

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF
EDUCATION,

Petitioner,

vs.

Case No. 14-1096SP

BARRINGTON ACADEMY AND
BARRINGTON ACADEMY II,

Respondents.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted on April 10, 2014, by video teleconferencing between sites in Tallahassee and Lauderdale Lakes, Florida, before Administrative Law Judge (ALJ) Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Bonnie Ann Wilmot, Esquire
Department of Education
325 West Gaines Street
Tallahassee, Florida 32399

For Respondent: Marc Anthony Douthit, Esquire
Douthit Law, LLC
Third Floor
6625 Miami Lakes Boulevard
Miami Lakes, Florida 33014

STATEMENT OF THE ISSUE

Whether Respondents (private schools participating in certain scholarship programs) engaged in fraud and/or failed to comply with provisions required of private schools participating in such scholarship programs and, if so, whether Petitioner (Commissioner) should suspend or revoke Respondents' rights to participate in the scholarship programs.

PRELIMINARY STATEMENT

Respondents are private schools that participate in the John M. McKay Scholarship for Students with Disabilities Program (McKay Scholarship Program or McKay Scholarship) and the Florida Tax Credit Scholarship Program (FTC Scholarship Program or FTC Scholarship).

On October 4, 2013, the Commissioner alleged in an Administrative Complaint certain facts relating to scholarship money for Student A. Based on those facts, the Commissioner suspended Barrington Academy's (Barrington) participation in both scholarship programs and proceeded to revoke that participation.

On February 19, 2014, the Commissioner filed an Amended Administrative Complaint against Barrington and Barrington Academy II (Barrington II) that re-alleged the facts as to Student A and added facts relating to Student B and Barrington II. Based on those facts, Petitioner suspended the participation of both Respondents in both scholarship programs and proceeded to

revoke that participation in both scholarship programs. Succinctly stated, both Respondents were accused of accepting McKay Scholarship Program payments for Student A and Student B and verifying that each student was in attendance when neither was in attendance. The Commissioner also alleged that school employees endorsed scholarship checks made payable to the respective parents of the two students and placed the proceeds in a Barrington bank account.

Respondents timely requested a formal administrative hearing, the matter was referred to DOAH, and this proceeding followed. This is an expedited proceeding pursuant to section 1002.395(11)(b)3., Florida Statutes (2013).^{1/}

The Commissioner presented the following witnesses: Carla Green (the educational director of a Department of Juvenile Justice (DJJ) facility in Greenville, Florida), Laura Harrison (a Department of Education employee in the Office of School Choice), Gwendolyn Thomas (the Administrator of both Respondents), and Kate Goss (a Department of Education employee specializing in private school programs). Petitioner offered five pre-marked exhibits, four of which were admitted into evidence.

Respondents presented the testimony of Curtis Thomas, the husband of Gwendolyn Thomas. Respondents offered no exhibits.

The Transcript, consisting of one volume, was filed April 28, 2014.

The parties timely filed their respective proposed recommended orders, which have been duly considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Barrington and Barrington II are private schools located in Florida City. They are located in the same facility under the same administration. Both have been eligible to receive McKay and FTC Scholarships for qualified students.

2. Gwendolyn Thomas is the long time administrator of Barrington, which has been in existence for approximately 25 years. Ms. Thomas is also the administrator of Barrington II, which has been in existence for approximately two years.

3. For medical reasons, Ms. Thomas did not participate in the day-to-day operation of either school between October 2010 and November 2013. During her absence, Mack Brown, the assistant principal, was in charge of both schools until he left in June 2013 to start a competing school.

4. Ms. Thomas has been in charge of the day-to-day operation of Barrington and Barrington II since November 2013.

5. McKay Scholarship payments are disbursed on a quarterly basis.^{2/} Pursuant to sections 1002.39(8)(b) and 1002.421(2)(d), any private school participating in the McKay Scholarship Program is required to affirmatively verify to the Department of Education that each scholarship student is regularly enrolled in

the school at least 30 days prior to the issuance of any quarterly scholarship payment.

6. Pursuant to section 1002.39(9)(f), McKay Scholarship checks are made payable to the parent of a scholarship student, which only the parent can sign. Private school personnel cannot sign such a check on behalf of the parent, even with the parent's permission.

7. Prior to June 9, 2011, Student A was enrolled in Barrington and received a McKay Scholarship. On June 9, 2011, Student A left Barrington and has not been a student at Barrington since June 9, 2011.

