

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MANNY DIAZ, JR., AS COMMISSIONER OF
EDUCATION,

Petitioner,

vs.

Case No. 22-1744SP

EAST ATLANTIC PREP (1995),

Respondent.

RECOMMENDED ORDER

On July 7, 2022, Administrative Law Judge Lisa Shearer Nelson of the Florida Division of Administrative Hearings (DOAH) conducted a duly-noticed hearing pursuant to section 120.57(1), Florida Statutes, in Titusville, Florida.

APPEARANCES

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

For Respondent: Arthur L. Council, owner/operator
East Atlantic Prep (1995)
3815 Curtis Boulevard
Port St. John, Florida 32927

STATEMENT OF THE ISSUES

The issues to be determined are whether Respondent's eligibility to participate in the Florida Tax Credit Scholarship Program (Florida Tax Credit), the John M. McKay Scholarship for Students with Disabilities Scholarship Program (McKay), the Family Empowerment Scholarship for

Students with Unique Abilities Scholarship Program (FES-UA), the Family Empowerment Scholarship Program (FES), and the Hope Scholarship Program should be revoked, and whether Respondent should be required to return scholarship funds already received.

PRELIMINARY STATEMENT

On April 12, 2022, Richard Corcoran, as Commissioner of Education¹ (Petitioner or the Commissioner), issued an Administrative Complaint against Respondent, East Atlantic Prep (1995) (East Atlantic Prep or Respondent), alleging that Respondent had committed fraud with respect to the procurement of scholarship funds related to three different students, and that Jennifer Jacobs Council, who served as an owner, operator, or person with direct contact with students, had been found guilty of a felony which disqualified her from employment. The Administrative Complaint notified Respondent that its eligibility to participate in several named scholarship programs was suspended, and that the Commissioner intended to revoke Respondent's eligibility to receive scholarship funds. The Administrative Complaint further ordered Respondent to return the sum total of scholarship funds fraudulently obtained (identified as \$660,701.25 in McKay, FES, Gardiner (previous name of FES), and FES-UA funds to the Department and \$1,160,567.13 in Florida Tax Credit Funds to Step Up for Students).

On April 24, 2022, Respondent filed an Amended Petition for Formal Administrative Proceeding through its owner/operator, Arthur Council, and on June 15, 2022, the case was forwarded to DOAH for assignment of an administrative law judge (ALJ).

¹ Since that time, Commissioner Corcoran resigned his position and was succeeded by Commissioner Manny Diaz. The style of this proceeding has been amended accordingly.

The case was originally assigned to ALJ Robert J. Telfer, III, who promptly noticed a telephonic scheduling conference. Section 1002.421(3)(c)2.c., Florida Statutes, requires DOAH's Director to expedite the proceedings and assign an ALJ who shall commence a hearing within 30 days after DOAH receives the formal written protest, and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript, unless these requirements are waived upon stipulation by *all* parties.

During the scheduling conference, Mr. Council was adamant that he did not want to waive the 30-day requirement for hearing, and indicated that he wanted a live hearing in his area.² Because Judge Telfer had a scheduling conflict at the time both parties were available, the case was transferred to Judge Nelson in order to comply with the 30-day requirement, and the case was scheduled for hearing on July 7, 2022.

On June 23, 2022, Petitioner filed a Request for Judicial Notice with respect to several court records and corporate filings, as well as a marriage certificate. The motion indicated that Respondent objected to the motion, but Respondent did not file a response as allowed by Florida Administrative Code Rule 28-106.204. After the time prescribed in rule 28-106.204 passed with no written response, the request for judicial notice was construed as a request for official recognition and was granted.

The Order of Pre-hearing Instructions (OPI) directed the parties to confer and exchange witness lists and exhibits, and to prepare a prehearing

² Mr. Council actually wanted the hearing to be at his school in Port St. John the following day. To do so was not feasible, so the hearing was scheduled within the 30-day timeframe at the historic courthouse in Titusville.

stipulation as detailed in the OPI. On July 5, 2022, Petitioner filed a Unilateral Pre-Hearing Stipulation, and represented that counsel had contacted Respondent's representative to obtain Respondent's input, but Respondent had not responded. Respondent did not file any witness list or provide any exhibits as required by the OPI.

The hearing commenced as scheduled. However, at the beginning of the hearing, Mr. Council advised that he had counsel who had encountered an emergency of some sort and had moved for a continuance. No notice of appearance or motion for continuance was filed on DOAH's case docket. Mr. Council did not name the counsel who was filing the motion for continuance, and when asked later in the hearing if he could advise the ALJ of the counsel's name, he indicated that he could not. At some point, Mr. Council volunteered a name for his counsel, but there was no person by that name listed as eligible to practice law in Florida. Eventually Mr. Council provided a name of a licensed attorney, but that attorney has never made an appearance in this case.

When Respondent requested the continuance, the Department objected, asserting that they would be prejudiced by a continuance at that point, given that counsel and one of their witnesses had traveled from Tallahassee to Titusville, and its remaining witnesses were all present and ready to go forward. Given that section 1002.421(3)(a) requires that the hearing be held within 30 days unless *all* parties waive the requirement, Respondent's request for a continuance was denied, and the hearing was completed.

At hearing, Jacqueline Hitchcock, Agent Daniel Genova, Ernette Duhart, Amanda Lapine, and Jeffrey Lapine testified for Petitioner, and Petitioner's Exhibits 1 through 4 and 6 through 28 were admitted into evidence. Arthur Council testified for East Atlantic Prep but presented no exhibits.

