

STATE BOARD OF ADMINISTRATION
OF FLORIDA

DEBBIE PAGE,

Petitioner,

vs.

SBA Case No. 2024-0413

STATE BOARD OF ADMINISTRATION,

Respondent.

FINAL ORDER

On March 20, 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, Debbie R. Page, and upon counsel for the Respondent. No exceptions to the Recommended Order were filed by either party. A copy of the Recommended Order is attached as Exhibit A. The matter is now pending before the Chief of Defined Contribution Programs for final agency action.

ORDERED

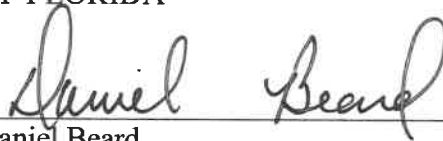
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The SBA does not have the authority to allow Petitioner to switch from the Investment Plan to the Pension Plan after Petitioner had already used her one-time second election. Moreover, since Petitioner has received a partial distribution from her Investment Plan account, she is now considered a “retiree” under the Florida Retirement System. *See* § 121.4501(2)(k), Fla. Stat. (“Retiree means a former member of the investment plan who has terminated employment and taken a distribution of vested employee or employer contributions”). A retiree cannot change plans. *See* § 121.591(1)(d), Fla. Stat. (“The distribution payment method selected by the

member or beneficiary, and the retirement of the member or beneficiary, is final and irrevocable at the time a benefit distribution payment is cashed, deposited, or transferred to another financial institution.”). Accordingly, 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 7th day of April, 2025, in Tallahassee, Florida.

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION
OF FLORIDA

A handwritten signature in black ink, appearing to read "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

I **CERTIFY** that a true and correct copy of the foregoing Final Order was served
on this 7th day of April, 2025, by mail and electronic mail to the following:


Debbie R. Page



Petitioner

and via electronic mail only to:

Deborah Minnis, Esq.
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Counsel for Respondent


Brittany Adams-Long
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**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

DEBBIE PAGE,

Petitioner,

vs.

CASE NO. 2024-0413

STATE BOARD OF ADMINISTRATION,

Respondent.

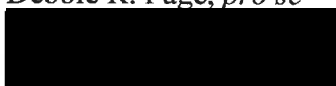
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RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on January 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: Debbie R. Page, *pro se*



For Respondent: Ian C. White, Esq.
Ausley McMullen, P.A.
123 S. Calhoun Street
Tallahassee, FL 32301

STATEMENT OF THE ISSUE

The issue is whether Respondent should be required to move Petitioner from the Florida Retirement System ("FRS") Investment Plan back into the Pension Plan after Petitioner already used her one-time second election and after Petitioner retired from the FRS Investment Plan.

PRELIMINARY STATEMENT

Pursuant to Section 120.57(2), Florida Statutes, this case was heard in an informal proceeding via a telephonic hearing on January 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's Exhibits R-1 through R-5 were admitted into evidence over Petitioner's objection to Exhibit R-5 (the call log).

A transcript of the hearing was made, filed with the agency, and provided to the parties on January 8, 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. Petitioner was initially enrolled in the Florida Retirement System in May of 1999, when she was employed by the Miami-Dade County School Board.
2. At the time of her initial enrollment in the FRS, the only retirement plan available was the Pension Plan.
3. In July of 2002, the Investment Plan was implemented as part of the FRS. Existing employees were given an initial election period during which they could choose to remain in the Pension Plan or enroll in the Investment Plan.
4. Petitioner was given a deadline of November 30, 2002, by 4:00 p.m. Eastern Time, to elect to remain in the Pension Plan or enroll in the Investment Plan.
5. Because the Plan Choice Administrator did not receive an election from Petitioner by the November 30th deadline, by default, Petitioner remained in the Pension Plan.

6. On December 1, 2003, Petitioner began working for Broward County, an FRS-participating employer.

7. While she was employed with Broward County, her employer's payroll department recommended that Petitioner switch from the FRS Pension Plan to the Investment Plan. Petitioner testified that the individual in the payroll department told her that her retirement benefit would be worth "\$1 million" when she retired.

8. On October 11, 2016, Petitioner called the MyFRS Financial Guidance Line and spoke with an EY Financial Planner about switching from the Pension Plan to the Investment Plan.

9. During this call, the EY Financial Planner went over the comparisons between the Pension Plan and the Investment Plan and informed Petitioner that if she chose to switch to the Investment Plan, she would not be able to go back to the Pension Plan.

10. On or about October 18, 2016, Petitioner completed, signed, and submitted a 2nd Election Retirement Plan Enrollment Form (Form ELE-2), thereby using her one-time second election to transfer from the Pension Plan to the Investment Plan.

11. Line 4 of Form ELE-2, signed by Petitioner, includes the following statement "By signing below, I acknowledge that I have read and understand the information on page 3 of this Enrollment Form, and I certify that all supplied information is true and correct."

12. Page 3 of Form ELE-2 includes the following statement: "A 2nd Election is irrevocable. You must remain in the plan you choose until your FRS-covered employment ends and you retire."

13. Petitioner's one-time second election was processed on October 18, 2016, with an effective date of November 1, 2016, in the Investment Plan.

14. A Florida Retirement System – Confirm of 2nd Election - Investment Plan dated October 20, 2016, was sent to Petitioner. This document contained the following information:

- This statement confirms your recent Florida Retirement System (FRS) Plan Choice utilizing your one-time 2nd election.
- You have elected to change to the FRS Investment Plan and transfer the Present Value of your FRS Pension Plan benefit. The effective date of this election will be November 1, 2016. Future employee and employer contributions will be directed to your new FRS Investment Plan account. As a member who is using your 2nd election to transfer to the FRS Investment Plan, you will have the Present Value of your FRS Pension Plan benefit calculated and transferred to the FRS Investment Plan as your opening account balance.
- If you feel this retirement plan election was made in error, you may be able to cancel it. Please call the MyFRS Financial Guidance Line at 1-866-4469377, Option 2. Failure to notify us no later than 4:00 PM EST on the last business day of the month following your election month will void your right to cancel this election.

