

**STATE BOARD OF ADMINISTRATION  
OF FLORIDA**

JASON DAVIS,

Petitioner,

vs.

SBA Case No. 2024-0065

STATE BOARD OF ADMINISTRATION,

Respondent.

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**FINAL ORDER**

On November 20, 2024, the Presiding Officer submitted her Recommended Order to the State Board of Administration of Florida (SBA) in this proceeding. The Recommended Order indicates that copies were served upon the *pro se* Petitioner, Jason Davis, and upon counsel for the Respondent. Petitioner filed exceptions to the Recommended Order. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Chief of Defined Contribution Programs for final agency action.

**ORDERED**

The Recommended Order (Exhibit A) is hereby adopted in its entirety. Petitioner elected to enroll in the Investment Plan by logging in to his account on the Florida Retirement System (FRS) website on May 28, 2007, prior to his initial choice deadline of May 31, 2007. As a member of the FRS, pursuant to section 121.4501(4)(f), Florida Statutes, Petitioner has the option to utilize his one-time second election and become a member of the Pension Plan if he pays the required “buy in” amount. Specifically, the statute requires the member to “transfer from his or her investment

plan account, and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of [making the transfer]." § 121.4501(4)(f)2., Fla. Stat. There are no exceptions provided by law.

Petitioner seeks to become a member of the Pension Plan without paying the buy in amount. Regarding the FRS, the SBA only has the authority granted to it by the legislature and is not authorized to depart from the statute. *See Balezentis v. Dep't of Mgmt. Servs.*, Case No. 04-3263, ¶ 10 (DOAH Mar. 2, 2005; DMS Apr. 4, 2005). Accordingly, because the statute requires the buy in amount to transfer to the Pension Plan, Petitioner is not entitled to the relief requested.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration of Florida in the Office of the General Counsel, State Board of Administration of Florida, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

DONE AND ORDERED this 8<sup>th</sup> day of January, 2025, in Tallahassee, Florida.

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION  
OF FLORIDA



Daniel Beard  
Chief of Defined Contributions Programs  
State Board of Administration of Florida  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, FL 32308  
(850) 488-4406


FILED ON THIS DATE PURSUANT TO  
SECTION 120.52, FLORIDA STATUTES, WITH  
THE DESIGNATED CLERK OF THE STATE  
BOARD OF ADMINISTRATION, RECEIPT OF  
WHICH IS HEREBY ACKNOWLEDGED.



Hillary Eason  
Agency Clerk

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing Final Order was served this 8<sup>th</sup> day of January, 2025, by mail and electronic mail to the following:

  
Brittany Adams Long  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, FL 32308

Jason Davis



Petitioner

Deborah Minnis  
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Counsel for Respondent

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

JASON DAVIS,

Petitioner,

vs.

CASE NO. 2024-0065

STATE BOARD OF ADMINISTRATION.

Respondent.


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**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on September 30, 2024. All parties appeared telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

**APPEARANCES**

For Petitioner: Jason Davis, *pro se*

  
Also appearing at the request of Petitioner, but not participating:  
Jonathan Heller, Esq.

For Respondent: Deborah S. Minnis  
Ausley McMullen, P.A.  
123 S. Calhoun Street  
Tallahassee, FL 32302

**STATEMENT OF THE ISSUE**

The issue is whether the Petitioner may use his one-time second election to enroll in the Florida Retirement System (FRS) Pension Plan without payment of the required buy-in amount.

## **PRELIMINARY STATEMENT**

Petitioner testified on his own behalf and presented no other witnesses. Respondent presented the testimony of Allison Olson, SBA Director of Educational Services. Respondent's Exhibits R-1 through R-8 were admitted into evidence without objection. Petitioner submitted a summary of his case with attached documents, which was admitted into evidence as P-1 without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on October 4, 2024. The parties were invited to submit proposed recommended orders within 30 days after the transcript was filed. The following recommendation is based upon the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

## **FINDINGS OF UNDISPUTED FACTS**

1. Petitioner began employment with the Miami-Dade County Board of County Commissioners, an FRS participating employer, on December 4, 2006.
2. Petitioner had until May 31, 2007, to make his initial election to enroll in either the defined benefit Pension Plan or the defined contribution Investment Plan.
3. On May 28, 2007 (Memorial Day holiday), Petitioner elected to enroll in the Investment Plan by logging into his account on the MyFRS.com website. This election was received and processed by the Plan Choice Administrator on May 29, 2007, the next business day following the holiday, with an effective date to the Investment Plan of June 1, 2007. Petitioner did not place any calls to the MyFRS Financial Guidance Line prior to his initial enrollment in the Investment Plan, and there is no evidence that prior to making his election, Petitioner utilized the other resources available to him through FRS, including public information on MyFRS.com.

4. Petitioner called the MyFRS Financial Guidance Line on March 23, 2012, and discussed issues relating to using his second election to transfer to the Pension Plan, including but not limited to the requirement to buy into the Pension Plan. During this call, Petitioner also requested an estimate of his buyback amount.

5. Petitioner was advised that the longer he waited to buy in, the higher the cost would be to buy in.

6. Petitioner was provided with buyback estimates on April 10, 2012.

7. On April 26, 2013, Petitioner placed a call to the MyFRS Financial Guidance Line. During that call, Petitioner stated that he did not wish to remain in the Investment Plan. He stated that he elected to go into the Investment Plan when he began employment because of the potential of losing his job. Petitioner acknowledges making this call.

