the injury is sufficiently real and immediate, the alleged injury can not be based on pure speculation or conjecture. The zone of interest must affect an area of individual rights that are protected by law. Lanoue v. Fla. Dep't of Law Enforcement, 751 So. 2d 94, 96 (Fla. 1st DCA 1999); Ward v. Bd. of Trs. of Internal Improvement Trust Fund, 651 So. 2d 1236, 1237 (Fla. 4th DCA 1995); All Risk Corp. of Fla. v. State Dep't of Labor & Employment Sec., 413 So. 2d 1200, 1202 (Fla. 1st DCA 1982).

145. As to the non-testifying Petitioners, there was no evidence presented to establish the manner and extent that any would be affected whatsoever by the school rezoning; accordingly, it is concluded that such Petitioners lack standing to challenge the current rezoning plan.

146. As identified herein, four of the Petitioners testified at the hearing as to their children and the specific circumstances under which each believed their children would be affected by the rezoning. Clearly, the Petitioners are unhappy that the rezoning process will result in a change of school attendance zones for their children, and this Order should not

be read to diminish the concerns or efforts of the Petitioners in their attempts to provide a proper educational experience for their children. Nonetheless, the evidence fails to establish that any of the testifying Petitioners are "substantially affected" by the school rezoning at issue in this proceeding.

147. There is no credible evidence that any student will suffer a "real and immediate injury in fact" by the Respondent's plan to transfer them from one high school to another. There is no credible evidence that substantially-similar educational opportunities will not be available to students at both Ocoee and Wekiva High Schools.

148. Although there was testimony related to current curriculum differences between the two schools, the evidence fails to establish that any student currently involved in a course of study unavailable at the new school will be impacted by curriculum differences. There is no credible evidence that any of the Petitioners currently attending Ocoee High School and enrolled in any course of study not available at Wekiva High school has been denied an opportunity to remain at Ocoee and complete the course of study. The sole student-Petitioner who is taking a Japanese language course not available at the new school appears to fall within the Respondent's transfer policy intended specifically to address such circumstances. There is no evidence that the Respondent has denied an academic transfer

application from the student.

149. Absent evidence that a student's academic opportunity will be negatively impacted, merely being assigned to attend a different school does not cause injury. There is no evidence that any legally protected individual rights were affected by the current rezoning plan. There is no constitutional or legal right to attend a particular school or to attend any school with preferred peers. Hill v. Sch. Bd. for Pinellas County, 954 F. Supp. 251 (M.D. Fla. 1997); Sch. Bd. of Orange County v. Blackford, 369 So. 2d 689 (Fla. 1st DCA 1979).

FINAL ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that the Petition for Hearing filed in this case is DISMISSED.

DONE AND ORDERED this 11th day of April, 2008, in Tallahassee, Leon County, Florida.

William F. Quattlebaum
WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 11th day of April, 2008.

ENDNOTE

[1/] All references to Florida Statutes are to the 2007 version, unless otherwise indicated.

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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.