15. Petitioner did not contact the MyFRS Financial Guidance Line by November 30, 2016, to cancel her one-time second election to the Investment Plan.

16. On November 30, 2016, the present value of Petitioner's Pension Plan benefit was transferred to her new Investment Plan account.

17. Broward County reported a termination date for Petitioner with an effective date of September 20, 2018.

18. On November 27, 2019, Petitioner was deemed retired from the Investment Plan when she received a partial distribution in the gross amount of \$1,500.00 from her Investment Plan account.

CONCLUSIONS OF LAW

19. Petitioner essentially seeks to *undo* her 2016 second election and be returned to the Pension Plan retroactively for all of her service under FRS. Movement between the FRS Pension Plan and the FRS Investment Plan is governed by Section 121.4501(4)(f), Florida Statutes. This section states, in pertinent part:

- (f) After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the

receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan.

20. Rule 19-11.007, Florida Administrative Code, provides a grace period to FRS members to rescind their election. This section states, in pertinent part:

(5) Grace Period

(a) If a member files an election with the Plan Choice Administrator and the member realizes that the election was made in error, or if the member has reconsidered his or her plan choice, the State Board of Administration (SBA) will consider, on a case-by-case basis, whether the election will be reversed, subject to the following: The member must notify the SBA by calling the toll free MyFRS Financial Guidance Line at: 1(866)446-9377, or by sending written correspondence directly to the SBA, to the Plan Choice Administrator, to the MyFRS Financial Guidance Line, or to the Division, no later than 4:00 p.m. (Eastern Time), on the last business day of the election effective month.

21. In order to take advantage of this provision, Petitioner was required to notify the FRS no later than November 30, 2016, by 4:00 p.m. Eastern Time, to rescind her decision to switch to the Investment Plan.

22. The Plan Choice Administrator did not receive a request from the Petitioner to cancel her election prior to the expiration of the grace period. After the grace period, Petitioner's 2nd election become final and there are no statutory provisions that would allow any additional elections after a member uses their one-time second election.

23. Petitioner claims that her decision to switch from the Pension Plan to the Investment Plan was based solely on unsupported statements by the payroll department that she would receive \$1 million dollars. However, Petitioner's reliance on advice from an employee in the Broward County Payroll Department provides no legal basis under which Respondent can depart from the requirements of Chapter 121, Florida Statutes. Moreover, Petitioner could easily

have determined the accuracy of the advice, had she accessed any of the available resources provided to her by FRS and asked for verification.

24. Respondent is a separate agency from Broward County and has no control over, or responsibility for, representations made by employees of the County. It is the responsibility of an FRS member to use all available resources to make an educated decision when making a change to their retirement plan. Petitioner had access to the following educational resources:

- Toll-free access to MyFRS Financial Guidance Line;
- Access to the public information on 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.

23. Erroneous or insufficient information provided to Petitioner by her employer's payroll department is not binding on Respondent. Section 121.021(10), Florida Statutes, expressly states that "[e]mployers are not agents of the [Department of Management Services], the [State Board of Administration], or the Division of Retirement, and the department, the state board, and the division are not responsible for the erroneous information provided by the representatives of the employer."

24. Based on the testimony and evidence presented at the hearing, no employees or representatives of Respondent made any misstatements or misrepresentations to Petitioner. On the contrary, it appears that the information Petitioner received from the MyFRS Financial Guidance Line was more than sufficient to at least raise concerns about the veracity of the statement by her payroll department. Notwithstanding the information from the MyFRS Financial Guidance Line,

Petitioner apparently continued to rely on the statement from a Broward County payroll department employee.

25. Respondent is not authorized to depart from the requirements of the above-referenced statutes when exercising its jurisdiction and has no power to enlarge, modify, or contravene the authority granted to it by the legislature. *State, Dept. of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco v. Salvation Ltd., Inc.*, 452 So. 2d 65, 66 (Fla. 1st DCA 1984); *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”).

26. 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). An agency “is not authorized to depart from the requirements of its organic statute when it exercises 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). 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. 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).

27. In addition, since Petitioner has received a partial distribution from her Investment Plan account, she is now considered a “retiree” under FRS. Pursuant to Section 121.4501(2)(k), Florida Statutes, a member is considered a “retiree” once they terminate employment with an FRS-participating employer and take a distribution from their Investment Plan account. Section

121.591(1)(d), Florida Statutes, states that “[t]he distribution payment method selected by the member or beneficiary, and the retirement of the member or beneficiary, is final and irrevocable at the time a benefit distribution payment is cashed, deposited, or transferred to another financial institution.” Petitioner was considered a retiree once she cashed or deposited the distribution check she received from her Investment Plan account.

28. Respondent is not responsible for Petitioner’s decision to use here one-time 2nd election. Respondent has no authority to switch Petitioner back to the Pension Plan, because Petitioner already used her one-time second election and because Petitioner is an FRS retiree. Therefore, Respondent is unable to grant the relief requested by Petitioner.

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 March 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
Tallahassee, FL 32301-1872
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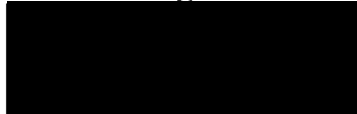
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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:
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COPIES FURNISHED via mail and electronic mail to:

Debbie R. Page



Petitioner

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