

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS COMMISSIONER
OF EDUCATION,

Petitioner,

Case Nos. 20-2512SP
20-2513SP

vs.

LION OF JUDAH ACADEMY (4015), LION
OF JUDAH ACADEMY (8827),

Respondents.

RECOMMENDED ORDER

Administrative Law Judge Hetal Desai of the Division of Administrative Hearings (DOAH) conducted the final hearing in this matter on August 12, 2020, by video conferencing with locations in Altamonte Springs and Tallahassee, Florida.

APPEARANCES

For Petitioner: Jason Douglas Borntreger, Esquire
Department of Education
325 West Gaines Street, Suite 1544
Tallahassee, Florida 32310

For Respondent: Shawn R. H. Smith, Esquire
Law Office of Shawn R. H. Smith, P.A.
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STATEMENT OF THE ISSUES

The issues in these consolidated cases are as follows: (1) whether Respondents employed Lorene Walker, who had contact with scholarship students and who did not meet the requisite criteria to pass the Level 2

background screening as required by section 1002.421(1)(m) and (p), Florida Statutes (2019), and if so, what is the appropriate remedy; and (2) whether Respondents engaged in fraud in violation of section 1002.421(3)(d) and, if so, whether Petitioner should revoke Respondents' participation in several Florida Scholarship Programs.¹

PRELIMINARY STATEMENT

On February 20, 2020, Petitioner Richard Corcoran, as Commissioner of Education (the Commissioner or Petitioner), issued Administrative Complaints (Complaints) against Respondents Lion of Judah Academy (4015) and Lion of Judah Academy Campus 2 (8827) (collectively referred to as the Schools or Respondents), giving notice of the Commissioner's intent to immediately suspend and revoke Respondents' participation in the John M. McKay Scholarships for Students with Disabilities Program, the Florida Tax Credit Scholarship Program, the Gardiner Scholarship Program, the Hope Scholarship Program, and the Family Empowerment Scholarship Program (collectively referred to as the Florida Scholarship Programs).²

The factual grounds for the intended decision to revoke scholarship participation were set forth in both Complaints, as follows:

Disqualifying Offense: Lion Of Judah Academy employs one Lorene Walker who has previously been convicted of a felony violation of section 893.13, Florida Statutes. Per sections 1002.421(1) and 435.04(2), Florida Statutes, private school employees, owners or directors who have been found guilty of a felony violation of Chapter 893, Florida Statutes, do not meet the requisite criteria

¹ Unless otherwise indicated, citations to the Florida laws and administrative rules refer to the 2019 versions.

² Lion of Judah Academy Campus 2 (8827) did not participate in the Gardiner or Hope Scholarship Programs.

to pass the Level 2 background screening required by sections 1002.421(l)(m) and (p), Florida Statutes.

Fraud: Lion Of Judah Academy has knowingly and willingly concealed its employment relationship with Lorene Walker in an effort to circumvent the requirements of law and continue the unlawful receipt of scholarship funds. Accordingly, Lion of Judah Academy has committed fraud as contemplated by section 1002.421(3)(d), Florida Statutes.

The Complaints further informed Respondents that the Commissioner may also take action if the owner "is operating or has operated an educational institution in a manner contrary to the health, safety, or welfare of students or the public, or if there is probable cause to believe that there is fraudulent activity on the part of the school."

On March 4, 2020, Respondents' owner, Judith Shealey, filed a petition to reinstate Ms. Walker's Employment with the Schools (Petition). Nothing in that Petition indicates Ms. Walker was still employed at the Schools.

On March 11, 2020, in response to the Complaints, the Schools submitted for the first time a signed copy of a termination letter dated December 9, 2019. As part of this same submission, Ms. Shealey sent a signed statement indicating she had not terminated Ms. Walker, but rather "had her work from home." This is the first time Ms. Shealey indicated Ms. Walker was still working for the Schools.

The Department of Education (Department) eventually dismissed the Petition with leave to amend. On April 10, 2020, the Schools filed a Motion to Amend and Reverse Your Decision (Motion) with the Department.

