

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CORDELIA BROWN,

Petitioner,

vs.

Case No. 16-0378

SARASOTA COUNTY SCHOOL BOARD,

Respondent,

and

DEPARTMENT OF EDUCATION,

Intervenor.

_____ /

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015),^{1/} on March 31, 2016, in Sarasota, Florida.

APPEARANCES

For Petitioner: Ronald G. Meyer, Esquire
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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, Cordelia Brown, is eligible to receive a scholarship offered by the 2015 Florida Best and Brightest Teacher Scholarship Program.

PRELIMINARY STATEMENT

On September 3, 2015, Petitioner, Cordelia Brown ("Petitioner"), applied to the School Board of Sarasota County, Florida (the "School Board"), for a scholarship under the 2015 Florida Best and Brightest Teacher Scholarship Program (the "Scholarship Program").

On November 11, 2015, the School Board notified Petitioner that it had determined that she was not eligible for the scholarship.

On January 13, 2015, Petitioner timely requested an administrative hearing to contest the School Board's denial of her application. On January 22, 2016, the School Board referred the matter to the Division of Administrative Hearings ("DOAH") and requested assignment to an Administrative Law Judge ("ALJ") to conduct an evidentiary hearing.

On January 26, 2016, the Florida Department of Education (the "Department") filed a Motion to Intervene. The Department's motion was granted by Order, dated January 27, 2016.

The final hearing was held on March 31, 2016. At the hearing, Petitioner testified on her own behalf. The School Board presented the testimony of Sonia Figaredo-Alberts, executive director of pupil support services, and Al Harayda, employee relations and equity administrator. The Department presented the testimony of Brian Dassler, deputy chancellor of educator quality. The parties stipulated to the introduction of Exhibits 1 through 14, which were received into evidence.

A one-volume Transcript of the final hearing was filed with DOAH on April 21, 2016. At the close of the hearing, the parties were advised of the ten-day timeframe following DOAH's receipt of the transcript to file post-hearing submittals. Following the Department's Unopposed Motion for Extension of Time to File Proposed Recommended Order, filed on April 26, 2016, the parties were given until May 12, 2016, to file proposed recommended orders. Each party filed a Proposed Recommended Order that was duly-considered in preparing this Recommended Order.

FINDINGS OF FACT

1. The Florida Legislature created the Scholarship Program during its 2015 Session. Through the 2015 General Appropriations Act, the Legislature adopted proviso language in Specific

Appropriation 99A ("Appropriation 99A") allocating \$44,022,483.00 to "award a maximum of 4,402 teachers with a \$10,000 scholarship based on high academic achievement on the SAT or ACT." See Ch. 2015-232, § 2, 99A, at 27, Laws of Fla.

2. To be eligible to receive the scholarship, Appropriation 99A stated that, "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."^{2/}

3. Appropriation 99A further provided that an "eligible teacher" was to apply to the employing school district no later than October 1, 2015. Thereafter, each school district was to submit to the Department the number of eligible teachers who qualified for the scholarship by December 1, 2015. By February 1, 2016, the Department was to disburse scholarship funds to each school district for each teacher who was to receive the scholarship. By April 1, 2016, each school district was to pay the scholarship award to each eligible teacher.

Appropriation 99A further stated that if the number of eligible teachers exceeded the total appropriated amount (\$44,022,483.00), the Department was to prorate the per teacher scholarship amount.

4. On September 3, 2015, Petitioner timely applied to the School Board to receive the scholarship award under the Scholarship Program.

5. On November 11, 2015, the School Board notified Petitioner that it had been determined that she did not qualify for the Scholarship Program. The School Board explained that Petitioner was not a "classroom teacher." Therefore, she was not eligible to receive the scholarship.

6. Petitioner is a first-year employee with the School Board. The School Board hired her at the start of the 2015-2016 school year. The School Board hired Petitioner as a speech-language pathologist.

