STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

COUNTY OF VOLUSIA, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,

Petitioner,

DOAH Case No. 13-2957

v.

DEPARTMENT OF JUVENILE JUSTICE,

Respondent.
_____/

RECOMMENDED ORDER

An administrative hearing was held in this case by video-teleconference at locations in Tallahassee and Daytona Beach, Florida, on September 23, 2014, before James H. Peterson III, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Mary G. Jolley, Esquire
Nancye Jones, Esquire
County of Volusia
123 West Indiana Avenue, Room 301
Deland, Florida 32720

For Respondent: Michael John Wheeler, Esquire
Department of Juvenile Justice
2737 Centerview Drive
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Respondent, the Department of Juvenile Justice (the Department or Respondent), provided Petitioner, the County of

Volusia (Volusia County or Petitioner), a point of entry to challenge the Department's 2008-2009 reconciliation regarding Volusia County and the Department's shared costs for secure detention care for juveniles.

PRELIMINARY STATEMENT

On April 16, 2013, a four-count Amended Petition for Administrative Hearing (Amended Petition) from Volusia County dated April 10, 2013, challenging the Department's annual reconciliations for a number of fiscal years and challenging certain rules, was filed with the Division of Administrative Hearings. The case was originally assigned DOAH Case No. 13-1442RX. Count I challenged the Department's fiscal year (FY) 2008-2009 reconciliation, Count II challenged the FY 2009-2010 reconciliation, Count III challenged the FY 2010-2011 reconciliation, Count IV challenged the FY 2011-2012 reconciliation, and Count V challenged certain rules enacted by the Department in 2012 containing definitions and procedures for calculating the secure juvenile detention care costs between the Department and Florida counties.

On May 16, 2013, following a telephonic hearing on the Department's Motion to Dismiss, an Order was entered dismissing Counts II and III, placing Counts IV and V in abeyance pending the outcome of pending appeals in other cases addressing the issues raised in Counts IV and V, and denying the Motion to

Dismiss Count I. By Order dated May 29, 2013, Count I was also placed in abeyance.

On August 7, 2013, Volusia County voluntarily dismissed Count V, the rule challenge. Thereafter, an Order Modifying Case Style and Severing Count I was entered on August 9, 2013, severing Count I from the remaining Count IV. The "RX" in the style of the original DOAH Case No. 13-1442RX for the remaining Count IV was dropped and the case number was changed to 13-1442 to reflect the fact that there was no longer a rule challenge. Count I was assigned a new case number reflected in the style above, DOAH Case No. 13-2957. DOAH Case No. 13-1442 was subsequently consolidated with a number of other cases challenging the FY 2011-2012 reconciliation and eventually resolved and closed by Order Closing Files and Relinquishing Jurisdiction on December 18, 2013.

Once severed, this case, DOAH Case No. 13-2957, was placed in abeyance pending the appeal of DOAH Case No. 10-1893 involving a challenge to the FY 2008-2009 reconciliation by a number of counties other than Volusia County. After a decision in that appeal, Orders renewing the abeyance a number of times were entered based upon status reports filed by the parties on February 20, March 4, March 13, and April 14, 2014, advising that "an agreement in principle has been reached that will resolve all issues involved in the instant case."

On May 15, 2014, the Department filed another Motion to Dismiss, asserting, as previously asserted in its original Motion to Dismiss, that Volusia County's challenge to the FY 2008-2009 reconciliation was untimely. Following a telephonic hearing, the Department's Motion to Dismiss was denied and this case was scheduled for hearing to be held August 8, 2014. By Order dated July 16, 2014, granting a stipulated motion to continue, the original hearing date was continued and rescheduled for September 23, 2014.