Subsequently, the Schools filed an Amended Petition for Administrative Hearing on May 15, 2020, which the Department received on May 18, 2020.

On June 1, 2020, the Department transferred the matter to DOAH, as two separate cases for each Complaint. The undersigned held a scheduling conference on June 4, 2020, during which the parties discussed the time restraints imposed by section 1002.421(3)(c)2.c., requiring that in a scholarship program eligibility case, the hearing be conducted within 30 days after DOAH's receipt of the formal written request. Neither party wished to waive the 30-day requirement during the scheduling conference. Therefore the matters were consolidated and a final hearing was scheduled to be conducted by Zoom on June 23, 2020.

On June 17, 2020, Respondents' counsel filed a Notice of Appearance and orally requested a continuance during a pre-hearing conference. The Commissioner did not object and the parties waived the 30-day requirement to hold the final hearing.

At the final hearing on August 12, 2020, the parties offered Joint Exhibits J1 through J8, which were received into evidence. Petitioner called three witnesses to testify: RaShawn Williams, Whitney Blake, and Scott Earley. Petitioner's Exhibits P1 through P21 were received in evidence as well. Respondents presented the testimony of three witnesses: Lorene Walker, Susan Layne, and Lamar Shealey. Respondents offered no exhibits.

The final hearing Transcript was received by the undersigned on October 8, 2020, and an Order imposing a deadline to file proposed recommended orders on October 19, 2020, was issued on that same date. The Commissioner timely filed a Proposed Recommended Order, which has been considered. Respondents' Proposed Recommended Order was late-filed on

October 20, 2020. As there was no objection to the untimeliness, Respondents' Proposed Recommended Order has also been considered. Prior to the hearing, the parties submitted an Amended Pre-Hearing Stipulation with several stipulated facts and issues of law, which have been incorporated in this Recommended Order.

FINDINGS OF FACT

Parties, People, and Programs

1. The Department is the government agency charged with administering numerous state scholarship programs pursuant to section 1002.421, Florida Statutes.

2. The Department operates or has administrative responsibilities for the Gardiner Scholarship Program, the John M. McKay Scholarships for Students with Disabilities Program, the Florida Tax Credit (FTC) Scholarship Program, and the Family Empowerment Scholarship Program. *See* §§ 1002.385, 1002.39, 1002.394, and 1002.395, Fla. Stat. The Gardiner, McKay, FTC, and Family Empowerment scholarships defray tuition and other qualified educational expenses for eligible students who attend charter, private, or other eligible schools in the state of Florida. The Department also operates or administers the Hope Scholarship Program, which provides tuition assistance to victims of school bullying so that they can enroll in another school. *See* § 1002.40, Fla. Stat. The scholarship funds are awarded to eligible students to be used at eligible schools.

3. The Commissioner is the agency head of the Department and has the authority to revoke or suspend a school's eligibility to receive scholarship monies on behalf of eligible students.

4. The Independent Education and Parental Choice Office, also referred to as the School Choice Office (Office), is a section of the Department which oversees several school choice options outside Florida's public school system. The Office also oversees the administration of various scholarships programs

under chapter 1002. The Office is in regular contact with schools that participate in these scholarship programs.

5. Respondents have been operating as private schools for approximately six years. Since the 2013/2014 school year, they have been found eligible and participated in numerous scholarship programs pursuant to section 1002.421. Respondents operate two campuses: (1) School Code No. 4015 located at 1056 North Pine Hills Road, Orlando, Florida (Pine Hills Campus); and (2) School Code No. 8827 located at 5308 Silver Star Road, Orlando, Florida (Silver Star Campus).

6. The Schools serve 40 to 50 scholarship students and receive approximately \$200,000 per year in scholarship funds.

7. Judith Shealey is the owner of the Schools. She carries the title of Executive Director, Principal, Headmistress, and/or Owner. Ms. Shealey has family members who are students and teachers at the Schools.