The Transcript of the proceedings was filed with DOAH on July 21, 2022, and a Scheduling Order was issued, advising that the parties' proposed recommended orders were due on August 1, 2022. Petitioner timely filed a Proposed Recommended Order. Respondent did not file a proposed recommended order.

On August 3, 2022, counsel for Respondent filed a Notice of Appearance and a Motion to Dismiss Complaint.³ Rule 28-106.204(2) requires that motions to dismiss must be filed no later than 20 days after the assignment of a presiding officer. Judge Telfer was assigned as a presiding officer no later than June 17, 2022, and the case was transferred to the undersigned on June 20, 2022. The Motion to Dismiss Complaint was filed well past 20 days from assignment of either ALJ, and is denied.

All references to Florida Statutes are to the 2021 codification. All emphasis is in the original unless otherwise indicated.

FINDINGS OF FACT

1. Petitioner is the state official charged with administering and overseeing state scholarship programs prescribed in chapter 1002. These scholarship programs include the McKay, codified at section 1002.39 (and repealed, effective July 1, 2022); the FES, codified at section 1002.394; Florida Tax Credit, codified at section 1002.395; and the Hope Scholarship Program, codified at section 1002.40. For simplicity's sake, they are referred to collectively as "scholarships," unless context requires that a specific scholarship be referenced.

³ The Notice of Appearance was entered by a different attorney from that named during the hearing.

2. The office within the Department of Education (DOE or the Department) responsible for overseeing these scholarships is the Office of Independent Education and Parental Choice (IEPC).

3. The process to become a private school, as opposed to a charter school, is minimal, with very little, if any, oversight. The entity wishing to open the school submits a request for a school code, and once it gets the code, registers with the state through the submission of a Private School Annual Survey (annual survey). Private schools must conduct level II background screenings, fire inspections, and health inspections, but are not required to provide the results of any of this information to the Department. The annual survey is a private school's only reportable requirement, and contains information such as the number of teachers, students, and school demographics. If a private school fails to submit its annual survey, then it is considered a "non-responder," and the Department no longer acknowledges that it is in business.

4. Private schools may apply for eligibility to receive scholarship funds. For private schools that receive scholarship funding, the level of oversight increases substantially, and is described in section 1002.421. For example, schools receiving scholarship funding must submit background screenings for officers, directors, and other controlling persons; must certify that all staff with direct student contact passed a Florida Department of Law Enforcement Level 2 background screening; and must terminate or deny employment to all persons who cannot meet this requirement.

5. The funds for scholarships are generally disbursed through nonprofit scholarship-funding organizations. The responsibilities of the scholarship-funding organizations, the schools, and the parents are outlined in section 1002.395(6) through (8). As described in the statute, a parent applies for a scholarship through the scholarship-funding organization, and chooses the school he or she wants his or her child to attend. Once the child is enrolled in the school, the school notifies the scholarship-funding organization that the

child will be attending that school. If the funds are to be disbursed by wire transfer, as the funds were in this case, the *parent* must approve each quarterly payment before the scholarship funds may be deposited. Section 1002.395(7)(f) states that “[t]he parent may not designate any entity or individual associated with the participating private school as the parent’s attorney in fact to endorse a scholarship warrant or approve a funds transfer. *A participant who fails to comply with this paragraph forfeits the scholarship.*”

6. In addition to income limitations specified for eligibility, there are also limits on who can receive scholarships. One such limitation is that scholarships cannot be provided to the child of an owner-operator, which is defined as “[a]n owner, operator, superintendent, or principal of an eligible school or a person with equivalent decisionmaking authority over an eligible private school.” *See* § 1002.395(2)(i)2. and (6)(g), Fla. Stat.

7. Respondent is a private school participating in state scholarship programs. Respondent operates one campus in Port St. John, Florida, with school code number (1995), operating at 3815 Curtis Boulevard. The name “East Atlantic Prep of Brevard County” is a fictitious name owned by Lighthouse Christian Academy of Merritt Island, Inc. The name of the school was changed in DOE’s records to East Atlantic Prep in July 2019.

8. Arthur Council is the current owner/operator of the school. Before assuming that role in 2019, he was a teacher at East Atlantic Prep.

9. On March 7, 2019, Arthur Council submitted amendments to the Articles of Incorporation for the Lighthouse Christian Academy of Merritt Island, Inc., deleting Joyce Willoughby, Amy Bilder, and Marian Fox as officers of the corporation. In their place, he added himself as president, Courtney Clement as treasurer, and Jennifer A. Jacobs as secretary. These changes were listed as effective September 4, 2018.

10. The directions on the form provided by the Department of State specifically indicate that a person can hold more than one position, stating,

“If an officer/director holds more than one title, list the first letter of each office held. President, Treasurer, Director would be PTD.”

11. The annual reports on file with the Secretary of State’s office, filed April 1, 2019; June 4, 2020; and April 16, 2021, list Arthur Council as president, Liam Jacobs as vice president, Courtney Clement as treasurer, and Jennifer Jacobs as secretary.

12. During the 2019-2020, 2020-2021, and 2021-2022 school years, Malilia Fleese was a student at East Atlantic Prep and received scholarship funds. The parent portal maintained by Step Up for Students, a scholarship-funding organization, lists Jennifer Jacobs as Malilia’s primary parent. The electronic signature page, signed February 7, 2019, lists Jennifer Jacob’s marital status as “single, I have never been married,” and contains the statement (which she clicked to certify), “I certify that no parent/guardian on this application is an owner, operator, principal or person with equivalent decision-making authority of an eligible private school.”