7. Prior to working for the School Board, Petitioner taught in Fulton County, Georgia. One factor in her decision to accept the School Board's offer of employment and relocate to Florida was the Scholarship Program.

8. For the 2015-2016 school year, Petitioner entered into a "Probationary Contract of Employment for Instructional Personnel of the Public Schools" with the School Board.^{3/} Petitioner holds a two-year, temporary teaching certificate issued by the Department in the area of Speech-Language Impaired.

9. For the 2015-2016 school year, the School Board assigned Petitioner to work as a speech language pathologist at Brentwood Elementary. All of Petitioner's students were identified as exceptional student education or "ESE" students.

10. At Brentwood Elementary, Petitioner led two class subjects, Speech Therapy and Language Therapy. In her Speech

Therapy class, Petitioner addressed her students' problems with speech and fluency (e.g., stuttering). Petitioner's Language Therapy class focused on the content of what is being said (i.e., expressive and receptive language). Petitioner instructed students in areas including reading, reading aloud, and analysis.

11. Petitioner instructed a total of 25 students over six class periods. Her classes consisted of small groups of two-to-four students. Petitioner's students ranged in age from pre-kindergarten through fifth-grade.

12. For her six classes, Petitioner prepared daily lesson plans. Her lesson plans targeted the goals and objectives on each of her students' individualized education plans. She aligned her lesson plans with Florida state standards. Some of the state standards are general education grade-level standards, and some are specific to speech or language therapy. Each lesson plan included sections addressing "Setting the Purpose for Learning," "Instruction and Assessment," "Teacher Supported Guided Instruction," and "Application." Petitioner submitted her lesson plans to her assistant principal for a quarterly review. Petitioner was observed and evaluated by her assistant principal using the same form used for evaluating other teachers at Brentwood Elementary. Petitioner was observed and evaluated on criteria related to the instruction she provided to her students as well as the culture of her classroom.

13. The School Board reported that Petitioner is "outstanding" in her role and was doing "a great job" according to the Brentwood Elementary administration. The School Board further relayed that "there is no question that [Petitioner] is an up-and-coming great professional."

14. The School Board denied Petitioner's application because it did not consider a speech language pathologist to be eligible for the Scholarship Program. The School Board explained that it understood the term "teacher" as used in Appropriation 99A to mean a "classroom teacher" as that term is defined in section 1012.01(2)(a). The School Board did not believe that Petitioner fit into the definition of a "classroom teacher." The School Board described a "classroom teacher" as a "person who is in charge of the whole classroom who is doing the daily instructional services to the kids."

15. In contrast to a "classroom teacher," the School Board considers speech-language pathology as a type of "related service." Related services are services provided to exceptional-education students to assist them in accessing and benefiting from classroom instruction. The School Board considers its "classroom teachers" and speech language pathologists to possess different skill-sets, bases of knowledge, and job goals and responsibilities. Speech-language pathologists have a specific

role to support other teachers by helping students meet their educational goals.

16. The School Board described Petitioner's job duties as "therapeutic services." In general, speech-language pathologists are professionals who assess, diagnose, and provide therapeutic treatment for various speech, language, and hearing disorders. In her role at Brentwood Elementary, Petitioner provided a comprehensive program to her ESE students to treat those students' specific speech or language impairments. Petitioner's Speech Therapy and Language Therapy classes were provided to two-to-four students at a time who were evaluated and deemed to have a disability that impacted their educational classroom performance. Petitioner taught her selected students specific skills or coping mechanisms that would allow them to overcome their impairments in order to better access instruction and curriculum. In other words, Petitioner's focus was to give her students the ability to learn.

17. The School Board further explained that Petitioner's "lesson plans" are referred to in the therapy setting as "plans of care." Plans of care are similar in form to lesson plans created by classroom teachers, but they differ in substance. Classroom teachers' lesson plans set forth strategies for an educator to deliver instruction to an entire classroom. Speech-language pathologists' plans of care, on the other hand, set

forth tailored therapy plans that address an individual student's specific impairment. In addition, Petitioner's class roster is referred to as a "caseload." Furthermore, while the Petitioner's Speech Therapy and Language Therapy classes were assigned course codes similar to general education course codes, her two classes were specially coded. Petitioner's students did not receive course credit for attending her classes with the therapy course code designation.