Compliance Requirements

8. As explained by RaShawn Williams, the Office, parents, and eligible schools work closely together to access the scholarship funds. The parents apply for the scholarships through the designated agency and enroll their students directly with an eligible school. The school is responsible for enrolling the student in the scholarship program awarded to that student. Essentially, the student must be deemed eligible to receive scholarship funds, and the school must be eligible to receive those scholarship funds. If a private school is deemed ineligible by the Office for participation in a scholarship program, the students at that school do not lose their eligibility for scholarship funds. Rather, they simply cannot use those funds to enroll in the ineligible school.

9. As private school participants in the Florida Scholarship Programs, the Schools were required to register with the State through the submission of a Private School Annual Survey; and then apply for eligibility through the submission of a yearly Scholarship Compliance Form (Compliance Form).

10. The Compliance Form specifies numerous governing statutory requirements including: (1) submitting background screenings for officers, directors, or other controlling persons; (2) certifying all staff with direct student contact have passed an FDLE Level 2 background screening; and (3) terminating or denying employment to all persons who cannot meet this requirement. The Compliance Form is completed by applicant schools online, and then a signed and notarized hard copy is mailed to the Office.

11. The relevant portions of the Compliance Form are found in "Section 4," and involve background checks:

A) * Has each Owner, Operator, and Chief Administrative Officer undergone a Level 2 background screening through the Florida Department of Law Enforcement and submitted the results to the Florida Department of Education in accordance with section 1002.421(1)(m), Florida Statutes? **(Reports must be filed with the private school and made available for public inspection).**

* * *

C) * Have all employees and contracted personnel with direct student contact submitted their fingerprints to the Florida Department of Law Enforcement for state and national background screening in accordance with section 1002.421(1)(m), Florida Statutes?

D) * In accordance with section 1002.421(1)(m), Florida Statutes, does the school deny employment to or terminate an employee or contracted personnel with direct student contact if he or she fails to meet the background screening standards under section 435.04, Florida Statutes?

E) * In accordance with section 1002.421(1)(m), Florida Statutes, does the school disqualify instructional personnel and school administrators from employment in any position that allows direct contact with students if the personnel or

administrators are ineligible under section 435.40, Florida Statutes?

12. A "No" answer on any of the above questions would, if unresolved, result in a private school's ineligibility for scholarship funds.

13. The evidence establishes that the Schools answered "Yes" for sections 4A, 4C, 4D, and 4E on the notarized Compliance Forms that were submitted on December 18, 2018, and December 11, 2019.

14. In addition to certifying the information above on the Compliance Forms every year, an eligible school must submit to the Office screening documentation for directors, principals, board members, administrators, and officers as part of the renewal of participation in the scholarship programs. Screening documentation related to other employees must be maintained by the schools and is usually only reviewed by the Office during an audit or a site visit of the school.

15. There is no dispute that the Schools never listed Lorene Walker as an administrator for the Schools. There is no dispute the Schools never submitted any background screening information for Ms. Walker until specifically requested by the Office in November 2019.

Employment of Lorene Walker

16. Lorene Walker was hired by the Schools in 2013.³ She had children and/or grandchildren who attend the Schools. The Schools claim Ms. Walker was hired from an entity known as "Career Source." Although Ms. Walker believed that she had been cleared to work at the Schools, there is no employment file or documentation that she had undergone the Level 2 background screening required by law before being employed at the Schools.

17. Originally, Ms. Walker worked as a "floater." As a floater, Ms. Walker cooked, cleaned, and did whatever the school needed at the time. It is unclear whether she had direct contact with students in this position.

³ Ms. Walker testified she began working there in 2015, but later stated she started in 2013. Ms. Shealey indicated by 2014, Ms. Walker had transitioned into the current position.

18. Regardless, in 2014, Ms. Walker transitioned into a more active role at the Schools. Although the Schools claim in response to the Complaints that she was simply an administrative assistant to Ms. Shealey, the evidence establishes that Ms. Walker was the Administrator for the Schools during the time relevant to the Complaints. She reminded teachers to send out grades, attended meetings, oversaw the lunch program, and prepared school-related and financial documentation. Ms. Walker was also responsible for the Schools' students' enrollment into the scholarship programs.