13. On the Electronic signature page, the following statement is included:

Under penalties of perjury, I certify that the information presented is true and accurate to the best of my knowledge and belief. I understand that providing false representations constitutes an act of fraud. False, misleading or incomplete information may result in the denial of the scholarship application or revocation of a scholarship award.

Per Florida Statute SB2126: “An owner or operator” includes: An owner, operator, superintendent, or principal of an eligible private school of a person with equivalent decision making authority over an eligible private school.

An eligible non-profit scholarship organization:
May not provide scholarships to a child of an owner or operator.

14. The electronic signature page signed January 1, 2020, for the August 2020 through June 2021 school year still stated that Jennifer Jacobs

is “single, I have never been married,” and contains the same certification as the previous year. The same can be said for the electronic signature page signed March 9, 2021, for the 2021/2022 school year.

15. Notwithstanding the statements made in the parent portal, Jennifer Ashley Jacobs, DOB 12/24/1986, married Arthur Council on October 6, 2019. Some of the records submitted in this case list her name as Jennifer Jacobs, and some list it as Jennifer Council. Regardless of the designation, Jennifer Jacobs and Jennifer Council are the same person. For the sake of clarity, unless context demands otherwise, she will be referred to in this Recommended Order as Jennifer Jacobs Council or Ms. Council.

16. Courtney Clement is Arthur Council’s sister, and as noted above, is listed as the treasurer for Lighthouse Christian Academy of Merritt Island, Inc., in the records maintained by the Department of State, Division of Corporations.

17. David Clement is Courtney Clement’s son, and is a student at East Atlantic Prep. The parent portal for Step Up for Students lists her name as “Courney Clement,” but her name is actually Courtney, and emails from Jennifer Jacobs Council confirm that Courtney Clement is David Clement’s mother. Ms. Clement certified through her electronic signature on May 9, 2019, while she was listed as treasurer for the school, “I certify that no parent/guardian of a child on this application is an owner, operator, principal or person with equivalent decision-making authority of an eligible private school.”

18. In February of 2021, IEPC received a complaint from a parent alleging concerns about possible fraud at East Atlantic Prep, and the possibility of felons working there. An investigation was initiated, and Jacqueline Hitchcock, the DOE employee responsible for undertaking the investigation with respect to East Atlantic Prep, requested several documents. Those documents include a list of all employees and their position titles; results of current FDLE Level 2 background screenings for employees; evidence related

to experience for each teacher; and results of employment history checks for each of the employees' or administrators' previous employers. Ms. Hitchcock requested that these records be supplied by March 10, 2021.

19. On May 5, 2021, IEPC issued a Notice of Noncompliance regarding the requested records. The Notice identified the multiple extensions the school had received, and advised that response was essential to East Atlantic Prep's continued participation in scholarship programs.

20. On May 26, 2021, Ms. Hitchcock received an email from Jennifer Jacobs Council. The email stated:

Jacqueline, Attached is all documents required, we are sorry it took so long to get to you we had a huge set back that literally took the entire amount of time to get corrected. Nothing will ever take this long to get back to you again.
Thanks for your understanding.

Jennifer A. Council
School Director
East Atlantic Prep
321-294-8668

21. Among the materials provided with the email is a listing of all the staff members of the school, and the positions they fill. With respect to Jennifer Jacobs Council, the listing states:

Jennifer Jacobs\Council – Office Administrator – Jennifer has been with East Atlantic Prep of Brevard County for the last 4 years, she runs our front office and doing [sic] special activities with the students for art. She rotates throughout the weekly schedule to make sure everyone learns some art. Jennifer also rotates throughout the Middle/High School teaching Health classes.

22. Jennifer Jacobs Council's application for employment at the school was signed August 1, 2016. In that application, she stated that she had never been convicted of a felony. At the time of the application, the name listed on

the application was Jennifer Jacobs, and Mr. Council was not the owner/operator of the school.

23. The FDLE records check for Jennifer Ashley Jacobs, completed May 26, 2021, reveal that on March 13, 2015, Jennifer Ashley Jacobs, D/O/B 12/24/1986, was charged with fraudulent use of a credit card and criminal use of personal identification information in Case No. 56-2015-CF-00015-A, in the Nineteenth Judicial Circuit in and for St. Lucie County. Both are third-degree felonies, in violation of sections 817.61 and 817.568(2)(a), Florida Statutes, respectively. Ms. Jacobs entered a plea of nolo contendere and was adjudicated guilty.

24. On March 6, 2015, Jennifer A. Jacobs was charged in the Eighteenth Judicial Circuit in and for Brevard County with two counts of uttering a forged instrument, in violation of section 831.02, Florida Statutes, and one count of grand theft, in violation of section 812.014(2)(c)1., Florida Statutes. All are third-degree felonies.

25. Pursuant to a plea agreement accepted April 21, 2015, adjudication was withheld and Jennifer A. Jacobs was sentenced to 36 months of drug offender probation, concurrent with any active sentence, specifically including the case in St. Lucie County.

26. On September 6, 2017, in the St. Lucie County case, Jennifer A. Jacobs entered a plea agreement admitting to a violation of probation. The judgment and sentence entered that day revoked her probation and sentenced her to county jail for 180 days, with credit for time served of 174 days.

27. The offenses to which Jennifer Jacobs Council pleaded nolo contendere to and/or was adjudicated guilty include a disqualifying offense for employment at a school where she has direct contact with students, and disqualifying offenses for any owner/operator of a private school receiving scholarship funds. They were disqualifying offenses at the time she was hired

to work at East Atlantic Prep, and she was not eligible for employment at the school.