18. Testimony at the final hearing, however, revealed that in an academic setting the goals and responsibilities of a speech-language pathologist have objectives similar to a "classroom teacher's." Sonia Figaredo-Alberts, the School Board's executive director of pupil support services, who is also a speech-language pathologist, recognized that Petitioner "is instructing students with communication disorders." Ms. Figaredo-Alberts explained that "we, as speech and language pathologists assist with very specific targeted areas . . . we do a very therapeutic intervention. We're teaching [our students]. There's no question that our therapy is about teaching that student specific skills . . . in a very thorough and specialized area."

19. According to Appropriation 99A, the Legislature gave the decision regarding a "teacher's" eligibility to receive a scholarship to the school districts. Appropriation 99A directed

each Florida school district to receive teacher applications for the Scholarship Program and to submit the number of eligible teachers who qualified for the scholarship to the Department.

20. While processing applications, several school districts sent questions to the Department regarding the implementation of the Scholarship Program. In particular, the Department received inquiries regarding who should be considered a "teacher" for purposes of the scholarship. Although the Department administered the Scholarship Program, Appropriation 99A did not grant the Department rulemaking authority. Therefore, the Department did not adopt rules regarding what teachers were eligible for the scholarship. The Department, however, did prepare and issue a memorandum addressing school districts' commonly asked questions.

21. On July 27, 2015, Hershel Lyons, chancellor of the Division of Public Schools for the Department, issued a memorandum entitled "Guidance on Best and Brightest Teacher Scholarship" (the "Memorandum") to the Florida School District Superintendents. The Memorandum provided that "[t]eachers eligible for the Best and Brightest Teachers Scholarship Program are classroom teachers as defined in [section] 1012.01(2)(a), F.S., who are employed by Florida school districts, charter schools, or the [Florida School for the Deaf and Blind]."

22. The Department based its interpretation of the term "teacher" on the various classes of employees set forth in section 1012.01(2)(a). The Department determined that the term "classroom teacher" in section 1012.01(2)(a) provided the best definition of the word "teacher" for purposes of the Scholarship Program.

23. On September 4, 2015, Chancellor Lyons issued a second memorandum to School District Superintendents with an attached Frequently Asked Questions document. The Frequently Asked Questions provided, in relevant part:

1. What are the eligibility criteria for the Best and Brightest Teacher Scholarship Program?

In order to meet eligibility requirements for the scholarship, the individual must:

a. Be a classroom teacher as defined in section 1012.01(2)(a), Florida Statutes . . .

* * *

2. According to section 1012.01(2)(a), F.S., what is the definition of a classroom teacher?

Classroom teachers are staff members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education and adult education, including substitute teachers.

24. Upon reviewing the Memorandum, the School Board believed the Department confirmed its view that "classroom

teachers" were the only individuals eligible for the Scholarship Program.

25. The Department did not follow up to determine whether any school district followed its guidance. The Department did not believe that Appropriation 99A gave it that authority.

26. The Department received the names of 5,332 teachers that the school districts determined were eligible for the scholarship awards. Appropriation 99A directed the Department to act as the fiscal agent for the Scholarship Program. As Appropriation 99A directed, the Department disbursed scholarship funds by February 1, 2016.^{4/} The Department prorated the scholarship funds so that each eligible teacher received approximately \$8,300.

27. Based on the evidence and testimony presented during the final hearing, Petitioner proved, by a preponderance of the evidence that she qualifies for the Scholarship Program. Accordingly, the School Board should take the necessary steps to ensure that Petitioner receives the appropriate scholarship award contained in Appropriations 99A.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the subject matter and parties pursuant to sections 120.569 and 120.57(1).

