

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DAVID ONESS,

Petitioner,

vs.

Case No. 15-7042

SARASOTA COUNTY SCHOOL BOARD,

Respondent,

and

DEPARTMENT OF EDUCATION,

Intervenor.

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held February 9, 2016, via video teleconference in Sarasota and Tallahassee, Florida, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division).

APPEARANCES

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Lynn C. Hearn, Esquire
Meyer, Brooks, Demma and Blohm, P.A.
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For Respondent: Margaret R. Good, Esquire
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For Intervenor: David L. Jordan, Esquire
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STATEMENT OF THE ISSUE

Whether Petitioner, David Oness, is eligible to receive the remuneration from the 2015 state of Florida Best and Brightest Scholarship program.

PRELIMINARY STATEMENT

By correspondence dated November 13, 2015, the Sarasota County School Board (SCSB or Respondent) informed Mr. Oness that he did "not qualify for the Best and Brightest Scholarship because [his] ACT test scores [did] not reflect the 80th national percentile or higher." In response to the November 13 correspondence, Mr. Oness timely requested a hearing before the Division. By correspondence dated December 14, the SCSB forwarded the hearing request to the Division for a hearing.^{1/} On January 6, 2016, the Florida Department of Education (DOE) filed an unopposed motion to intervene, which was granted. The final hearing was scheduled for, and held on, February 9, 2016.

Prior to the hearing, the parties, including the intervenor, filed a Pre-hearing Stipulation. To the extent appropriate, the stipulated facts are found below.

At the final hearing, Mr. Oness testified on his own behalf. Respondent called Al Harayda, SCSB's Employee Relations and Equity Administrator, to testify on its behalf. DOE called Brian Dassler, DOE Deputy Chancellor, to testify. Exhibits A through F were admitted into evidence without objection.

The Transcript of the proceeding was filed with the Division on February 25, 2016.^{2/} On February 26, a Notice of Filing Transcript was issued, wherein the parties were notified that their respective proposed recommended orders (PROs) were to be filed on March 7, before 5:00 p.m. The parties timely submitted their PROs. Within Respondent's PRO, the issue of subject matter jurisdiction was raised as an impediment to the Division rendering the Recommended Order.

On March 9, 2016, Mr. Oness filed his Unopposed Motion to Supplement Proposed Recommended Order to Address Newly Raised Claim of Lack of Jurisdiction. An Order granting the request was issued, and the undersigned considered Mr. Oness' supplement addressing the "lack of jurisdiction" position.

On March 22, 2016, Respondent and DOE filed a Joint Notice of Supplemental Authority (notice), citing as supplemental authority section 25 of chapter 2016-62, Laws of Florida. Mr. Oness timely filed a response to the notice. Both pleadings have been considered.

Unless otherwise noted, all statutory citations are to the Florida Statutes (2015).

FINDINGS OF FACT

1. Mr. Oness is employed by the SCSB and is in his 11th year as a teacher at Sarasota High School.
2. The 2015 Florida Legislature Appropriations Act created the Best and Brightest Teacher Scholarship Program (the scholarship), chapter 2015-232, p. 27, Item 99A. The eligibility pre-requisites for applying to and being awarded the scholarship (up to \$10,000) were established in the scholarship.
3. The scholarship provided the following:

Funds in Specific Appropriation 99A are provided to implement Florida's Best and Brightest Teacher Scholarship Program. The funds shall be used to award a maximum of 4,402 teachers with a \$10,000 scholarship based on high academic achievement on the SAT or ACT. To be eligible for a scholarship, a teacher must have scored at or above the 80th percentile on either the SAT or the ACT based upon the percentile ranks in effect when the teacher took the assessment and have been evaluated as highly effective pursuant to section 1012.34, Florida Statutes, or if the teacher is a first-year teacher who has not been evaluated pursuant to section 1012.34, Florida Statutes, must have scored at or above the 80th percentile on either the SAT or the ACT based upon the percentile ranks in effect when the teacher took the assessment. In order to demonstrate eligibility for an award, an eligible teacher must submit to the school district, no later than October 1, 2015, an official record of his or her SAT or ACT score