28. Each year, private schools receiving scholarship funds are required to submit a Scholarship Compliance Form for Private School Participants in State Scholarship Programs (Scholarship Compliance Form). Scholarship Compliance Forms were submitted for East Atlantic Prep, signed and notarized by Arthur Council on July 9, 2021, and March 1, 2022, respectively.

29. The Scholarship Compliance Form contained the following questions:

C) Have all employees or 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?

30. On the forms submitted and notarized July 9, 2021, and March 1, 2022, Mr. Council answered each question, “yes.” At the time that Mr. Council signed each of these forms, East Atlantic Prep had received the criminal records check regarding his wife, Jennifer Jacobs Council.

31. On July 15, 2021, Ms. Hitchcock emailed her findings to Mr. Council. She found that three of Respondent’s employees did not meet qualifications to

teach when hired. Those findings are not relevant to the charges in the Administrative Complaint. Her other findings are as follows:

4. Jennifer Jacobs – Has a felony conviction under chapter 812, Florida Statutes. Pursuant to section 435.04(2)(cc), Florida Statutes, Ms. Jacobs is disqualified from employment. I will need a letter signed and notarized indicating that Ms. Jacobs is no longer employed at East Atlantic Prep of Brevard County.

5. An amendment filed with the Division of Corporations signed by Arthur Council on 3/7/19 indicates that Courtney Clements was added as an officer an officer/director effective 9/4/18. Section 1002.395(6)(g), Florida Statutes, prohibits a private school from accepting Florida Tax Credit funds for any dependents of an owner or operator. Section 1002.395(2)(i)2., Florida Statutes, defines an owner or operator as: *An owner, operator, superintendent, or principal or an eligible private school or a person with equivalent decision making authority over an eligible school.* East Atlantic Prep of Brevard County accepted \$12,736 in Florida Tax Credit funds for David Clement, which is a violation of the Florida Tax Credit statute.^[4]

32. On that same day, on an email account in Jennifer Jacobs Council’s name, Mr. Council responded, saying he had no problem fixing things and working with Ms. Hitchcock, and indicated that he “can have a notarized letter to you by tomorrow regarding Jennifer.”

33. On July 15, 2021, Mr. Council executed an affidavit that states: “This is notice that Jennifer Jacobs no longer works, volunteer’s [sic], or is associated with any operation of East Atlantic Prep of Brevard County. This is effective immediately.”

⁴ Ms. Hitchcock did not realize at this point that Jennifer Jacobs Council’s daughter was also receiving scholarship funds, because her last name is different from her mother’s. It was first discovered when Ms. Hitchcock received a spread sheet from Step Up for Students regarding payments that Jennifer Jacobs Council was the parent of a scholarship student.

34. Ms. Hitchcock spoke with Mr. Council by phone and explained that the school was not allowed to receive scholarship funds for the children of owner/operators. She felt that he did not have a clear understanding of what was required by the Division of Corporations; he conveyed to her that he was under the impression that he had to have four people listed, so he listed his wife, his sister, and his two-year-old child. She advised him that he would have to take Courtney Clement off as a director, as well as Ms. Council.

35. Ms. Hitchcock felt that some of Mr. Council's actions were not intentional. She felt that East Atlantic Prep could make some changes, remove Jennifer Jacobs Council from the school's employ, and the school could remain in operation. She wanted to give the school the benefit of the doubt, and closed the investigation.

36. It is noted that Mr. Council represented to Ms. Hitchcock and reiterated at hearing that he thought he had to have four people listed as officers/directors for the annual statement for the Secretary of State records. However, when Mr. Council first amended the records, he named three people, as opposed to four, and he did not remove any of the officers listed with the Division of Corporations in July 2021.

37. After the 2021 investigation against East Atlantic Prep was closed, Ms. Hitchcock received a phone call from a representative of Step Up for Students. Ms. Hitchcock was advised that she needed to speak with an inspector from the Brevard County Sheriff's Office (BCSO) regarding possible fraud with respect to a student named Dustin Lapine who had attended East Atlantic Prep. She received some documents from Step Up for Students, spoke with Dustin's mother, and spoke with Inspector Daniel Genova from the BCSO. Ms. Hitchcock understood from her conversation with Inspector Genova that Jennifer Jacobs Council was still at East Atlantic Prep, which led her to reopen her investigation.

38. Amanda and Jeffrey Lapine are married and have one son, Dustin. In the summer of 2020,⁵ Amanda saw some information regarding East Atlantic Prep and contacted them to take a tour. After she and her husband toured the school, they decided to enroll their son for the next school year. During the tour, they were provided a packet of information and paperwork to fill out. According to Mrs. Lapine, they knew East Atlantic Prep charged tuition to attend the school, but were told that there were scholarships available for which they might qualify. The Lapines were told to fill out the information packet and the school would submit it on their behalf.

39. Mrs. Lapine did not recall if there was any heading that identified Step Up for Students on the top of the forms she completed. Typically, parents applying for scholarships through Step Up for Students do so online and not through paper forms. She was very sure that she did not submit anything directly to the scholarship funding organization, but submitted all of the information that she filled out to Jennifer Jacobs Council at East Atlantic Prep. Her testimony is clear and credible, and is accepted.