19. As Administrator, Ms. Walker also had authority, either explicit or implicit, from the Schools' owner, Ms. Shealey, to represent the Schools when dealing with the Office. She worked directly with Ms. Williams on compliance issues, including fire safety, health inspections, and completion of the Annual Survey and Compliance Form for the Schools. Ms. Walker also responded to requests for information from Ms. Williams and others in the Department. It was clear Ms. Walker was integral to the operation of the Schools.

20. Ms. Shealey and Ms. Walker were the only two individuals with access to the Schools' email accounts that were used to correspond with the Department. The emails from one of the email addresses usually contained Ms. Shealey's signature block indicating either the title of "Principal" or "Headmistress." Ms. Walker's signature line identified her title as "Administrator."

21. Before being hired by the Schools, Ms. Walker had been arrested for numerous offenses between 1978 and 2001 in Florida. Although most of these offenses were dismissed, dropped, and/or abandoned, she pled nolo contendere to and was found guilty of a 1994 charge for unlawful purchase of a controlled substance, a second-degree felony in violation of section 893.13, Florida Statutes (1993).

22. The 1994 charge is a disqualifying offense which rendered Ms. Walker ineligible to be a school employee.⁴ There was no evidence that Ms. Walker had obtained an exemption for this qualification.

23. As noted above, the Schools never disclosed Ms. Walker's importance in their operations in their Compliance Forms. Prior to November 2019, the Schools had never provided any screening documentation for Ms. Walker to the Office as part of the yearly compliance process.

Investigation and Complaints

24. On or around October 14, 2019, the Department received a complaint from another state agency concerning possible abuse by an employee of the School at the Pine Hills campus. Although the abuse investigation was handled outside of the Office, the Office opened an inquiry into the Schools' compliance with background check requirements and other issues. Whitney Blake conducted the investigation on behalf of the Office.

25. The first step in this inquiry was a letter from Ms. Blake's supervisor, dated October 25, 2019, requesting (among other things) a list of all employees (including both teachers and other personnel) and results of current FDLE Level 2 background screenings for all employees.

⁴ Section 435.04, Florida Statutes, provides the following in relevant part:

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

* * *

(ss) Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.

26. On November 4, 2020, Ms. Walker sent the Department a list of all the Schools' staff, including herself as "Administrator," along with the results of her background screening, revealing her previous disqualifying offense.

27. On November 15, 2019, Ms. Blake attempted to contact Ms. Shealey by phone because she was concerned that Ms. Walker, who was the disqualified employee, was the person sending the information from the School. When she called the Schools and requested to speak with the owner (Ms. Shealey), the person who answered purportedly claiming to be the Schools' owner did not have a distinguishable accent. Ms. Shealey was known to have a strong accent, whereas Ms. Walker did not. Regardless, on this call, Ms. Blake instructed the person on the other end of the phone line that the Schools would need to terminate Ms. Walker immediately because of her disqualifying offense.

28. On that same day, Ms. Blake then sent a follow-up email to the Schools (at both email addresses utilized by the Schools) indicating there were outstanding items that had not been provided as requested in the October 25 letter. She also specifically requested proof Ms. Walker was no longer at the Schools. Specifically, the Department stated:

Upon review of the Level 2 background screenings, it was determined Lorene Walker has disqualifying offenses pursuant to section 435.04, F.S. An employee or contracted personnel with direct student contact means any employee or contracted personnel who has unsupervised access to a scholarship student for whom the private school is responsible.

To certify compliance with this requirement, please submit a signed statement indicating Lorene Walker's employment at your school has been terminated or that individual's role with your school no longer puts he/she in proximity to scholarship students.

Your attention to this in the next five days will preempt any further action on our part. (emphasis added).

29. That same date, November 15, 2019, the Schools emailed one of the items requested by Ms. Blake, an abuse poster, to the Office. Although Ms. Walker testified she did not send the email, it had her signature block and was from one of the Schools' two email accounts to which she had access. The undersigned finds Ms. Walker sent this email to Ms. Blake.

