

**STATE BOARD OF ADMINISTRATION  
OF FLORIDA**

MARILYN COSBY NELSON,

Petitioner,

vs.

SBA Case No. 2024-0558

STATE BOARD OF ADMINISTRATION,

Respondent.

**FINAL ORDER**

On July 1, 2025, the Presiding Officer submitted his 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, Marilyn Cosby Nelson, and upon counsel for the Respondent. 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, except for paragraph 24, which is clarified below. Petitioner terminated her Florida Retirement System (FRS) employment on June 21, 2024. Petitioner was rehired by the Broward County School Board on September 12, 2024. On October 1, 2024, Petitioner received a partial distribution from her Investment Plan Account. Because Petitioner was employed by an FRS employer at the time of this distribution, this distribution was considered an “in service” distribution that is not permitted. *See* Fla. Admin. Code R. 19-11.001(34) (“‘In-service distribution’ is an invalid distribution made to a member who is actively employed with an FRS employer at the

time of taking a distribution.”).

An FRS member may not take a distribution of benefits from the member’s Investment Plan Account unless the member has terminated all employment with an FRS employer. *See* § 121.591, Fla. Stat. (“Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased . . . .”). Termination is defined in section 121.021(39)(a), Florida Statutes, as “when a member ceases all employment” with FRS employers. However, (for retirements effective on or after July 1, 2010) “if a member is employed by any employer within the next 6 calendar months, termination shall be deemed not to have occurred.” § 121.021(39)(a)2., Fla. Stat. Here, Petitioner was employed within 6 months of her original termination, so she was no longer considered “terminated.” Thus, she took an invalid “in-service” distribution on October 1, 2024.

If an Investment Plan member receives an invalid distribution, “such person must either repay the full amount within 90 days of receipt of final notification . . . or, in lieu of repayment, the member must terminate employment from all participating employers.” § 121.591(1)(a)5., Fla. Stat. If such member fails to repay the full amount, the person may be deemed retired from the Investment Plan. *Id.*

Here, Petitioner took an invalid distribution and seeks for relief from repayment or termination, asserting that she had a financial hardship. The statutes do not allow distributions for hardships. *See* § 121.591, Fla. Stat. (“Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses . . . .”). Accordingly, Petitioner is not entitled to the relief requested.

Paragraph 24 in the Recommended Order states: “A member is considered ‘retired’ upon taking any distribution (including a distribution of employee contributions) from the Investment Plan.” To clarify, a person is considered a “retiree” when the person is a former member of the Investment Plan who has terminated employment and taken a distribution of vested employee or employer contributions as provided in section 121.591, Florida Statutes. *See* § 121.4501(2)(k), Fla. Stat.

In addition, paragraph 24 states: “A retiree who violates this requirement and any employing agency who employs such a retiree is jointly liable for returning any funds distributed.” This statement refers to a situation in which a member terminates employment, takes a distribution (and thus is considered a retiree), and then returns to work within 6 calendar months of the date of the initial retirement date (i.e., the date the member took a distribution). *See* § 121.091(9)(c), Fla. Stat. (explaining that a person cannot be reemployed by an FRS employer and receive salary and benefits from that employer for 6 calendar months after meeting the definition of termination). Here, Petitioner was re-employed prior to taking a distribution; thus, she was not considered a retiree. Instead, she took an invalid, in-service distribution. An FRS employer is not jointly liable when a member takes an invalid, in-service distribution. An FRS employer is only jointly liable when the member has terminated; taken a distribution, thus becoming a “retiree”; and the FRS employer hires the retiree within 6 calendar months of retiring. That did not occur here.

In sum, because Petitioner was employed with an FRS employer on September 12, 2024, she was not eligible to receive a distribution from her Investment Plan Account on October 1, 2024. Florida law requires that she either pay back the in-service distribution or terminate her FRS employment and wait 6 calendar months before returning to employment

with an FRS employer. As noted by the Presiding Officer, the SBA has no authority to make any exceptions to the statutory requirements, even for a showing of hardship. Thus, Petitioner's request for relief is denied.

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 29<sup>th</sup> day of August, 2025, in Tallahassee, Florida.

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION  
OF FLORIDA

A handwritten signature in black ink, reading "Daniel Beard", is written over a horizontal line.

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**

29th I CERTIFY that a true and correct copy of the foregoing Final Order was served this  
day of August, 2025, by mail and electronic mail to the following:

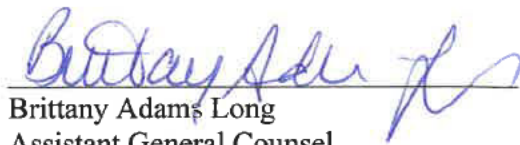
Marilyn Cosby Nelson



*Petitioner*

and via electronic mail only to:

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*Counsel for Respondent*



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**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

MARILYN COSBY NELSON,

Petitioner,

vs.