29. The School Board is a duly-constituted governing body charged with the duty to operate, control, and supervise public schools within Sarasota County, Florida. See Art. IX, § 4(b), Fla. Const.; and §§ 1001.30 and 1001.33, Fla. Stat.

30. The Department acts as the administrative and supervisory education agency under the direction of the State Board of Education. See § 1001.20(1), Fla. Stat. The Department is required to "assist in providing professional leadership and guidance and in carrying out the policies, procedures, and duties authorized by law." § 1001.20(2), Fla. Stat.

31. Petitioner challenges the School Board's denial of her application for a financial award under the Scholarship Program. Absent specific statutory authority, the burden of proof is on the party asserting the affirmative of an issue in an administrative proceeding. See Antel v. Dep't of Prof'l Reg., 522 So. 2d 1056 (Fla. 5th DCA 1988); and Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

32. The preponderance of the evidence standard is applicable to this case. See § 120.57(1)(j), Fla. Stat.; Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). 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. S. Fla. Water Mgmt. v. RLI Live Oak, LLC,

139 So. 3d 869, 872 (Fla. 2014); see also Dufour v. State, 69 So. 3d 235, 252 (Fla. 2011) ("Preponderance of evidence is defined as evidence 'which as a whole shows that the fact sought to be proved is more probable than not.'"). Accordingly, Petitioner carries the ultimate burden to prove, by a preponderance of the evidence, that she is entitled to receive an award under the Scholarship Program.

33. The Florida Legislature, through the 2015 General Appropriations Act, created the Scholarship Program. See Ch. 2015-232, § 2, 99A, at 27, Laws of Fla. The proviso language in Appropriation 99A established the eligibility prerequisites for the Scholarship Program. Appropriation 99A states:

99A SPECIAL CATEGORIES GRANTS AND AIDS -
THE FLORIDA BEST AND BRIGHTEST TEACHER
SCHOLARSHIP PROGRAM

FROM GENERAL REVENUE FUND . . .
44,022,483

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.

34. The parties agree that, except for the issue of Petitioner's status as a "teacher," Petitioner is otherwise eligible for a scholarship. Accordingly, the legal issue to determine in this matter is whether Petitioner qualifies as a "teacher" as the Legislature used the term in Appropriation 99A.

35. The facts establish that Petitioner, a speech-language pathologist, is not a "classroom teacher" as defined by the School Board. She does not teach a subject for which her students receive academic credit. She does not teach a full classroom. Petitioner's lesson plans differ from those of

"classroom teachers." Petitioner's "plans of care" are individualized to treat a single student's specific speech or language impairment while "classroom teachers'" lesson plans set forth strategies to deliver instruction to an entire classroom.

36. However, the facts also establish that Petitioner does instruct students in a classroom setting at Brentwood Elementary. She is assigned 25 students. Petitioner teaches two class subjects. She is assigned six class periods. She prepares lesson plans ("plans of care") for each subject in accordance with Florida state standards. Petitioner inculcates her students in certain academic skills including reading, reading comprehension, and speech. Petitioner also holds a (temporary) teaching certificate issued by the Department.

37. In reviewing Appropriation 99A, the undersigned concludes that the term "teacher" is broad enough to encompass Petitioner in her role at Brentwood Elementary. The Legislature specifically used the term "teacher" to describe the individuals it desired to be eligible for the Scholarship Program. The term "teacher" means "teacher." The Legislature did not limit the scholarship to just "classroom teachers." Consequently, as explained below, the undersigned determines that the School Board should not restrict its employees' eligibility for a scholarship award to just "classroom teachers."