40. Mrs. Lapine texted with Jennifer Jacobs Council regarding the scholarship, and eventually learned from her that Dustin was approved for a scholarship of approximately \$6,300 a year. Mrs. Lapine was somewhat surprised, because she believed that she and her husband made too much money to qualify for a scholarship. No one from Step Up for Schools or any other scholarship-funding organization ever contacted the Lapines during the application process. Neither she nor her husband Jeffrey ever registered for a portal with Step Up for Students, and neither of them ever provided their email addresses.

⁵ Mrs. Lapine's testimony refers at times to dates related to the 2019/2020 school year, as opposed to the 2020/2021 school year. However, from the documents submitted and the whole of her testimony, it is found that it is more likely than not that she visited the school in July of 2020 and enrolled Dustin that fall.

41. Mr. and Mrs. Lapine did not believe that their son had a positive experience with East Atlantic Prep, and by March of 2021, they pulled him out of the school.⁶

42. After Dustin was no longer at East Atlantic Prep, Ms. Lapine received mail from Step Up for Students, asking that she either approve or deny payment for the last quarter of the school year. Mrs. Lapine thought it odd, because she had never approved payment before. She called Step Up for Students, and the woman with whom she spoke told Mrs. Lapine that in previous quarters, Mrs. Lapine had approved payment on her parent portal. When Mrs. Lapine told Step Up for Students' representative that she did not know what the woman was talking about, she was placed in contact with someone else to discuss her account. After realizing that her and her husband's signatures had been used fraudulently, she contacted the BCSO to file a fraud complaint.

43. Agent Daniel Genova is an investigative agent in the economic crimes unit of the BCSO. He received a complaint from Mrs. Lapine that her name and signature were used and documents were created, including an email account, without her permission. As part of Agent Genova's investigation, he met with both Arthur Council and Jennifer Jacobs Council. The first interview took place on May 12, 2022, in Mr. Council's office at East Atlantic Prep. During the interview, Jennifer Jacobs Council identified herself as Joyce Wilvey, but gave her own birthdate. After the interview, as Agent Genova and his partner were leaving the school, Jennifer Jacobs Council came out to the parking lot, crying, and admitted she gave them a false name because she was not supposed to be at the school.

44. Ernette Duhart worked at East Atlantic Prep for approximately four years. She resigned on May 20, 2022. While she was there, Arthur Council

⁶ Mrs. Lapine admitted that she did not go through the formal withdrawal process with East Atlantic Prep, because by that time, "emotions were high" and she did not want to go to the school. However, it is clear that after spring break in 2021, Dustin was enrolled in public school instead of East Atlantic Prep.

was running the school, with Jennifer Jacobs Council helping him. Ms. Council was there, every day, working in the office. Ms. Council was not there the last day Ms. Duhart worked, but was there that week, long after Mr. Council signed the affidavit stating she would no longer be at the school.

45. Ms. Hitchcock received documents from Step Up for Students regarding Dustin Lapine and his parents. The documents include Dustin's birth certificate, which clearly identifies his parents as Amanda and Jeffrey Lapine, and a copy of Jeffrey Lapine's driver's license. Also included are two handwritten letters. The first one, purportedly signed by Amanda Lapine, states:

To whom it may concern,

I Amanda Lapine have been paying my brother Jeffery Lapine's Bills for the months of June and July of 2020 totaling around \$1,200 per month. He is unable to work and taking complete care of his son Dustin.

Thanks,

Amanda Lapine

46. The second letter is purportedly from Jeffrey Lapine, and states:

8/11/20

I Jeffery Lapine do not receive unemployment benefits nor can I apply for such benefits. My sister Amanda has been paying all my bills.

Jeffery Lapine

47. Neither Jeffrey Lapine nor Amanda Lapine wrote these letters. The handwriting is not theirs, and Jeffrey's name is misspelled in both. Amanda and Jeffrey Lapine are husband and wife, not brother and sister. Jeffrey Lapine was not unemployed at any point during this timeframe. He changed jobs in February 2021, well after the documents were submitted, and no

evidence was submitted to indicate that, even then, there was a break in his employment.

48. A parent portal with Step Up for Students was also created in Jeffrey Lapine's name. The parent portal for the 2020-2021 school year lists Jeffrey Lapine as the primary parent, and no secondary parent is identified. It lists his marital status as "single, I have never been married." The three security questions and answers are listed as: 1) In what city were you born? (South Haven); 2) What was the model of your first car? (Grand Am); and 3) What is your father's middle name? (Eugene). The email listed for the account is amandaeap2020@gmail.com, and the electronic signature is purportedly signed by Jeffrey Lapine (with first name misspelled as Jeffery) on July 31, 2020.

49. Mr. Lapine did not set up this parent portal, and did not know one existed. His first car was a blue Chevrolet and his father's middle name is Paul. He did not recognize the email address amandaeap@gmail.com and did not provide that email to Step Up for Students.

50. On December 14, 2021, Amanda Lapine submitted paperwork denying payment for the school year 2020-2021, writing on the form, "Per conversation with Ms. Joy on 12/14/2021 my email is Alapine1121@gmail.com. We *never* set up a parent portal log in nor had we ever gone online to approve payments in the past."

51. The information received regarding the Lapines' account caused Ms. Hitchcock to examine other files related to scholarships awarded to East Atlantic Prep students, which revealed some curiosities.

52. The Step Up for Students parent portal for Malilia Fleese lists the same three security questions as those for Dustin Lapine. It also lists the model of the first car as a Grand Am and the father's middle name as Eugene.

53. Likewise, the parent portal for David Clement lists the same three security questions, and also indicates that the model of the first car was a

Grand Am and the father's middle name was Eugene. The email for this account is clementeap@yahoo.com.