On September 4, 2014, the Department filed a Motion to Relinquish Jurisdiction asserting that, after discovery, "the parties are in agreement that there is no material issue in dispute and the Respondent's letter of December 7, 2009 did not fully comply with Administrative Law Rule 28.106.111 [relating to point of entry]." The Motion to Relinquish Jurisdiction further stated, "Respondent has discussed this matter with Petitioner and advised Petitioner that this motion would be filed." Under the impression that the Motion to Relinquish Jurisdiction was agreed upon, on September 4, 2014, the undersigned entered an Order Closing File and Relinquishing Jurisdiction. Later that day, at the request of Volusia County, a telephonic hearing was held wherein Volusia County advised that it did not agree to close the case and the undersigned determined that there appeared to be remaining genuine issues of

material fact. Therefore, an Order Vacating Order Closing File and Relinquishing Jurisdiction was entered that same day.

At the hearing held September 23, 2014, Petitioner presented the testimony of Volusia County Division of Corrections Director, Marilyn Chandler Ford, and offered 20 exhibits which were received into evidence as Petitioner's Exhibits P-1 through P-20, without objection. Respondent presented the testimony of the Department's Director of the Office of Program Accountability, Beth Davis, but offered no exhibits.

The proceedings were recorded and a transcript was ordered. The parties were given 10 days from date of the filing of the hearing transcript within which to submit their proposed recommended orders. The one-volume Transcript of the proceedings was filed on October 3, 2014. Both parties timely filed their respective Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The State of Florida is responsible for providing detention care to juveniles.

2. Volusia County and the Department have a joint obligation to contribute to the financial support of juvenile detention care pursuant to section 985.686(1), Florida Statutes.[1/]

3. Volusia County is a political subdivision of the State of Florida and is mandated by section 985.686(3) to pay the costs of providing detention care for juveniles only for the period of time prior to final court disposition, exclusive of certain costs as set forth in the statute. The State of Florida is responsible for all other costs of secure juvenile detention.

4. The Department is responsible for administering the cost-sharing requirements.

5. Any difference between the estimated costs and actual costs paid by Petitioner shall be reconciled by Respondent at the end of each fiscal year pursuant to section 985.686(5).

6. The administrative rules enacted by the Department provide that a county is to be given a credit for any overpayment.

7. Volusia County paid $3,739,325 in twelve monthly payments of $311,610.38 based on the Department's fiscal year 2008-2009 Secure Detention Cost Share Estimate.

8. On or about December 7, 2009, the Department issued its Annual Reconciliation for fiscal year 2008-2009, which set forth Volusia County’s FY 2008-2009 share of the year-end cost of secure detention, and assigned Petitioner a credit for overpayment in the amount of $111,040.17.

9. On invoice number 201002-64, dated January 5, 2010, Respondent provided Volusia County a credit of $111,040.17, designated as "FY 08-09 Reconciliation."

10. The Department has adopted the administrative law judge's Recommended Order entered in DOAH Case No. 10-1893 (consolidated with seven other cases), Miami-Dade County, et al. v. Department of Juvenile Justice, Case No. 10-1893, et seq. (Fla. DOAH Aug. 22, 2012)(Miami-Dade Recommended Order), as set forth in Okaloosa County v. Department of Juvenile Justice, 131 So. 3d 818, 819 (Fla. 1st DCA 2014), which required the Department to provide an annual reconciliation that reflected each county's actual costs.

11. For FY 2008-2009, the actual cost per day for secure detention for a juvenile was $220.81.

12. For FY 2008-2009, Volusia County's total pre-dispositional days were 8,679.

13. For FY 2008-2009, Volusia County's actual costs were $1,916,409.90.

14. For FY 2008-2009, Volusia County overpaid the Department $1,822,915.10.

15. Volusia County is substantially affected by the reassessment of its actual costs of detention for FY 2008-2009.

16. For fiscal year 2008-2009, Volusia County is owed an additional credit of $1,711,874.93 for overpayment.

17. Volusia County filed its Amended Petition for Administrative Hearing on April 16, 2013, challenging the FY 2008-2009 annual reconciliation and seeking a refund for its overpayment.