38. The resolution of this matter centers on statutory interpretation. The interpretation of Appropriation 99A begins with the question of whether the proviso language is clear and unambiguous. "When construing a statute, the court must first look to the plain meaning of the words used by the Legislature." Brandy's Prods. v. Dep't of Bus. & Prof'l Reg., Div. of Alcoholic Bev. & Tobacco, 188 So. 3d 130, 2016 Fla. App. LEXIS 5244, *4 (Fla. 1st DCA 2016) (citing Verizon Bus. Purchasing, LLC v. Dep't of Revenue, 164 So. 3d 806, 809 (Fla. 1st DCA 2015)); see also W. Fla. Reg'l Med. Ctr., Inc. v. See, 79 So. 3d 1, 9 (Fla. 2012). "When a statute is clear, a court may not look behind the statute's plain language or resort to rules of statutory construction to determine legislative intent." Dep't of High. Saf. & Motor Veh. v. Peacock, 185 So. 3d 632, 633 (Fla. 1st DCA 2016) (citing State, Dep't of Rev. v. Lockheed Martin Corp., 905 So. 2d 1017, 1020 (Fla. 1st DCA 2005)).

39. "To discern legislative intent, a court must look first and foremost at the actual language used in the statute." Larimore v. State, 2 So. 3d 101, 106 (Fla. 2008). "The Legislature is assumed to know the meaning of the words used in a statute and to have expressed its intent through the use of the words." Peacock, supra, at 633. The actual language the Legislature used in Appropriation 99A is clear and unambiguous.

40. Appropriation 99A does not define the term "teacher." Where the Legislature has not specifically defined the words used in a statute, "the language should be given its plain and ordinary meaning." Greenfield v. Daniels, 51 So. 3d 421, 426 (Fla. 2010) (citing Sch. Bd. of Palm Beach Cnty. v. Survivors Charter Schs., Inc., 3 So. 3d 1220, 1233 (Fla. 2009) (quoting Fla. Birth-Related Neurological Injury Comp. Ass'n v. Fla. Div. of Admin. Hrgs., 686 So. 2d 1349, 1354 (Fla. 1997))). It is appropriate to refer to a dictionary definition to ascertain the plain and ordinary meaning of a word used in a statute. Survivors Charter Schs., supra, at 1233.

41. The word "teacher" has a plain and ordinary meaning. "Teacher" is defined as "one that teaches; especially: one whose occupation is to instruct." "Teacher" also means "a person who passes on information or skill." MERRIAM-WEBSTER DICTIONARY, at <http://www.merriam-webster.com>. See Seagrave v. State, 802 So. 2d 281, 286 (Fla. 2001) ("When necessary, the plain and ordinary meaning of words [in a statute] can be ascertained by reference to a dictionary."); see also Raymond James Fin. Servs. v. Phillips, 110 So. 3d 908, 910 (Fla. 2d DCA 2011) ("It is appropriate to refer to dictionary definitions when construing statutes or rules.").

42. Based on the plain and ordinary meaning of the term "teacher," Petitioner is eligible to participate in the

Scholarship Program. It is undisputed that Petitioner "instructs" the ESE students assigned to her at Brentwood Elementary. Petitioner also "passes on information or skills" to her students. Therefore, based on the common understanding of the word "teacher," the undersigned concludes that the term "teacher" as used in Appropriation 99A includes Petitioner.

43. The School Board (and the Department) interpret the term "teacher," based on a definition set forth in section 1012.01(2)(a). Section 1012.01(2)(a) provides definitions for chapter 1012, the Personnel Chapter of the Florida Educator Code. Section 1012.01 states, in pertinent part:

(2) INSTRUCTIONAL PERSONNEL. — "Instructional personnel" means any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students. Included in the classification of instructional personnel are the following K-12 personnel:

(a) Classroom teachers. — Classroom teachers are staff members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers.

(b) Student personnel services. — Student personnel services include staff members responsible for: advising students with regard to their abilities and aptitudes, educational and occupational opportunities, and personal and social adjustments;

providing placement services; performing educational evaluations; and similar functions. Included in this classification are certified school counselors, social workers, career specialists, and school psychologists.

* * *

(d) Other instructional staff. – Other instructional staff are staff members who are part of the instructional staff but are not classified in one of the categories specified in paragraphs (a)-(c). Included in this classification are primary specialists, learning resource specialists, instructional trainers, adjunct educators certified pursuant to s. 1012.57, and similar positions.