CASE NO. 2024-0558

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 May 13, 2025. 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: Marilyn Cosby Nelson, *pro se*



For Respondent: Ian C. White, Esq.  
Ausley McMullen, P.A.  
123 S. Calhoun Street  
Tallahassee, FL 32302

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner is required, under Florida law, to either repay the full amount of an invalid distribution from her Florida Retirement System (“FRS”) Investment Plan account, or terminate her employment with an FRS employer.

### **PRELIMINARY STATEMENT**

Pursuant to Section 120.57(2), Florida Statutes, this case was heard in an informal proceeding via a telephonic hearing on May 13, 2025, in Tallahassee, Florida. The hearing was held before the undersigned presiding officer for the State of Florida, State Board of Administration.

Petitioner testified on her own behalf and presented no other witnesses. Respondent presented the testimony of Lindy Still, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-5 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on June 2, 2025. The parties were invited to submit proposed recommended orders within 20 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. On June 21, 2024, Petitioner terminated her employment with the Broward County School Board, an FRS-participating employer.
2. On August 8, 2024, Petitioner contacted the MyFRS Financial Guidance Line and spoke with an EY Financial Planner about taking a distribution from her FRS Investment Plan account due to a financial hardship.
3. During this call, the EY Financial Planner explained to Petitioner that she would have to wait 3 full months after the month of June before she would have access to the funds in her FRS Investment Plan account. Therefore, her retirement funds would not become fully available until October 1, 2024.

4. The EY Financial Planner then explained to Petitioner that if she returned to work with an FRS-participating employer, she would not have access to her retirement funds.

5. Petitioner informed the EY Financial Planner that she expected to return to work by October.

6. Petitioner was rehired by the Broward County School Board, effective September 12, 2024.

7. On September 24, 2024, Petitioner contacted the MyFRS Financial Guidance Line and again spoke with a Customer Care Representative about taking a distribution from her FRS Investment Plan account.

8. During this call, the Customer Care Representative explained to Petitioner that if she took a distribution on October 1, 2024, she would not be eligible to return to FRS employment until May 1, 2025. Petitioner acknowledged that she understood this limitation and the Customer Care Representative proceeded to walk Petitioner through the process of scheduling a partial distribution from her FRS Investment Plan account for October 1, 2024.

9. During the September 24, 2024 call, Petitioner was required to verify her eligibility to receive a distribution, by providing the appropriate response to four questions before her distribution request could be processed. The questions, and Petitioner's responses those questions, were as follows:

- **Question #1:** If you are covered for health insurance benefits through your employer and wish to continue them after retiring, the FRS recommends that you talk with your Human Resource office about eligibility of benefits and how it may affect your coverage prior to taking a distribution from your Investment Plan account. The following requires careful review. You must respond to each of the following questions. If you fail to respond to each question, your distribution will not be processed.



Does the FRS have your correct date of termination on file? This includes all FRS employment, but is not limited to, regularly established, full-time, part-time, Other Personal Services (OPS), seasonal employment, adjunct professor, or substitute teaching. This also includes any paid or unpaid positions, service arrangements or employment by or through a third-party providing services to an FRS employer. Your FRS records show your date of termination is June 21, 2024.

**Petitioner's Response: "Yes."**

- **Question #2:** The FRS offers all FRS members free, unbiased financial guidance services from financial planners who do not sell any investments and can assist you with clarifying specific FRS guidelines regarding the distribution as well as other financial planning topics. Would you like to speak to an FRS Financial Planner before proceeding with your distribution?

**Petitioner's Response: "No."**

- **Question #3:** Your distribution is being processed in good faith, based on information you provide. Florida Statutes prohibit in-service distributions. You must not be actively employed or pending re-employment with any FRS employer in any type of position at the time of this distribution. This includes all FRS employment, but is not limited to, regularly established, full-time, part-time, Other Personal Services (OPS), seasonal employment, adjunct professors, or substitute teaching. This also includes any paid or unpaid positions, service arrangements or employment by or through a third-party providing services to an FRS employer.

If you take a distribution of your vested Investment Plan benefit, any unvested Pension Plan years of service and the accumulated benefit associated with that service will be forfeited.