18. Volusia County's substantial interest is of a type and nature for which the undersigned has jurisdiction in that it will determine Volusia County's actual cost of secure detention care for FY 2008-2009 and determine whether Volusia County is entitled to a credit.[2/]

19. Volusia County was not a party to DOAH Case No. 10-1893 resulting in the Miami-Dade Recommended Order or Okaloosa County v. Department of Juvenile Justice, 131 So. 3d 818, 819 (Fla. 1st DCA 2014), referenced in Finding of Fact 10, above.

20. In this case, the Department's response to request number one of Volusia County's Second Request for Admissions admitted "that Volusia County was not provided a point of entry into proceedings as required under section 28-106.111 of the Florida Administrative Code to challenge the fiscal year 2008-2009 annual reconciliation." See Exh. P-5, pp. 6-9.

21. The Department's response to Volusia County's request number two of Volusia County's Second Request for Admissions admitted "that Volusia County was not provided a clear point of entry to challenge the fiscal year 2008-2009 annual reconciliation pursuant to Capeletti Brothers, Inc. v.

Department of Transportation, 362 So. 2d 346 (Fla. 1st DCA 1978) cert. denied, 368 So. 2d 1374 (Fla 1979)." See Exh. P-5, pp. 6-9.

22. At no time has the Department attempted to seek relief from its admission that Volusia County was not provided a point of entry to challenge the FY 2008-2009 reconciliation.

23. Based upon the Department's admission, it is found as a matter of fact that Volusia County was not provided with a point of entry to challenge the FY 2008-2009 reconciliation.

24. As Volusia County was not provided with a point of entry to challenge the FY 2008-2009 reconciliation, Count I of Volusia County's Amended Petition challenging the Department's FY 2008-2009 reconciliation was timely filed.

CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

26. Volusia County has standing to bring this action. The parties have stipulated, and it is concluded that the determination of whether Volusia County is entitled to a refund for overpayment of its actual costs of detention for FY 2008-2009 affects Volusia County's substantial interests. Those interests are of the type for which this proceeding was designed

to protect. See Agrico Chem. Corp. v. Dep't of Envtl. Reg., 406 So. 2d 478 (Fla. 2d DCA 1981)(standing shown where injury is of sufficient immediacy and type which the proceeding is designed to protect).

27. Further, by its response to requests for admissions, the Department has conceded "that Volusia County was not provided a point of entry into proceedings as required under section 28-106.111 of the Florida Administrative Code to challenge the fiscal year 2008-2009 annual reconciliation."

28. Florida Rule of Civil Procedure 1.370(b), provides in pertinent part:

> Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.

29. At no time has the Department attempted to withdraw or amend its admission that Volusia County was not provided a point of entry to challenge the FY 2008-2009 reconciliation.

30. In fact, despite request by the undersigned at the final hearing that the Department address the issue of "the admission that there was no clear point of entry" in its post-trial submission,[3/] the Department's Proposed Recommended Order does not address the issue.

31. As recognized by the First District Court of Appeal in Twin City Roofing Construction Specialists, Inc. v. Department of Financial Services, 969 So. 2d 563, 565:

> [m]atters admitted during discovery in administrative litigation can furnish the basis for a finding of fact, see Fla. Admin. Code R. 28-106.206 (Florida Rules of Civil Procedure regarding discovery are applicable in administrative proceedings); Fla. R. Civ. P. 1.370(b)(if a party admits a matter in response to a request for admission then that matter is "conclusively established unless the court on motion permits withdrawal or amendment of the admission"); see also Holland v. CSX Transp., Inc., 583 So. 2d 777 (Fla. 2d DCA 1991) (holding that an admission made in response to a request for admissions "conclusively establishes the fact admitted").

32. Therefore, it has been conclusively established that Volusia County was not afforded a point of entry. Id.

33. Because Volusia County was not provided a point of entry to challenge the Department's FY 2008-2009 reconciliation, the commencement of the administrative process was not triggered. Cf. Fla. League of Cities, Inc. v. Admin. Comm'n, 586 So. 2d 397, 413 (Fla. 1st DCA 1991)("Notice of agency action which does not inform the affected party of its right to request a hearing and the time limits for doing so is inadequate to trigger the commencement of the administrative process.").