44. Despite this definition available in section 1012.01(2), the School Board is not permitted to add the word "classroom" to Appropriation 99A that the Legislature did not include therein. "[C]ourts are not at liberty to add words to statutes that were not placed there by the Legislature." Caceres v. Sedano's Supermarkets, 138 So. 3d 1224, 1225 (Fla. 1st DCA 2014); see also L.G. v. State, 939 So. 2d 1141, 1143 (Fla. 1st DCA 2006) ("Where the legislature has used a term in one part of the statute and excluded it in another, it is improper to imply the term in a provision where it has been otherwise excluded.") If the drafters of Appropriation 99A had intended to restrict the Scholarship Program to only "classroom teachers" instead of "teachers," the drafters would have specifically included that extra word in the proviso language. Consequently,

section 1012.01(2)(a) does not support the School Board's position that "classroom teachers" are the only individuals eligible for the Scholarship Program.

45. Even if the School Board could rely on section 1012.01(2) to interpret the term "teacher," the statutory definition of "classroom teacher" appears to support Petitioner's claim. Parsing through the statutory language, the evidence in the record demonstrates that Petitioner is a "staff member" of Brentwood Elementary assigned a "professional activity" by the School District. She "instructs" students assigned to her. She conducts "courses in classroom situations." And, her courses are specifically prepared for "exceptional student education."^{5/} Further, the classification of education personnel set forth in section 1012.01, makes no separate mention of personnel who provide "related services." Accordingly, there is no legal reason one who provides a "related service" cannot also be a "teacher" for purposes of the Scholarship Program.^{6/}

46. Notwithstanding the plain and ordinary meaning of the term "teacher" in Appropriation 99A, the undersigned recognizes that Florida courts defer to agency interpretation of their own statutes. However, because the proviso language in Appropriation 99A is unambiguous and conveys a clear and definite meaning, the court must apply that meaning even if it conflicts with the interpretation of the statute adopted by the administrative

agency charged with enforcing it. See Muratti-Stuart v. Dep't of Bus. & Prof'l Reg., Constr. Indus. Licensing Bd., 174 So. 3d 538, 540 (Fla. 4th DCA 2015) ("An agency's interpretation of a statute is entitled to great deference unless the agency's interpretation conflicts with the plain and ordinary meaning of the statute."); Verizon Bus. Purchasing, 164 So. 3d at 812 ("Judicial deference does not require that courts adopt an agency's interpretation of a statute when the agency's interpretation cannot be reconciled with the plain language of the statute."); Micjo, Inc. v. Dep't of Bus. & Prof'l Reg., 78 So. 3d 124, 126-27 (Fla. 2d DCA 2012) (rejecting the agency's interpretation of the definition of "wholesale sales price" in section 210.25(13), Florida Statutes (2009), because the interpretation was inconsistent with the plain language of the statute).

47. The undersigned also notes that, while the Legislature tasked the Department with disbursing the scholarship funds, Appropriation 99A did not grant the Department with rulemaking authority over the Scholarship Program. As the Department repeatedly stressed, the Memorandum it issued offering a suggested definition for "teacher" was simply guidance to the school districts. Consequently, the School Board is not obligated to follow the Department's Memorandum.

48. Finally, the School Board (and the Department) suggest that language in the 2016 General Appropriations Act can be used

to interpret the term "teacher" in Appropriation 99A. During its 2016 Session, the Legislature enacted section 1012.731, Florida Statutes (2016), entitled "The Florida Best and Brightest Teacher Scholarship Program." See Ch. 2016-62, Laws of Fla., § 25, at 33-34 ("Section 25"). Through Section 25, the Legislature allocated funds to award scholarships to "classroom teachers, as defined in s. 1012.01(2) (a)."^{7/}