When you take a distribution from your Investment Plan account, you will be considered retired from the FRS and cannot be reemployed by any FRS participating employer in any position within the first 6 calendar months from the date this distribution is processed. This includes positions that are not covered for FRS retirement, but are not limited to temporary, part-time, adjunct, substitute teaching or any OPS positions. This also includes any paid or unpaid positions, service arrangements or employment by or through a third-party providing services to an FRS employer. If you are reemployed within the first 6 calendar months of your retirement date, your distribution will be considered invalid. Florida law states that you and any FRS participating agency that employs you are jointly liable for

returning any funds distributed. Please note: your six calendar months begin after the month of your distribution.

If you receive an in-service and/or invalid distribution, you will have 90 days from the date of notification to repay the full amount of the distribution to the FRS. In lieu of repayment, you may terminate all employment with FRS agencies. If full repayment is not made within the noted 90 days, or you do not terminate employment, the State Board of Administration of Florida may declare you a retiree and/or pursue its legal options.

By proceeding with your distribution, you certify that you are currently eligible to receive this distribution. You also understand that if it is later determined you were not eligible to receive this distribution, you will have to repay the invalid distribution.

Is there any reason why you are not eligible to receive this distribution?

**Petitioner's Response: "No."**

- **Question #4:** With all of the information provided previously, do you understand the re-employment limitations and the consequences of taking a distribution at this time?

**Petitioner's Response: "Yes."**

10. Respondent's witness, Lindy Still, testified that no distribution from a member's FRS Investment Plan account is processed unless the member correctly responds to the four questions above. According to Ms. Still, Respondent processed her distribution request online while on the phone with the Customer Service Representative. Whether made by telephone or online, Respondent would not have been able to process Petitioner's distribution request without Petitioner first providing the proper responses to the questions listed above.

11. Based on the answers she provided to the questions in par. 9 above, a partial distribution in the gross amount of \$15,000.00 was processed from Petitioner's FRS Investment Plan account and Petitioner received the funds on October 1, 2024.

12. During an audit of the FRS Investment Plan, Respondent discovered Petitioner had been reemployed by the Broward County School Board, effective September 12, 2024. Petitioner's receipt of a distribution from her FRS Investment Plan account while employed with an FRS employer, constitutes an "in-service distribution," which is not permissible under Chapter 121, Florida Statutes.

13. By letter dated December 2, 2024, SBA provided Petitioner with the following two options to correct the unlawful distribution: a) pay back the entire amount of the distribution; or b) terminate employment with the Broward County School Board. She was further advised that if she terminated her employment, she would have to wait 6 calendar months before accepting employment from any FRS-participating employer.

14. On January 15, 2025, the SBA sent Petitioner another letter regarding the in-service distribution, providing the same options. Petitioner responded by letter on February 10, 2025, requesting leniency based on a financial hardship she was experiencing.

15. On March 12, 2025, the SBA sent Petitioner a final letter regarding the in-service distribution and reiterated that she must either pay back the in-service distribution or terminate her employment with the Broward County School Board and wait 6 calendar months before returning or being employed at any other FRS-participating employer.

16. On or about March 25, 2025, Petitioner filed a Petition for Hearing, requesting relief from any obligation to terminate employment with the Broward County School Board, notwithstanding her inability to repay the amount improperly distributed from her Investment Plan account.

## CONCLUSIONS OF LAW

17. Petitioner carries the burden to demonstrate compliance with all applicable statutory requirements before being granted the relief requested. *Young v. Dep't of Community Affairs*, 625 So. 2d 831 (Fla. 1993); *Dep't of Transp. v. J.W.C.*, 396 So. 2d 778 (Fla. 1st DCA 1981).

18. Having received a distribution from her FRS Investment Plan account, while still employed by an FRS-participating employer, Petitioner has requested relief from the State Board of Administration's demand that she repay the distribution or terminate employment, due to her financial circumstances.

19. There is no question that Petitioner was not eligible to receive the \$15,000 distribution from her Investment Plan account. Section 121.591, Florida Statutes, states that "Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department." The law is clear that FRS does not permit "in-service" distributions.

20. The law is equally clear that FRS does not permit "hardship distributions" to members who are still employed with an FRS-participating employer. Section 121.591 also states,

Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code.

21. Section 121.591(1)(a)3, Florida Statutes, states in part as follows:

Benefits in the form of vested accumulations as described in section 121.4501(6) are payable under this subsection in accordance with the following terms and

conditions: ... 3. The member must be terminated from all employment with all Florida Retirement System employers, as provided in section 121.021(39).

22. The SBA's correction of an improper distribution is addressed under section 121.591(1)(a)5, Florida Statutes, which states,

If a member or former member of the Florida Retirement System receives an invalid distribution, such person must either repay the full amount within 90 days after receipt of final notification by the state board or the third-party administrator that the distribution was invalid, or, in lieu of repayment, the member must terminate employment from all participating employers.

23. The options provided to Petitioner for correcting her invalid distribution are not only supported by the applicable law, but are also mandated by that law.