30. On November 18, 2019, the Schools sent another item previously requested by Ms. Blake, the teaching qualifications for a teacher, to the Office. Again, although Ms. Walker claimed she did not send the email, it had her signature block and was from one of the Schools' two email accounts to which she had access. The undersigned finds Ms. Walker sent this email to Ms. Blake.

31. Ms. Blake did not receive any proof that the Schools had removed Ms. Walker from her position within five days as requested in the November 15 email to the Schools. As a result, on November 22, 2019, Ms. Blake emailed the Schools reiterating the requirements of section 1002.421, and repeating her request for a signed statement that Ms. Walker had been terminated or had no contact with scholarship students. Ms. Blake also added: "Failure to turn in the requested documentation could impact your school's ongoing participation in the Scholarship Program."

32. During this time, Ms. Blake spoke to Ms. Shealey numerous times on the phone regarding the outstanding requests related to another teacher and the signed documentation that Ms. Walker had been removed from her position. Ms. Shealey indicated it would be difficult to remove Ms. Walker due to Ms. Walker's oversight of the school and her familiarity with the scholarship student information.

33. After Ms. Blake did not receive the requested proof of Ms. Walker's removal from the Schools and two other items related to a teacher, the Office issued a Notice of Noncompliance on December 5, 2019.

34. On December 19, 2019, Ms. Shealey sent to Ms. Blake one of the outstanding items related to the teacher by email. There was no mention of Ms. Walker and no signed proof that Ms. Walker had been removed from her position.

35. The next day, Ms. Blake wrote an email to Ms. Shealey indicating that she did not have authority to exempt Ms. Walker from the background screening requirements. She again asked for the outstanding information related to the other teacher and a signed statement indicating Ms. Walker had been removed and no longer had proximity to scholarship students.

36. On December 23, 2019, Ms. Shealey emailed Ms. Blake that the teacher for which there was an outstanding request had resigned and no longer worked for one of the Schools. Ms. Blake responded with yet another request for the signed statement indicating Ms. Walker had been terminated or was no longer in proximity to scholarship students.

37. In response, Ms. Shealey sent an email to Ms. Blake with an attached letter. The letter titled "Termination of your employment" and dated December 9, 2019, indicates that Ms. Shealey terminated Ms. Walker during a meeting held on December 9, 2019. The letter is unsigned. Ms. Shealey indicated in the text of the email that it was the hardest letter she had to write.

38. Being concerned that they had not received a signed statement, Ms. Blake and Ms. Williams requested that a site visit be conducted at the Pine Hills Campus. A visit was scheduled for February 5, 2020, and the Schools were provided notice of the site visit by certified mail, email, and telephone. Additionally, the Schools were provided a checklist of the documents that should be provided to the inspector during the site visit.

39. On February 5, 2020, Scott Earley from the Office conducted the site visit at the Pine Hills Campus. When he arrived, Ms. Shealey was not there and none of the documentation previously requested had been prepared for review. Mr. Earley testified that once Ms. Shealey arrived, she did not know where all the requested documents were, nor could she produce all of them. For example, when asked about a necessary health form, Ms. Shealey indicated that Ms. Walker would know where the document was, but she could not locate it.

40. Mr. Earley did not recall Ms. Shealey stating during the inspection that Ms. Walker was working from home, but she gave Mr. Earley the impression that Ms. Walker's background screening issue had been resolved. Regardless, the Site Visit Staff/Consultant Worksheet filled out for the February 5 site visit does not disclose Ms. Walker as a member of staff or contracted personnel with the Pine Hills Campus. Although Ms. Walker was not at the Pine Hills Campus during the site visit, Mr. Earley believed based on his observations and conversations with Ms. Shealey that Ms. Walker was still employed by the Schools as a director or principal.

41. Almost two weeks later on February 20, 2020, Petitioner filed the Complaints against the Schools. It was not until March 11, 2020, in response to the Complaints that the Schools submitted for the first time a signed copy of a termination letter dated December 9, 2020.