8. Petitioner was again provided with a buyback estimate on June 4, 2013.

9. Petitioner was also provided with buyback estimates on May 1, 2014 and June 3, 2014 and again in March of 2018.

10. When Petitioner placed a call to the MyFRS Financial Guidance Line on July 1, 2014, he was reminded of the conversation in 2012 about the potential buyback cost to transfer into the Pension Plan.

11. Petitioner testified at the hearing that during his hiring process, he was not told by his employer's human resources department about the requirement to buy in to the Pension Plan.

12. Petitioner submitted a sample enrollment packet as an exhibit. The language of the enrollment packet states that there is a cost to use a second election to transfer from the Investment Plan into the Pension Plan. The language further indicates that it is the member's responsibility to

make up any difference between the Investment Plan balance and the amount needed to buy into the Pension Plan.

13. There is no evidence that the Respondent or any employees or agents of Respondent or any employees or agents of the MyFRS Financial Guidance Line provided any inaccurate or deceptive information to Petitioner, in fact, there apparently was no interaction between Petitioner and anyone affiliated with Respondent or any agent of the MyFRS Financial Guidance Line prior to Petitioner choosing the Investment Plan during his initial enrollment.

14. Petitioner can still make a second election to the Pension Plan.

### **CONCLUSIONS OF LAW**

15. Pursuant to Section 121.4501(4)(a)1, Florida Statutes, beginning in 2002, persons hired into FRS eligible positions before January 1, 2018, have the opportunity to make an election between the Pension Plan and the Investment Plan. Petitioner was initially hired into an FRS-qualifying position on December 4, 2006, and had an initial choice deadline of May 31, 2007.

16. The Petitioner made a timely initial election to enroll into the Investment Plan on May 28, 2007 (Memorial Day) by signing on to the MyFRS website. The Plan Choice Administrator received and processed the election on May 29, 2007, the following business day.

17. Petitioner had access to the following educational resources to assist him in making his election:

- Toll-free access to MyFRS Financial Guidance Line;
- Access to the public information on [MyFRS.com](http://MyFRS.com) (including detailed information on the election process, copies of all publications and FAQ's);
- Employee workshops; and



- Employer Human Resources offices, which were afforded workshop training on the election process and supplied with printed materials regarding election options.

18. Petitioner did not contact the MyFRS Financial Guidance Line or access the MyFRS Financial Guidance Line before making his initial election to enroll in the Investment Plan.

19. The governing Florida Statutes provide in part:

“The third-party administrator shall retain all member records for at least 5 years for use in resolving any member conflicts. The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to a member if the action occurred 5 or more years before the complaint is submitted to the state board. It is presumed that all action taken 5 or more years before the complaint is submitted was taken at the request of the member and with the member’s full knowledge and consent. To overcome this presumption, the member must present documentary evidence or an audio recording demonstrating otherwise.”

§121.450(8)(g), Fla. Stat.

Petitioner executed his initial election over five years ago. Pursuant to section 121.4501(8)(g), Florida Statutes, the third-party administrator contracted by the State Board of Administration for record keeping is required to maintain member records for use in resolving disputes for five years. Neither Respondent nor the third-party administrator is required to produce records for actions that occurred five or more years before a complaint is submitted. All action taken five years or more before a complaint is submitted also is presumed to have been taken at the request of and with the member’s full knowledge and consent.

20. As a current member of FRS and pursuant to §121.4501(4)(f), Florida Statutes, the Petitioner still has the option to utilize his onetime second election and can become a member of the Pension Plan if he pays the required “buy-in” amount.

21. As a statutorily created entity, Respondent has only that authority granted to it by the legislature. Florida Statutes creating and governing the Florida Retirement System, and Petitioner’s rights and responsibilities under them, are clear and the SBA cannot deviate from them. Balezentis v. Dep’t of Mgmt. Servs., Div. of Retirement, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2, 2005) (noting that agency “is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction”). Respondent does not have the authority to grant the relief sought by Petitioner.

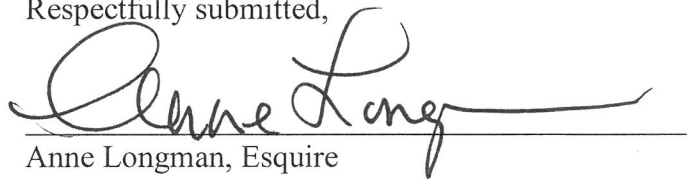
22. It is unfortunate that Petitioner did not make a second election to the Pension Plan when he first considered doing so, but there is no evidence here that Respondent did not comply with its governing statutes and rules in this matter.

**RECOMMENDATION**

Having considered the law and undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested by Petitioner.

Dated this 20th day of November 2024.

Respectfully submitted,



Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
106 East College Avenue, Suite 1500  
Tallahassee, FL 32301-1872  
[alongman@llw-law.com](mailto:alongman@llw-law.com)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed via electronic delivery with:  
Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, FL 32308  
[Hillary.Eason@sbafla.com](mailto:Hillary.Eason@sbafla.com).  
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COPIES FURNISHED via mail and electronic mail to:

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Jason Davis, pro se



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