49. The School Board's argument, however, is not persuasive. The undersigned recognizes that, to interpret ambiguous statutory language, legislation enacted in subsequent legislative sessions may be examined to discern legislative intent. See Dadeland Depot, Inc. v. Paul Fire & Marine Ins. Co., 945 So. 2d 1216, 1230 (Fla. 2006). However, Section 25 contains no express language that the Legislature intended the proviso language in the 2016 Scholarship Program to apply retroactively to the 2015 Scholarship Program. Neither does Section 25 contain any legislative expression that Appropriation 99A was incorrectly implemented or misapplied. The undersigned considers the 2016 enactment a new/renewal of the Scholarship Program, not a "clarification" of the funds the Legislature specifically appropriated in 2015. See e.g., D & T Props. v. Marina Grande Assocs., 985 So. 2d 43, 47 (Fla. 4th DCA 2008) ("Where the legislature expressly characterizes the intent of legislation, it is especially appropriate to consider the amended statute to

determine the original legislative intent of the statute.”)
Consequently, the undersigned concludes that Appropriation 99A means what its text most appropriately conveys, that the term “teacher” means “teacher” and is not restricted to “classroom teacher.”

50. In applying the clear and unambiguous language of Appropriation 99A, the undersigned concludes that, as a matter of law, the Legislature intended the Scholarship Program to be open to all “teachers” and not restricted to just “classroom teachers.” Based on the competent substantial evidence in the record, Petitioner demonstrated that she serves as a “teacher” in her role at Brentwood Elementary. Accordingly, Petitioner has met her burden of proving, by a preponderance of the evidence, that she is entitled to a scholarship under the Scholarship Program.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the School Board of Sarasota County, Florida, issue a final order fulfilling its responsibilities under Appropriation 99A, i.e., submitting Petitioner’s name to the Department of Education as a teacher eligible for the scholarship created by the 2015 Florida Best and Brightest Teacher Scholarship Program.

DONE AND ENTERED this 13th day of June, 2016, in
Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of June, 2016.

ENDNOTES

^{1/} All statutory references are to the 2015 Florida Statutes, unless otherwise noted.

^{2/} The proviso language also stated that a teacher must have been evaluated as highly effective pursuant to section 1012.34, Florida Statutes, unless the teacher was a first-year teacher who had not yet been evaluated under that section. Petitioner, as a first-year teacher at the time she applied, had not been evaluated under section 1012.34. Therefore, her only requirement for the scholarship award was to have the requisite SAT or the ACT score at or above the 80th percentile. Petitioner took the SAT in 2004. Petitioner scored a 98 percent on her verbal test and an 89 percent on her math test. The School Board does not dispute that Petitioner met all the eligibility requirements for the scholarship aside from the question of whether the School Board should consider her a "teacher" for purposes of participating in the Scholarship Program.

^{3/} This contract refers to Petitioner as a "Teacher."

^{4/} Funds appropriated to the Scholarship Program became available on July 1, 2015. See Ch. 2015-232, § 113, Laws of Fla.

^{5/} The fact that the Legislature specifically included "exceptional special education" in the statutory definition of "classroom teacher" in section 1012.01(2)(a) shows the value the Legislature places on instructing ESE students, as well as those individuals who provide them the specialized instruction they need to achieve their educational goals. By opening the Scholarship Program to "teachers," the Legislature expressed its intent that those teachers who instruct ESE students "in classroom situations" should receive the same scholarship opportunity as those teachers who lead more traditional course subjects.

^{6/} The undersigned finds the facts of this matter are unique to this case and distinguishable from the factual findings and conclusions in the Recommended Order in Andrew v. Sarasota County School Board, Case No. 15-7041, (Fla. DOAH Apr. 8, 2016). Along with the factors listed in paragraph 36, the School Board representative specifically acknowledged that Petitioner "instructs" and "teaches" the ESE students assigned to her classes. Additionally, the Petitioner in Andrew did not hold a teaching certificate.

^{7/} See section 1012.731(2), effective July 1, 2016.

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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.