34. It follows that the Department's FY 2008-2009 reconciliation as to Volusia County is regarded as "preliminary." See Capeletti Bros., Inc. v. Dep't of Transp., 362 So. 2d 346, 348-349 (Fla. 1st DCA 1978), cert. denied, 368 So. 2d 1374 (Fla. 1979)("Absent waiver, we must regard an

agency's free-form action as only preliminary irrespective of its tenor.").

35. Although Volusia County presented additional evidence on the lack of point of entry, no analysis or findings on that evidence has been undertaken because of the Department's admissions. The evidence was otherwise insufficient to show that Volusia County waived its right to challenge the Department's FY 2008-2009 reconciliation as to Volusia County. As noted in Henry v. Department of Administration, 431 So. 2d 677 (Fla. 1st DCA 1983):

> Waiver is not a concept favored in the law, and must be clearly demonstrated by the agency claiming the benefit. In Capeletti Brothers, Inc. v. State, Department of Transportation, 362 So. 2d 346, 348 (Fla. 1st DCA 1978); cert. denied, 368 So. 2d 1374 (1979), this court held:
> [A]n agency must grant affected parties a clear point of entry, within a specified time after some recognizable event in investigatory or other free-form proceedings, to formal or informal proceedings under Section 120.57. Uncertainty in an agency's rules and practices on this point usually results, as is shown by our experience in the past several months, in a petition for review followed by an agency motion to dismiss on the alternative grounds that the agency has not yet taken final action or that, if it has done so, the request for Section 120.57 proceedings and the review petition are too late. *We have usually resolved such confusion in favor of the affected party.* (emphasis added).

36. The Department argues that the doctrine of administrative finality should be applied to foreclose Volusia County's challenge to the Department's FY 2008-2009 reconciliation, citing the decision in Okaloosa County v. Department of Juvenile Justice, 131 So. 3d 818 (Fla. 1st DCA 2014). There, the First District Court of Appeal stated:

> At the conclusion of the consolidated administrative proceedings, which included the original challengers to the annual reconciliation and the non-challenging counties, the ALJ made the following determinations: 1) the December 7, 2009 annual reconciliation constituted final agency action for all counties that had not contested the reconciliation in accordance with the Department's January 26, 2010 letter; 2) the Department lacked statutory authority to recalculate the amounts set forth in its annual reconciliation for the fifty-five counties that had not filed challenges; and 3) the doctrine of administrative finality precluded Orange County from belatedly challenging the annual reconciliation. See Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679, 681 (Fla. 1979)(stating "[t]here must be a terminal point in every proceeding both administrative and judicial, at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein"). Finding that the Department acted without any legitimate reason in disturbing and adjusting the annual reconciliation as to those counties such as Orange County that did not timely challenge it, the ALJ recommended reinstatement of the amounts set forth in the December 7, 2009 annual reconciliation letter for Orange County and similarly situated counties. We conclude that these rulings fully comport with the law. Accordingly, we reverse the final

> order and remand with instructions to the Department to adopt the recommended order in its entirety.

131 So. 3d at 820-21.

37. Volusia County, however, was not a party to the "consolidated administrative proceedings, which included the original challengers to the annual reconciliation and the non-challenging counties," id., addressed in the Miami-Dade Recommended Order[4/] and the First District Court of Appeal's opinion in Okaloosa County, supra. Rather, the original challengers in the underlying proceeding included Brevard, Broward, Santa Rosa, Pinellas, Hillsborough, Hernando, and Miami-Dade counties. Of those original challengers, Pinellas, Brevard, Hillsborough, and Santa Rosa counties were found to have accepted the Department's March 23, 2010, adjustment, leaving only Hernando, Miami-Dade, and Broward counties that were found to have maintained their challenge in that proceeding. The "non-challenging counties" involved in that consolidated proceeding included Alachua, Orange, Escambia, City of Jacksonville, Bay, Seminole, and Okaloosa counties. Miami-Dade Recommended Order, ¶¶ 104-107.