42. Even after the Complaints had been served on the Schools, however, it was unclear what Ms. Walker's involvement was with the Schools. There may have been some confusion because Ms. Walker had been seen after her purported termination on campus. Ms. Walker claimed she was on campus only to pick up her children and grandchildren. Testimony from two of the Schools' teachers indicated that they noticed Ms. Walker was no longer at the Schools, but knew she was taking care of the Schools' paperwork from her home. Neither teacher could establish a date certain for when Ms. Walker stopped working on campus and/or when she began working at home.

43. Prior to the filing of the Complaints in these proceedings, there was no evidence that the Schools ever reported to the Office that Ms. Walker had been working from home. Nothing in the Petition filed on March 4, 2020, indicates Ms. Walker was still employed at the Schools. It was not until March 11, 2020, in response to the Complaints that the Schools submitted for the first time a signed copy of a termination letter dated December 9, 2020.

44. As part of the March 11 submission, Ms. Shealey sent a signed statement indicating she had not terminated Ms. Walker, but rather "had her work from home." This was the first time Ms. Shealey indicated to the Office that Ms. Walker was still working for the Schools.

45. In the Motion filed April 10, 2020, the Schools indicated they were unaware of the specifics of the Level 2 background screening requirement, and that, once aware, "we took action immediately and terminated the employee in question." There was no indication in the body of the Motion the Schools continued to employ Ms. Walker to work at her home. Attached to the Motion, however, was the same letter submitted on March 11 indicating Ms. Walker was working from home.

46. In the Amended Petition filed on May 15, 2020, the Schools state Ms. Walker was terminated:

- "I terminated Ms. Lorene Walker due to the Department's information in order to come into compliance with the Florida Department of Education."
- "I rectified this deficiency by terminating Ms. Walker."
- "Ms. Lorene Walker was terminated on December 9, 2019, as advised by Whitney Blake."

47. Although the Amended Petition does not explicitly state Ms. Walker continued to work for the Schools at home, it does leave room for this interpretation: "As of December 9, 2019, Ms. Lorene Walker no longer works in the Lion of Judah facility."

48. It is unclear on what date Ms. Walker stopped working from home for the Schools. What is clear is that at the time of the final hearing she was no longer working at the Schools in any location or in any capacity.

ULTIMATE FACTUAL DETERMINATIONS

49. The greater weight of the evidence establishes Ms. Walker, in her role as Administrator, should have been disclosed to the Office as an "operator" or "a person with equivalent decision making authority." The Schools were required to send her background screening documentation to the Office as required by the Compliance Form and section 1002.421(1)(p), and they did not.

50. The Schools employed a person with a disqualifying offense in violation of sections 1002.421(1)(m) and 435.04(2)(ss). Specifically, the Schools employed Ms. Walker from 2014 (if not earlier) through December 2019 (if not later) in a position in which she was in the vicinity of scholarship students, knowing that she had been found guilty of a felony and without obtaining or providing documentation related to a Level 2 background clearance.

51. The Schools continued to allow Ms. Walker to remain in a position that placed her in the vicinity of scholarship students after receiving notification of her ineligibility for almost a month (if not more).

52. The greater weight of the evidence establishes the Schools engaged in fraudulent activity, to wit: (1) Ms. Shealey falsely represented to the Office that the Schools complied with Section 4 of the Compliance Form for 2018 and 2019; (2) the Schools falsely obscured Ms. Walker's role at the School and her criminal background; and (3) the Schools failed to honestly disclose Ms. Walker's employment status when they claimed to terminate her on December 9, 2020, but failed to inform the Office that they had retained (or rehired) her to work at home. The Schools made these statements of material

fact either knowing they were false or in reckless disregard of the truth or falsity of the representations, which were false.

CONCLUSIONS OF LAW

53. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569, 120.57(1), and 1002.421(3)(c), Florida Statutes.