54. Ms. Hitchcock asked personnel from Step Up for Students to pick five student files with scholarships to East Academy Prep, and they all had these same security questions. In each case, the first car was listed as a Grand Am and the father's middle name was listed as Eugene. Similarly, many had email addresses with a person's first name, followed by eap@gmail.com.

55. There is no direct evidence that Jennifer Jacobs Council created the accounts and parent portals with Step Up for Students for students receiving scholarship funds at East Atlantic Prep. However, the evidence is clear that, at least with respect to the Lapines, the parents did not open the account. They gave information to Jennifer Jacobs Council and an account was created in Jeffrey Lapine's name for Dustin Lapine, and scholarship funds were approved for East Atlantic Prep without their involvement. Jennifer Jacobs Council is also the one who advised them that the scholarship was approved for their son. The compelling and persuasive evidence submitted supports a finding that it is more likely than not Jennifer Jacobs Council, or someone else at East Atlantic Prep, created some of the documents submitted to Step Up for Students and created the parent portal in order to have a vehicle through which payments to East Atlantic Prep could be made.

56. It is also found, despite the affidavit submitted to IEPC indicating that Jennifer Jacobs Council was not at the school in any capacity, the greater weight of the evidence is that she continued to work at the school in a capacity that provided direct contact to students. Even Mr. Council admitted as much, stating,

But at the end of the day, it's more of if the disqualifying factor is Jennifer – and Your Honor, I want to say this, too, is that in doing this type of work, there has been a lot of – and I'm just going to be honest, a lot of single parents, women, there has been a lot of staff, and if Jennifer has ever continued to help me, it was to be a liaison or a

bridge to this person who I knew – I also have another company, and it’s been going on for a year, and she does that. And so it’s always been to be, “Hey, you know, I don’t want to have a meeting with a parent who’s trying to holler at me.” You know, even staff – and I’m just being honest. ... You know, any time I ever had a young girl in our office, I needed someone there. You know, if a teacher couldn’t be there who I trusted, I needed somebody there.

57. The Administrative Complaint in this case was issued April 12, 2022. The Sunbiz records for the Secretary of State, Division of Corporations, records reflect documentation was filed on April 14, 2022, to remove Jennifer A. Council as an officer for Lighthouse Christian Academy of Merritt Island, Inc., the owner of the fictitious name East Atlantic Prep of Brevard County. Courtney Clement and Liam Council, Mr. Council’s young son, were still listed as officers.

CONCLUSIONS OF LAW

58. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 1002.421(3)(d).

59. Section 1002.421(3) provides, in pertinent 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. ...

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

1. An imminent threat to the health, safety, or welfare of the students;

2. A previous pattern of failure to comply with this section; or
3. Fraudulent activity on the part on the part of the private school. ...

60. In this proceeding, the Commissioner has immediately suspended and seeks to revoke Respondent's ability to participate in state scholarship programs. Therefore, the burden of proof rests with the Commissioner to prove the allegations in the Administrative Complaint by a preponderance of the evidence. Section 120.57(1)(j) provides that findings of fact shall be based on the preponderance of the evidence, except in penal or license disciplinary proceedings, or as otherwise provided by statute. Section 1002.421(3) is silent regarding the burden of proof, and as Petitioner correctly asserts, scholarship eligibility is not licensure: regardless of the outcome of this proceeding, the school may continue to operate and students may still receive scholarship funds, as long as they attend a school eligible to receive the funds. *Stewart v. Silva of South Fla., Inc.*, Case No. 17-3898SP (Fla. DOAH Dec. 11, 2017; Fla. DOE Mar. 14, 2018).

61. The Supreme Court of Florida has stated, "A 'preponderance' of the evidence is defined as 'the greater weight of the evidence,' *Black's Law Dictionary* 1201 (7th ed.1999), 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)(citing *American Tobacco Co. v. State*, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997)). As applied to this case, Petitioner must prove by the greater weight of the evidence, or that it is more likely than not, that Respondent committed the violations alleged in the Administrative Complaint.

62. Count I of the Administrative Complaint states as follows:

Fraud: During the 2019-2020, 2020-2021, and 2021-2022 school years, East Atlantic Prep claimed Florida Tax Credit Scholarship Funds for student Malilia Fleese, the minor child of Jennifer Jacobs Council, the school's owner of record with the

Florida Department of State, Division of Corporations and the Florida Department of Education. However, in order to claim scholarship eligibility for her children, Ms. Jacobs Council has previously executed affidavits stating that neither a parent nor guardian of the children is an owner or operator of East Atlantic Prep, thereby committing fraud as contemplated in section 1002.421(3)(e)3., Florida Statutes.

63. The greater weight of the evidence clearly establishes that Jennifer Jacobs Council applied for scholarship funds for her daughter during the time she was listed as an officer for East Atlantic Prep. The evidence also shows that she was working at the school during this period, working in the office and assisting Mr. Council. She sent at least one email to the Department identifying herself as “School Director.” She gave the appearance to the public of being able to handle administrative matters for the school, such as enrollment and scholarship applications. Petitioner must also show that Jennifer Jacobs Council served as an owner/operator, and that her actions in signing the affidavit constitute fraud.

64. As reflected in the Findings of Fact, an owner/operator is defined in section 1002.395(2)(i)2., as “[a]n owner, operator, superintendent, or principal of an eligible school or a person with equivalent decisionmaking authority over an eligible private school.” The question then becomes whether, as secretary of the corporation, Jennifer Jacobs Council is a person with equivalent decision-making ability over East Atlantic Prep.

