

**SCHOOL BOARD OF
ST. JOHNS COUNTY, FLORIDA**

RYAN A. JOHNSON,

Petitioners,

vs.

DOAH Case No. 18-3481

ST. JOHNS COUNTY SCHOOL BOARD

Respondent.

FINAL ORDER

On April 5, 2019, an Administrative Law Judge with DOAH of Administrative Hearings (“DOAH”) submitted a Recommended Order (“RO”) to the St. Johns County School Board (“School Board” or “District”) in DOAH Case No. 18-3481. A copy of the RO is attached hereto as Exhibit A and is incorporated herein. The Petitioner, Ryan A. Johnson, did not file exceptions to the RO. This matter is now before the School Board for final agency action.

BACKGROUND

On June 4, 2018, the School District notified Petitioner that school bus transportation for his children to and from Liberty Pines Academy (“LPA”) would not be provided for the 2018-2019 school year. On June 8, 2018, Petitioner sent a letter to the District opposing the termination of bus transportation to and from LPA for his children and other students residing in his neighborhood, and requesting reconsideration. On June 22, 2018, the District Superintendent communicated to Petitioner and other affected residents his intent to move forward with termination of bus transportation, and Petitioner responded with his intent to request a hearing before DOAH.

On July 5, 2018, the District forwarded Petitioner's communications to DOAH and requested assignment of an Administrative Law Judge ("ALJ") to conduct an administrative hearing pursuant to the School Board's contract with DOAH. The matter was originally scheduled for hearing on September 10 and 11, 2018, but the case was subsequently abated for the School Board to take official action, at a publicly-noticed meeting, on the Superintendent's recommendation to terminate bus transportation. The School Board took that action on October 9, 2018. At its regular meeting on January 8, 2019, the School Board also approved the Superintendent's recommendation to postpone the termination of bus transportation until the beginning of the 2019 – 2020 school year.

Following the School Board action of October 9, the parties filed a status report with the ALJ and requested the matter be scheduled for hearing. The case was scheduled for hearing on January 17, 2019, and subsequently rescheduled to February 15, 2019.

At the final hearing, on February 15, 2019, Petitioner testified on his own behalf and introduced the testimony of Frank Sebregandio and Sonya Cook. Petitioner's Exhibits P3 through P11 were admitted in evidence.

The School Board introduced the testimony of Alfred Pantano and Tim Forson. The School Board's Exhibits R1 through R35 were admitted in evidence.

A one-volume transcript of the proceedings was filed on March 6, 2019. The parties timely filed Proposed Recommended Orders on March 18, 2019. The ALJ filed her Recommended Order on April 5, 2019.

SUMMARY OF THE RECOMMENDED ORDER

In her RO, the ALJ rejected Petitioner's claims challenging the validity of the School Board's decision to terminate his children's bus transportation to LPA based on the findings of fact and conclusions of law set forth in the order.

STANDARDS OF REVIEW OF DOAH RECOMMENDED ORDERS

Section 120.57(1)(l), Florida Statutes¹, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of the ALJ "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." § 120.57(1)(l), Fla. Stat. (2018); Charlotte County v. IMC Phosphates Co., 18 So. 3d 1079, 1087 (Fla. 2d DCA 2009); Wills v. Fla. Elections Comm'n, 955 So. 2d 61, 62 (Fla. 1st DCA 2007). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" refers to the existence of some evidence as to each essential element and as to its admissibility under legal rules of evidence. See e.g., Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm's, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1995); Nunez v. Nunez, 29 So. 3d 1191, 1192 (Fla. 5th DCA 2010).

A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credulity of witnesses. See, e.g., Rogers v. Dep't of Health, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); Belleau v. Dep't of

¹ Unless otherwise noted, all references to the Florida Statutes are to the 2018 version.

Envtl. Prot., 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); Dunham v. Highlands County School Bd., 652 So. 2d 894 (Fla. 2d DCA 1995). If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. See, e.g., Arand Constr. Co. v. Dyer, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); Conshor, Inc. v. Roberts, 498 So. 2d 622 (Fla. 1st DCA 1986).

Section 120.57(1)(1), Florida Statutes, authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction." See Barfield v. Dep't of Health, 805 So. 2d 1008, 1012 (Fla. 1st DCA 2001); L.B. Bryan & Co. v. Sch. Bd. of Broward County, 746 So. 2d 1194, 1197-97 Fla. 1st DCA 1999); Deep Lagoon Boat Club, Ltd. v. Sheridan, 784 So. 2d 1140, 1141-42 (Fla. 2d DCA 2001). However, the agency should not label what is essentially an ultimate factual determination as a "conclusion of law" to modify or overturn what it may view as unfavorable finds of fact. See, e.g., Stokes v. State, Bd. of Prof'l Eng'rs, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are "permissible" ones. See, e.g., Suddath Van Lines, Inc. v. Dep't of Env'tl. Prot., 668 So. 2d 209, 212 (Fla. 1st DCA 1996).

CONCLUSION

Having considered the Recommended Order and being otherwise duly advised, it is ORDERED that:

A. The Recommended Order (Exhibit A) is adopted and is incorporated by reference.

B. Bus transportation for Petitioner's children to and from Liberty Pines Academy shall terminate effective at the beginning of the 2019 – 2020 school year.


JUDICIAL REVIEW

Any party to this proceeding has the right to see judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 14th day of May, 2019, in St. Johns County, Florida.

SCHOOL BOARD OF ST. JOHNS COUNTY,
FLORIDA

By: _____


Kelly Barrera, Chair
St. Johns County School Board
40 Orange Street
St. Augustine, Florida 32084

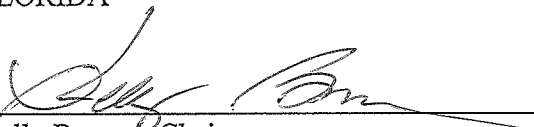
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail delivery, this 14th day of May, 2019, on the following:

Frank D. Upchurch III
Upchurch, Bailey and Upchurch III
Post Office Drawer 3007
St. Augustine, Florida 32085-3007
Email: fdupchurch@ubulaw.com

Ryan A. Johnson
120 S. Arabella Way
St. Johns, Florida 32259
Email: rajohnson@3212@gmail.com

SCHOOL BOARD OF ST. JOHNS COUNTY,
FLORIDA

By: 
Kelly Barrera, Chair
St. Johns County School Board
40 Orange Street
St. Augustine, Florida 32084

Copy furnished to:

J.L. Nieman
832 Chanterelle Way
Fruit Cove, Florida 32259
Email: Nieman46804@yahoo.com