24. There is also no question that Petitioner must refrain from reemployment with an FRS employer for at least 6 months following her separation from the Broward County School Board. Section 121.091(9)(c), Florida Statutes, states that any Investment Plan member whose retirement is effective on or after July 1, 2010, cannot be reemployed with an FRS-participating employer until the member has been retired for 6 calendar months. A member is considered "retired" upon taking any distribution (including a distribution of employee contributions) from the Investment Plan. A retiree who violates this requirement and any employing agency who employs such a retiree is jointly liable for returning any funds distributed.

25. For purposes of a member's eligibility to receive benefit under FRS, "termination" occurs only after a member ceases all FRS employment, and if a member becomes employed by any FRS employer within the next 6 calendar months, termination will be deemed not to have occurred. F.S. § 121.021(39)(a).

26. Because of Petitioner's reemployment with the Broward County School Board on September 12, 2024, she was not eligible to receive the distribution from her Investment Plan account on October 1, 2024. Respondent has correctly advised Petitioner that Florida law requires

her to either pay back the in-service distribution or terminate her employment with the Broward County School Board and wait 6 calendar months before returning or being employed at any other FRS-participating employer.

27. It should be noted that Respondent's actions in this case are not merely an instance of inflexible or indifferent government bureaucracy. While Petitioner may view Respondent as being unreasonably rigid, or punitive, by not making an exception in her case, the legal requirements with which Respondent must comply leave no room for discretion. Florida law requires that the FRS Investment Plan be administered in compliance with the "plan qualification requirements imposed on governmental plans under s. 401(a) of the Internal Revenue Code." F.S. § 121.4501(13)(a). Respondent is required to "implement and administer the investment plan in compliance with the Internal Revenue Code and as designated under [Part II, Chapter 121]." *Id.*

28. Governmental retirement plans (e.g., FRS Investment Plan) enjoy preferential tax treatment only because those plans maintain compliance with section 401(a) of the Internal Revenue Code, which sets forth standards that must be met for retirement plans to "qualify" for such preferential tax treatment. To be "qualified," a plan must comply with the section 401(a) requirements in both form and operation. 26 CFR § 1.401-1(b)(3); *see also, Ed Thielking, Inc. v. Comm'r of Internal Revenue*, 119 T.C.M. (CCH) 1026 (T.C. 2020).

29. One of those qualification requirements is a "definite written program" setting forth all provisions essential for qualification, which is communicated to employees. 26 C.F.R. § 1.401-1(a)(2). A plan fails this "definite written program" requirement if it is administered in a manner that does not follow the terms of the plan document. *Fam. Chiropractic Sports Inj. & Rehab Clinic, Inc. v. Comm'r of Internal Revenue*, 111 T.C.M. (CCH) 1046 (T.C. 2016). The Tax Court in *Fam. Chiropractic* held that a retirement plan did not constitute a "definite written program," and was

therefore not a qualified plan, based on the failure to abide by distribution rules in the plan's governing documents. *Id.*

30. The FRS Investment Plan does not permit "in-service" distributions and Respondent's approval of in-service distribution from the Investment Plan, contrary to the provisions of Chapter 121 would violate the qualification standards under sec. 401(a) of the Internal Revenue Code, in addition to Chapter 121.

31. Respondent is charged with administering the FRS Investment Plan in accordance with Chapter 121, Florida Statutes, and the agency lacks discretion to waive or ignore any law governing that administration. Respondent is not authorized to depart from the requirements of these statutes when exercising its jurisdiction. *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's construction and application of Chapter 121 are entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. *Level 3 Communications v. C.V. Jacobs*, 841 So. 2d 447, 450 (Fla. 2002); *Okeechobee Health Care v. Collins*, 726 So. 2d 775, 778 (Fla. 1st DCA 1998).

32. Respondent, as an administrative entity of the State of Florida, has only those powers conferred upon it by the legislature. *See, e.g., Pesta v. Dep't of Corrections*, 63 So.3d 788 (Fla. 1st DCA 2011). The Florida Administrative Procedure Act expressly provides that statutory language describing the powers and functions of such an entity are to be construed to extend "no further than...the specific powers and duties conferred by the enabling statute." §§ 120.52(8) and 120.536(1), Fla. Stat.

33. Accordingly, Respondent does not have the authority to waive the requirement that Petitioner repay her in-service distribution or terminate her current employment with an FRS eligible employer.

**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 1st day of July 2025.

Respectfully submitted,

/s/ Glenn E. Thomas  
Glenn E. Thomas, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
106 East College Avenue, Suite 1500  
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[gthomas@llw-law.com](mailto:gthomas@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  
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