38. Further, in his recommended order, Judge Stevenson specifically noted, "This order does not purport to recommend a course of action to the Department as regards those counties

that were not parties to this litigation." Miami-Dade Recommended Order, 84, n.20.

39. The need for administrative finality should not bar Volusia County's challenge. The doctrine of administrative finality, drawn from Austin Tupler, supra, involved a repetitive challenge by the same petitioner before the same agency involving the same issue. 377 So. 2d at 681. "In the field of administrative law, the counterpart to res judicata is administrative finality." Delray Med. Ctr., Inc. v. Ag. for Health Care Admin., 5 So. 3d, 26, 29 (Fla. 4th DCA 2009). Res judicata applies to bar a subsequent claim where there was a former judgment on the merits between the same parties or their privies, on the same cause of action. Id. In this case, Volusia County is challenging the Department's FY 2008-2009 reconciliation regarding Volusia County for the first time. Therefore, neither res judicata nor the concept of administrative finality should apply to prevent Volusia County's challenge.

40. Moreover, in this case, unlike the challenges addressed in Okaloosa County, the fact that Volusia County was not afforded a point of entry has been conclusively established by the Department's admissions.

41. Furthermore, in determining the correct amount for the FY 2008-2009 reconciliation for Volusia County, the parties have

stipulated to the actual cost per day for a juvenile's secure detention, as well as Volusia County's total pre-dispositional days, actual costs, overpayment to the Department, and the amount Volusia County is owed as an additional credit for overpayment.

42. Therefore, as Volusia County has standing to bring this proceeding, Count I of the Amended Petition was timely filed because Volusia County was not afforded a point of entry, and the parties have stipulated to the correct amount owed to Volusia County for its overpayment to the Department for FY 2008-2009, it is appropriate for the Department to enter a final order setting forth the amount Volusia County is owed as an additional credit for overpayment to the Department.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Juvenile Justice enter a final order finding that the Department failed to provide Volusia County with a point of entry to challenge the Department's 2008-2009 reconciliation regarding Volusia County and the Department's shared costs for secure detention care for juveniles, and further providing that the Department shall, without undue delay, provide a revised assessment to Volusia County stating that for FY 2008-2009:

1. Volusia County's actual costs of providing predisposition secure juvenile detention care for fiscal year 2008-2009 were $1,916,409.90;

2. Volusia County overpaid the Department $1,822,915.10; and,

3. Volusia County is owed an additional credit of $1,711,874.93 for overpayment.

DONE AND ENTERED this 29th day of October, 2014, in Tallahassee, Leon County, Florida.

JAMES H. PETERSON, III
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of October, 2014.

ENDNOTES

[1/] Unless otherwise noted, all statutory and rule citations are to current versions, the substantive provisions of which have not changed since 2007.

[2/] Findings of Fact 1 through 18 are derived from the parties' Stipulated Facts 1-18, respectively, filed September 19, 2014.

[3/] Transcript of Proceedings, p. 70.

[4/] Administrative Law Judge Stevenson's recommended order in Miami-Dade County, et al., v. Dep't of Juv. Just., Case No. 10-1893, et seq. (Fla. DOAH Aug. 22, 2012).

COPIES FURNISHED:

Mary G. Jolley, Esquire
Nancye Jones, Esquire
County of Volusia
Room 301
123 West Indiana Avenue
Deland, Florida 32720
(eServed)

Michael John Wheeler, Esquire
Florida Department of Juvenile Justice
2737 Centerview Drive
Tallahassee, Florida 32399
(eServed)

Christina K. Daly, Interim Secretary
Department of Juvenile Justice
Knight Building
2737 Centerview Drive
Tallahassee, Florida 32399-3100
(eServed)

Brian Berkowitz, General Counsel
Department of Juvenile Justice
Knight Building
2737 Centerview Drive
Tallahassee, Florida 32399-3100
(eServed)

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