65. Chapter 607, Florida Statutes, provides the framework for corporations naming boards of directors and officers. Section 607.0802 and 607.0803 provide, respectively, that directors must be natural persons who are 18 years of age or older, and that a board of directors must consist of *one or more* individuals. Under Florida law, a corporation is managed by its board of directors or by its officers acting under the direction and control of the board, whether it is a corporation for profit, or not-for-profit. *Fla. State*

Oriental Med. Ass'n v. Slepín, 971 So. 2d 141, 144 (Fla. 1st DCA 2007); see also *Meese v. Warm Mineral Springs, Inc.*, 128 So. 2d 174, 179 (Fla. 2d DCA 1961) (“The board of directors of a corporation represents the corporate body, and the directors are entrusted with authority to conduct and manage the corporate affairs”).

66. Based on the weight of the evidence submitted, Jennifer Jacobs Council was a person with equivalent decision-making ability, and thus meets the definition of an owner/operator as defined in section 1002.395(2)(i)2.

67. Finally, Petitioner must show that when Jennifer Jacobs Council signed the application for scholarship funds, she did so fraudulently. The elements to prove fraud are well settled: there must be 1) a false statement concerning a material fact; 2) made with knowledge that the representation is false and with the intention of inducing another’s reliance on the statement; and 3) consequent injury to the other party action in reliance on the false misrepresentation. *Lance v. Wade*, 457 So. 2d 1008, 1022 (Fla. 1984); *Cohen v. Krofit Estate Buyers, Inc.*, 843 So. 2d 989, 991 (Fla. 4th DCA 2003). Fraudulent intent is, by necessity, usually proven by circumstantial evidence and those circumstances “by their number and joint consideration, [must] be sufficient to constitute proof.” *Nally v. Olson*, 134 So. 2d 265, 267 (Fla. 2d DCA 1961). A series of acts, taken together, may constitute fraud. *Dep’t of Rev. v. Rudd*, 545 So. 2d 369, 372 (Fla. 1st DCA 1989). Scienter or guilty knowledge as an element of intentional misconduct may 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, 696 (Fla. 3d DCA 1992).

68. With respect to Jennifer Jacobs Council, Petitioner has demonstrated, based on the entirety of the evidence presented, that she committed fraud by signing the application for scholarship funds and asserting that no parent of her child was an owner/operator of a private school. Ms. Council worked at

the school and was involved in its daily affairs. She made representations to parents that implied the authority to act on behalf of the school. She was listed as a corporate officer for the school with the Secretary of State. And with respect to other statements on two of the applications, she made false statements regarding her marital status. The application was signed with the intent that Step Up for Students would rely on the statements contained in the application to approve scholarship funds for her child, and it did so.

Petitioner has proven Count I by a preponderance of the evidence.

69. Count 2 alleges the same type of fraud as Count I, except the fraud is alleged in relation to the applications signed for scholarship funds for the 2019-2020 and 2020-2021 school years by Courtney Clement.

After careful consideration, Petitioner has not proven the violation alleged in Count 2. To be sure, Courtney Clement apparently signed the same statement in order to get scholarship funds for her child, and she is also listed as an officer of Lighthouse Christian Academy of Merritt Island, Inc., which owns the fictitious name for East Atlantic Prep. However, other than the fact that Ms. Clement is Mr. Council's sister, and that at one time she worked at East Atlantic Prep in some unknown capacity, the evidence presented does not provide any insight into what role she played at the school, and does not give sufficient assurance that when she signed the application for scholarship funds that she could be perceived as someone who, by her actions, could have decision-making authority for the school.

70. Count 3 also alleges fraud, this time in connection with the application for scholarship funds for Dustin Lapine. Count 3 states:

Fraud: On or about August 19, 2020, East Atlantic Prep submitted an FTC application for one Dustin Lapine, the minor child of Jeffrey and Amanda Lapine, to scholarship funding organization Step Up for Students (SUFS), in order to secure FTC funds to be directed to East Atlantic Prep. East Atlantic Prep included within the application certain documents falsely or improperly purported

to be created and/or executed by Jeffrey and Amanda Lapine, thereby committing fraud as contemplated in section 1002.421(3)(e)3., Florida Statutes.

71. Petitioner has proven the allegations in the Administrative Complaint with regard to Count 3. The evidence shows that the Lapines provided information to Jennifer Jacobs Council at her request, and that she informed them that Dustin had been awarded a scholarship. However, the Lapines did not set up a parent portal with Step Up for Students; did not write the letters submitted to Step Up for Students; did not sign the letters or the scholarship application; and did not approve payment for funds to go to East Atlantic Prep. The only plausible conclusion is that Jennifer Jacobs Council or someone else at East Atlantic Prep with comparable authority and access took the information provided by the Lapines and used it to set up the parent portal and approve funds to go to the school. Section 1002.395(7)(f) explicitly prohibits a school from approving funds on behalf of an enrolled child. *See also* § 1002.421(1)(f)2., Fla. Stat. While there was evidence presented that suggested this was a common practice at East Atlantic Prep, at least some of that evidence was hearsay, and no pattern of practice regarding creation of scholarship accounts and payment endorsement was alleged in the Administrative Complaint. However, with respect to the Lapines, the evidence was clear and persuasive.