demonstrating that the teacher scored at or above the 80th percentile based upon the percentile ranks in effect when the teacher took the assessment. By December 1, 2015, each school district, charter school governing board, and the Florida School for the Deaf and the Blind shall submit to the department the number of eligible teachers who qualify for the scholarship. By February 1, 2016, the department shall disburse scholarship funds to each school district for each eligible teacher to receive a scholarship. By April 1, 2016, each school district, charter school governing board, and the Florida School for the Deaf and the Blind shall provide payment of the scholarship to each eligible teacher. If the number of eligible teachers exceeds the total the department shall prorate the per teacher scholarship amount.

4. Mr. Oness timely filed an application to participate in the scholarship.

5. Mr. Oness was evaluated as "highly effective" pursuant to section 1012.34, Florida Statutes.

6. Mr. Oness was raised and educated in Canada. Mr. Oness did not take either the ACT^{3/} or the SAT^{4/} when he went to college, as it was not necessary in Canada.

7. Mr. Oness took the ACT in Las Vegas, Nevada, on September 12, 2015.

8. On "The ACT® Student Report" (pages 6 and 7 of Exhibit A), it recorded Mr. Oness's ACT score as: Composite Score 24 U.S. RANK 74%|STATE RANK 81%

9. No credible testimony or evidence was received from any authoritative figure from the ACT entity or otherwise that clearly establishes what is meant by the "STATE RANK" percentile. The form provides:

U.S. Rank and State Rank: Your ranks tell you the approximate percentages of recent high school graduates in the U.S. and your state who took the ACT and received scores that are the same as or lower than yours.

It remains unclear whether the term "STATE RANK" means: the state of Nevada, where Mr. Oness took the ACT; the state of Florida, where Mr. Oness lives and works; or some other state.

10. On November 13, 2015, SCSB's Human Resources Salary Specialist, Mary McCurry, advised Mr. Oness that he did not qualify for the scholarship award "because your ACT test scores do not reflect the 80th national percentile or higher."

11. Mr. Oness asked Respondent to review the non-qualification determination by e-mail dated November 13, 2015, and received an e-mail in return from the SCSB's Employee Relations and Equity Administrator, Al Harayda, advising that the DOE provided "the percentiles that we had to use" in determining eligibility.

12. The DOE provided guidance to the SCSB that "the national percentile score should be used to meet eligibility requirements."

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.^{5/}

14. Petitioner bears the burden of proving by a preponderance of the evidence that he is entitled to the award services. Dep't of Transp. v. J. W. C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat. A preponderance of the evidence is defined as "the greater weight of the evidence," or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

15. Mr. Oness did not sustain his burden of proof.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Sarasota County School Board enter a final order that Petitioner is not eligible for a Best and Brightest Scholarship.

DONE AND ENTERED this 29th day of March, 2016, in
Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of March, 2016.

ENDNOTES

^{1/} The language in the transmittal letter reads in part:

We have been instructed to refer these
[there were two other cases involving the
same scholarship] matters to the Division of
Administrative Hearings for a hearing(s)
before an administrative law judge regarding
the School Board's denial of scholarship
eligibility.

^{2/} It appears that Petitioner's counsel electronically filed the
Transcript, thus the undersigned assumes that Petitioner's
counsel has the original Transcript, as it was not filed with
the Division.

^{3/} The phrase "ACT" was never defined. The term is understood
to be the acronym for the American College Testing.

^{4/} The phrase "SAT" was never defined. The term is understood to
be the acronym for the Scholastic Aptitude Test.

^{5/} Respondent's position that the Division does not have
jurisdiction is distinguishable. Respondent claims that the

issue involves the state's budget process. This case involves Mr. Oness' eligibility to receive the scholarship, nothing more, nothing less.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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