54. The burden of establishing the grounds for suspending or revoking a private school's participation in the scholarship programs at issue falls on the Commissioner, who must prove the allegations by a preponderance of the evidence. *See Stewart v. Silva of South Florida, Inc.*, Case No. 17-3898SP, 2017 WL 9285925, at *10 (Fla. DOAH Dec. 11, 2017; Fla. DOE Mar. 14, 2018) (citing *Fla. Dep't of Transp. v. J.W.C. Co., Inc.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981)); *see also* § 120.57(1)(j), Fla. Stat.

55. Private school employees of schools participating in the Florida Scholarship Programs are subject to certain background screening requirements found in section 1002.421, which provides in relevant part:

(1) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—*A private school participating in an educational scholarship program established pursuant to this chapter must be a private school as defined in s. 1002.01(2) in this state, be registered, and be in compliance with all requirements of this section in addition to private school requirements outlined in s. 1002.42, specific requirements identified within respective scholarship program laws, and other provisions of Florida law that apply to private schools, and must:*

* * *

(e) Annually complete and submit to the department a notarized scholarship compliance statement certifying that all school employees and contracted personnel with direct student contact have undergone background screening pursuant to

s. 943.0542 and have met the screening standards as provided in s. 435.04.

* * *

(m) Require each employee and contracted personnel with direct student contact, upon employment or engagement to provide services, to undergo a state and national background screening, pursuant to s. 943.0542, by electronically filing with the Department of Law Enforcement a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the private school, a school district, or a private company who is trained to take fingerprints and deny employment to or terminate an employee if he or she fails to meet the screening standards under s. 435.04. Results of the screening shall be provided to the participating private school. For purposes of this paragraph:

1. An “employee or contracted personnel with direct student contact” means any employee or contracted personnel who has unsupervised access to a scholarship student for whom the private school is responsible.

* * *

(p) Require each owner or operator of the private school, prior to employment or engagement to provide services, to undergo level 2 background screening as provided under chapter 435. For purposes of this paragraph, the term “owner or operator” means an owner, operator, superintendent, or principal of, or a person with equivalent decision making authority over, a private school participating in a scholarship program established pursuant to this chapter. The fingerprints for the background screening must be electronically submitted to the Department of Law Enforcement and may be taken by an authorized law enforcement agency or a private company who is trained to take fingerprints. However, the

complete set of fingerprints of an owner or operator may not be taken by the owner or operator. The owner or operator shall provide a copy of the results of the state and national criminal history check to the Department of Education. The cost of the background screening may be borne by the owner or operator. (emphasis added).

56. As found previously, pursuant to section 435.04(2)(ss), Ms. Walker pled nolo contendere to a second-degree felony under chapter 893 and therefore was disqualified from having contact with scholarship students or serving as an operator of a private school receiving Florida Scholarship Program funds.

57. The Commissioner is tasked with enforcing these background screening requirements and can suspend a private school's eligibility for participating in scholarship programs pursuant to section 1002.421, which states in relevant part:

(3) COMMISSIONER OF EDUCATION
AUTHORITY AND OBLIGATIONS. — The
Commissioner of Education:

(a) Shall deny, suspend, or revoke a private school's participation in a scholarship program if it is determined that the private school has failed to comply with this section or exhibits a previous pattern of failure to comply. However, if the noncompliance is correctable within a reasonable amount of time, not to exceed 45 days, 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.

* * *

(d) May immediately suspend payment of scholarship funds if it is determined that there is probable cause to believe that there is:

* * *

3. Fraudulent activity on the part of the private school.

58. The Commissioner's order immediately suspending payments "may be appealed" by timely filing a request for hearing pursuant to sections 120.569 and 120.57. § 1002.39(7)(c), Fla. Stat. As explained in *Stewart*, the Commissioner's decision for immediate suspension is based on probable cause. In this administrative hearing, however, the facts must be supported by the greater weight of the competent substantial evidence. The Commissioner must show that more likely than not, the Schools engaged in fraudulent activity. *Stewart*, 2017 WL 9285925, at *12.⁵

59. The essential elements of a fraud claim are: (1) a false statement concerning a material fact; (2) made (i) with knowledge that the representation is false and (ii) with the intention of inducing another's reliance thereon; and (3) consequent injury to the other party acting in reliance on the false representation. *See, e.g., Cohen v. Kravit Estate Buyers, Inc.*, 843 So. 2d 989, 991 (Fla. 4th DCA 2003).