72. Finally, Count 4 alleges the following:

4. Disqualifying Offense: East Atlantic Prep employs one Jennifer Jacobs Council, who has previously been convicted of felony convictions of sections 817.61, 817.568, 812.014 and 831.02, Florida Statutes, as an owner/operator, or in a position which requires direct contact with students. Per sections 1002.421(1) and 435.04(2), Florida Statutes, school owners, operators and employees who have been found guilty of a felony violation of sections 817.61, 817.568, 812.014 and 831.02, Florida Statutes, do not meet the requisite

criteria to pass the Level 2 background screening required by sections 1002.421(1)(m) and (p), Florida Statutes.

73. Section 1002.421 provides, in pertinent part:

(1) A private school participating in an educational scholarship program established pursuant to this chapter ... 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.943.0452 and have met the screening standards as provided in s. 425.04.

* * *

(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 school for the 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 decisionmaking authority over, a private school participating in a scholarship program established pursuant to this chapter. ...

5. In addition to the offenses listed in s. 435.04, a person required to undergo background screening pursuant to this part or authorizing statutes may not have an arrest warrant awaiting final disposition for, must not have been found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, and must not have been adjudicated delinquent for, and the record must not have been expunged for, any of the following offenses or any similar offense of another jurisdiction:

* * *

i. Section 817.568, relating to criminal use of personal identification information.

* * *

k. Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.

* * *

m. Section 831.02, relating to uttering forged instruments.

74. Section 435.04(2)(cc) lists felonies related to theft, robbery, and related crimes described in chapter 812 as disqualifying offenses.

75. Petitioner has demonstrated that Jennifer Jacobs Council has committed felonies for which she was adjudicated guilty that disqualify her from employment at East Atlantic Prep, much less acting as an

owner/operator and being an officer of the corporation.⁷ There is no question that she had direct contact with students; even the records submitted to IEPC state that she worked in the office and taught both art and health.

76. Jennifer Jacobs Council was hired before Mr. Council was the owner/operator of East Atlantic Prep. There was no evidence presented to indicate whether a records check was completed when she was hired. However, in order to truthfully answer the Scholarship Compliance Forms in Petitioner's Exhibit 11, it would be incumbent upon Mr. Council to make sure that there were records on hand to show that appropriate background screening was performed with respect to all of the school's employees. Either he did so, and ignored either the records on file or the need to conduct background screening, or he signed the compliance forms without making any inquiry. Neither alternative is acceptable.

77. What is more troubling is that once he provided the affidavit to Ms. Hitchcock indicating that Jennifer Jacobs Council would no longer be associated with the school, she continued to be on campus on a regular basis. Mr. Council admitted as much. Clearly, Mr. Council, as owner/operator of East Atlantic Prep, not only did not comply with the background screening requirements but knowingly allowed a person he knew was ineligible to work at the school to remain in its employ, despite his affidavit to the contrary.

78. Throughout the hearing, Mr. Council focused on this one violation, repeatedly stating that everything could be resolved by having Ms. Council no longer be associated with East Atlantic Prep. The problem is he executed a sworn statement to that effect already, and did not abide by that statement. Under these circumstances, the undersigned has no confidence that Mr. Council would abide by that restriction going forward.

⁷ It does not matter whether her name was Jennifer Jacobs or Jennifer Council at the time of the offenses, or whether her name is officially "registered" anywhere as Jennifer Jacobs Council. It was clearly established at hearing that they are one and the same person, and that person referred to in this Recommended Order as Jennifer Jacobs Council committed the felonies reflected in the arrest records, and that person was working at East Atlantic Prep.

79. Petitioner has demonstrated by a preponderance of the evidence that Respondent has violated section 1002.421(3)(a) (failing to comply with provisions of section 1002.421), based on the failure to comply with background screening requirements and continuing to employ someone who is ineligible to work at a private school as alleged in Count 4. It is further concluded that Petitioner has demonstrated by a preponderance of the evidence that Respondent violated section 1002.421(3)(e), based on fraudulent activity, i.e., by creating fraudulent documents in order to obtain scholarship funding as alleged in Count 2, and by submitting an application for Malilia Fleese that included the false statement (among others) that her parent was not an owner/operator of East Atlantic Prep as alleged in Count 1.

80. Petitioner has demonstrated a factual and legal basis for the immediate suspension and revocation of Respondent's eligibility to receive scholarship funds.

81. The Administrative Complaint in this case also directed Respondent to return scholarship funds fraudulently obtained, in the total amount of \$1,821,268.38. Petitioner's Proposed Recommended Order does not include the return of these funds as a sanction, and with good reason, because section 1002.421 does not appear to authorize mandating the return of scholarship funds, and Petitioner has not cited to any other statutory authority for this sanction.⁸ Even if section 1002.421 authorized the return, the only funds that could be subject to such a requirement are those that Petitioner actually proved were improperly obtained, which in this case would be the scholarship funds for Malilia Fleese and Dustin Lapine. While there was testimony about a possible pattern of action by Respondent to apply for funds in a manner not authorized by statute, those incidents were not alleged in the Administrative

⁸ Section 1002.421(3)(d)1. allows the Commissioner to consider whether a private school has reimbursed the Department or scholarship-funding organization for funds improperly received or retained by the school, in those cases where the Commissioner is seeking to permanently deny or revoke a private school's authority to operate. The Commissioner is not seeking to do that here.

Complaint and, thus, cannot be a basis for agency action. *Trevisani v. Dep't of Health*, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Commissioner enter a Final Order finding that Respondent, East Atlantic Prep, violated section 1002.421(3), upholding the immediate suspension of scholarship funds, and revoking the eligibility to receive scholarship funds going forward.

DONE AND ENTERED this 19th day of August, 2022, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of August, 2022.

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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.