8. Between August 26, 2011, and August 23, 2013, nine checks, totaling \$12,230.25, were issued to the mother of Student A pursuant to the McKay Scholarship Program. Those checks were issued on the following dates in the following amounts:

August 26, 2011	\$1,336.75
October 27, 2011	\$1,336.75
January 24, 2012	\$1,336.75
March 21, 2012	\$1,336.75
August 21, 2012	\$1,382.50
October 22, 2012	\$1,382.50
January 23, 2013	\$1,382.50
March 20, 2013	\$1,382.50
August 23, 2013	\$1,353.25

9. The back of each check contains an endorsement that appears to be the name of Student A's mother. Student A's mother did not sign any of these checks. Each check was signed by an

employee of Barrington or Barrington II. Each check was deposited into an account owned by Barrington.

10. For each of these payments, Barrington submitted documentation to the Department of Education that Student A was attending Barrington prior to the issuance of the payment, without verifying that Student A was in attendance. As noted above, Student A was not in attendance.

11. On October 4, 2013, the Commissioner filed her Administrative Complaint against Barrington and suspended Barrington's participation in the McKay and FTC Scholarship Programs. The Commissioner had information that Student A was not enrolled in Barrington and had probable cause to believe that Barrington Academy had engaged in fraudulent conduct.^{3/}

12. Afterwards, many of the Barrington students were administratively transferred to Barrington II, and continued to receive scholarship payments.

13. Prior to June 7, 2013, Student B was enrolled in Barrington II and received a McKay Scholarship. On June 7, 2013, Student B was taken into the custody of the DJJ and enrolled in a residential facility in Greenville, Florida. Student B was in the custody of DJJ until March 7, 2014.^{4/}

14. Between September 25, 2013, and January 23, 2014, three checks, totaling \$8,316.75, were issued to the mother of Student

B pursuant to the McKay Scholarship Program. Those checks were issued on the following dates in the following amounts:

September 25, 2013	\$2,772.25
October 23, 2013	\$2,772.25
January 23, 2014	\$2,772.25

15. The back of each check contains an endorsement that appears to be the name of Student B's mother. Student B's mother did not sign any of these checks. Each check was signed by an employee of Barrington or Barrington II. Each check was deposited into an account owned by Barrington.

16. For each of these payments, Barrington II submitted documentation to the Department of Education that Student B was attending Barrington II prior to the issuance of the payment, without verifying that Student B was in attendance. As noted above, Student B was not in attendance.

17. On February 19, 2014, the Commissioner filed her Amended Administrative Complaint against Barrington and Barrington II and suspended their participation in the McKay and FTC Scholarship Programs. The Commissioner had information that Student B was not enrolled in Barrington II and had probable cause to believe that Barrington II had engaged in fraudulent conduct.

18. Barrington has reimbursed the Department of Education for the McKay Scholarship payments made on behalf of Student A.

19. Barrington II has deposited with its attorney sufficient funds to reimburse the Department of Education for the McKay Scholarship payments made on behalf of Student B.

20. Although Ms. Thomas had returned as administrator when at least two of the McKay Scholarship payments at issue were processed by a school employee, she testified, credibly, that she had not authorized that action and was unaware of the misconduct before the Administrative Complaint and the Amended Administrative Complaint were filed.

21. The persons responsible for the deficiencies discussed above have either voluntarily left their employment or have been fired.

22. Barrington and Barrington II have hired a person to ensure compliance with McKay and FTC Scholarship Programs.

CONCLUSIONS OF LAW

23. DOAH has jurisdiction over the subject matter of and the parties to this proceeding pursuant to sections 120.569, 120.57(1), and 1002.395(11)(b)3, Florida Statutes.

24. This is a de novo proceeding designed to formulate final agency action. See Hamilton Cnty Bd. of Cnty Comm'rs v. Dep't. Env'tl. Reg., 587 So. 2d 1378 (Fla. 1st DCA 1991) and section 120.57(1)(k).

25. In this proceeding the Commissioner seeks to revoke Respondents' participation in the McKay Scholarship Program and

the FTC Scholarship Program. The burden of establishing the grounds for that action falls on the Commissioner, who must prove her allegations by a preponderance of the evidence. See Winn v. Muskateers Academy, DOAH Case No. 06-5074, Conclusion of Law 42; Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981) (burden of proof is usually upon party asserting the affirmative of the issue); and § 120.57(1)(j), Fla. Stat.

26. A "preponderance" of the evidence means the greater weight of the evidence. See Fireman's Fund Indem. Co. v. Perry, 5 So. 2d 862 (Fla. 1942).