60. "[F]raudulent intent usually must be proved by circumstantial evidence and such circumstances may, by their number and joint consideration, be sufficient to constitute proof." *Nally v. Olsson*, 134 So. 2d 265, 267 (Fla. 2d DCA 1961). As proof of fraud, the Commissioner can show "a series of distinct acts, each of which may be a badge of fraud and when taken together as a whole, constitute fraud." *Dep't of Rev. v. Rudd*, 545 So. 2d

⁵ The evidentiary burden is not "clear and convincing" because scholarship participation does not equate to a license. Unlike a licensee whose license is revoked, a school may keep its doors open and continue to operate. *Stewart*, 2017 WL 9285925, at *12. *Cf. Balino v. Dep't of HRS*, 348 So. 2d 349, 350 (Fla. 1st DCA 1977) (imposing burden on State to prove by a preponderance of evidence grounds for discontinuing, suspending, or reducing public assistance such as Medicaid benefits).

369, 372 (Fla. 1st DCA 1989) (quotations omitted). Further, "[s]cienter, or guilty knowledge, [which] is an element of intentional misconduct [such as fraud], ... can be established by showing actual knowledge, or that the defendant was reckless or careless as to the truth of the matter asserted." *Ocean Bank of Miami v. INV-UNI Inv. Corp.*, 599 So. 2d 694, 697 (Fla. 3d DCA 1992).

61. The undersigned has found, as recited above, that the Commissioner carried the burden of proof regarding the allegations of Count I. Specifically, it has established the Schools employed Ms. Walker, someone with a disqualifying offense, since 2014. The Schools also failed to provide a copy of the results of Ms. Walker's criminal background screening during the 2018 and 2019 compliance process.

62. Additionally, regarding the fraud allegations in Count II, the evidence taken as a whole shows the Schools knowingly and willfully concealed the true nature of the employment relationship with Ms. Walker in order to circumvent the criminal background requirements and continue the receipt of scholarship funds, thereby committing fraud or fraudulent activity. Ms. Shealey (who executed the Compliance Forms) and Ms. Walker (who was in charge of the Schools' compliance paperwork) knew she had committed the disqualifying offense. Although the Schools argued they thought the background issue had been resolved, there was no evidence that it had been. Taken as a whole, the evidence shows that the Schools did not properly background screen their employees, including Ms. Walker; and knowingly allowed her to work as an Administrator despite her disqualifying offense. The Schools' failure to submit a timely signed statement of Ms. Walker's termination and Ms. Shealey's inconsistent statements regarding Ms. Walker's employment status are suspect. Specifically, Ms. Shealey states repeatedly that Ms. Walker was terminated on December 9, 2019, but then later states she moved Ms. Walker to work from home on December 9, 2019. These statements contradict the testimony that Ms. Walker was fired


sometime in December and then re-hired in January. The Schools' failure to disclose Ms. Walker's role in operating the school and her employment (or reemployment) during the site visit or at any time before the Complaints, further supports a finding of fraudulent activity.

63. As such, the Commissioner is legally authorized to immediately and indefinitely revoke the Schools' eligibility and participation in the Florida Scholarship Programs.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Commissioner enter a final order (1) upholding the suspension; and (2) revoking the eligibility of Lion of Judah Academy (4015) and Lion Of Judah Academy (8827) to participate in the following Florida Scholarship Programs: John M. McKay Scholarships for Students with Disabilities Program, Florida Tax Credit Scholarship Program, Gardiner Scholarship Program, Hope Scholarship Program, and/or Family Empowerment Scholarship Program.

DONE AND ENTERED this 3rd day of November, 2020, in Tallahassee, Leon County, Florida.



HETAL DESAI
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Filed with the Clerk of the
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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.