27. Pursuant to sections 1002.39(7)(c)2. and 1002.395(11)(c)3., the Commissioner is authorized to immediately suspend McKay Scholarship payments and FTC Scholarship payments if the Commissioner has probable cause to believe there is fraudulent activity on behalf of a private school. Here, the Commissioner had reliable information that Barrington and Barrington II had verified the attendance of students who were not in attendance. Moreover, for Student A, the Commissioner had reliable information that the parent had not endorsed the scholarship payments that had been issued in her name. That information provided the Commissioner with probable cause to immediately suspend McKay Scholarship payments and FTC Scholarship payments to Barrington and Barrington II and to

initiate these proceedings to revoke their participation in both scholarship programs.

28. Subject to a private school's due process rights, which can include a formal hearing before DOAH, section 1002.39(7)(a)1., pertaining to the McKay Scholarship Program, provides that the Commissioner:

Shall deny, suspend, or revoke a private school's participation in the scholarship program if it is determined that the private school has failed to comply with the provisions of this section. However, if the noncompliance is correctable within a reasonable amount of time and if the health, safety, or welfare of the students is not threatened, the commissioner may issue a notice of noncompliance which provides the private school with a timeframe within which to provide evidence of compliance before taking action to suspend or revoke the private school's participation in the scholarship program.^{5/}

29. The Commissioner proved that Respondents repeatedly failed to comply with the provisions of chapter 1002.39 over a period that began in August 2011 when Barrington falsely verified the attendance of Student A and falsely endorsed and deposited the scholarship check made payable to Student A's parent. That misconduct continued until February 2014 when Barrington II falsely verified the attendance of Student B and falsely endorsed and deposited the scholarship check made payable to Student B's parent. The Commissioner has the authority and the discretion to revoke both Barrington's and Barrington II's participation in

both scholarship programs. In its Proposed Recommended Order, the Commissioner argues that Respondents' participation in both scholarship programs should be revoked. That action is reasonable given the nature and duration of the misconduct.

30. In making the recommendation that follows, the undersigned has considered that Ms. Thomas is back in charge of both schools, that she was unaware of the misconduct at the times the misconduct occurred, that Barrington Academy has repaid the amounts paid for Student A, that Barrington II is prepared to repay the amounts for Student B, that Respondents have hired a compliance officer, and that the employees directly responsible for the misconduct are no longer employed by Barrington or Barrington II.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Education revoke the participation of Barrington Academy and Barrington Academy II in the McKay Scholarship Program and the FTC Scholarship Program. It is further RECOMMENDED that both schools be permitted to re-apply to participate in these programs after the Department of Education has been reimbursed for the scholarship payments made on behalf of Student B and after both schools demonstrate that they have personnel and written procedures that will ensure compliance with all applicable rules and statutory provisions.

DONE AND ENTERED this 19th day of May, 2014, in Tallahassee,
Leon County, Florida.



CLAUDE B. ARRINGTON
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 19th day of May, 2014.

ENDNOTES

^{1/} Each statutory reference is to Florida Statutes (2013), and each reference to a rule is to the rule published in Florida Administrative Code as of the date of this Recommended Order.

^{2/} All deficiencies at issue in this proceeding pertained to the McKay Scholarship Program. Because no deficiency relating to the FTC Scholarship Program is at issue, that process will not be discussed.

^{3/} The Commissioner acted pursuant to sections 1002.39(7)(c)2. and 1002.395(11)(c)3., which authorize such suspension from the McKay Scholarship Program and FTC Scholarship Program, respectively, when there is probable cause to believe there has been fraudulent activity on the part of the private school. The Commissioner utilized the same authority in subsequently filing the Amended Complaint.

^{4/} Pursuant to section 1002.39(3)(a), a student is not eligible for a McKay Scholarship while he or she is enrolled in a school operated by or for DJJ.

^{5/} Section 1003.395(11)(a)1., pertaining to the FTC Scholarship Program, contains almost identical language to section

1002.39(7)(a)1., and provides the Commissioner the authority to take action against Respondents' participation in the FTC Scholarship Program.

COPIES FURNISHED:

Bonnie Ann Wilmot, Esquire
Department of Education
325 West Gaines Street
Tallahassee, Florida 32399

Marc Anthony Douthit, Esquire
Douthit Law, LLC
Third Floor
6625 Miami Lakes Boulevard
Miami Lakes, Florida 33014

Lynn Abbott, Agency Clerk
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399

Pam Stewart, Commissioner
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399

Matthew Carson, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 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.