

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

MICHAEL LANDER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2013-2912
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
_____	)	

**FINAL ORDER**

On October 1, 2014, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Michael Lander, and upon counsel for the Respondent. This matter was decided on the written record, once the Presiding Officer confirmed there was no dispute in this case as to any material fact. Both parties were given the opportunity to present written statements, documentary evidence, and any Proposed Recommended Orders they wished to produce on or before August 29, 2014. Respondent timely filed exhibits and a Proposed Recommended Order. Petitioner filed exhibits and made several motions, but did not file a Proposed Recommended Order. All of Petitioner's motions were denied by the Presiding Officer. Respondent did not file any exceptions to the Recommended Order, which were due October 16, 2014. By a letter received by the Respondent on October 13, 2014, Petitioner submitted a request for a 30-day extension of time in which to file exceptions, due to the fact he had to request to use the law library at the facility in which he currently is incarcerated, and it could take 10 days for such request to be granted.

The request was granted by letter from the Respondent dated October 22, 2014, and Petitioner was given to November 22, 2014 in which to file exceptions. Petitioner did not file any exceptions even with the extension and giving an extra allowance for mailing time and possible delays due to the holiday season. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending, for final agency action, before the Senior Defined Contribution Programs Officer.

**ORDERED**

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner has forfeited his right to a retirement benefit under the Florida Retirement System (FRS) pursuant to Section 112.3173, Florida Statutes, because he was convicted of multiple felony charges of sexually abusing a minor who was his student in the fifth grade class that was taught by Petitioner while he was employed by Pasco County School Board, an FRS-participating employer.

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 in the Office of the General Counsel, State Board of Administration, 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.

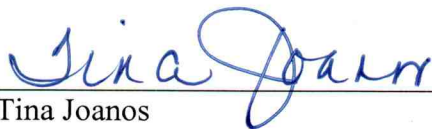
DONE AND ORDERED this 5<sup>th</sup> day of January, 2015, in Tallahassee,  
Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



**Joan B. Haseman**  
Senior Defined Contribution Programs Officer  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

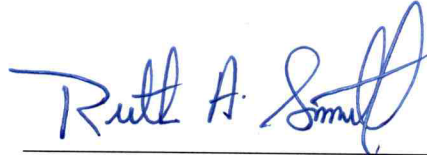
FILED ON THIS DATE PURSUANT TO  
SECTION 120.52, FLORIDA STATUTES  
WITH THE DESIGNATED CLERK OF THE  
STATE BOARD OF ADMINISTRATION,  
RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED.



Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent via U.S. Mail to Michael Lander, [REDACTED] and by email transmission to Brian Newman, Esq. ([brian@penningtonlaw.com](mailto:brian@penningtonlaw.com)) and Brandice Dickson, Esq., ([brandi@penningtonlaw.com](mailto:brandi@penningtonlaw.com)) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 5<sup>th</sup> day of January, 2015.



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Ruth A. Smith  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

MICHAEL LANDER,

Petitioner,

v.

CASE NO. 2013-2912

STATE BOARD OF ADMINISTRATION,

Respondent.

---

**RECOMMENDED ORDER**

This case was considered in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on July 25, 2014, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner: Michael Lander, *pro se* (#314765)

  
Petitioner

For Respondent: Brandice D. Dickson, Esquire  
Pennington, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner's Investment Plan account was rightly forfeited by the Respondent.

EXHIBIT A

## PRELIMINARY STATEMENT

After the Respondent filed its Pre-Hearing Statement, Petitioner filed a pleading titled Petitioner's Dispute to Material Undisputed Facts Identified in Respondent's Pre-Hearing Statement; Rebuttal to Respondent's Position Outlined in Respondent's Pre-Hearing Statement; and Notice of Untimely Filing and Serving of Respondent's Pre-Hearing Statement. On July 21, 2014, Petitioner filed a separate Petitioner's Notice and Dispute to Material Undisputed Facts Identified in Respondent's Pre-Hearing Statement; Rebuttal to Respondent's Position Outlined in Respondent's Pre-Hearing Statement; Notice of Untimely Filing and Serving of Respondent's Pre-Hearing Statement; and Notice of Untimely Scheduled Hearing by Respondent, with a letter asking that this matter be decided on the written record. Petitioner also served copies of his Exhibits P-1 through P-9. Respondent then filed a Motion to have Case Heard on Written Record. I reviewed all submitted materials, confirmed that there was no dispute in this case as to any material fact, and entered an order cancelling the scheduled hearing and directing that any additional written statements, documentary evidence or proposed recommended orders be filed on or before August 29, 2014. See Order for Case to be Heard on Written Record, July 25, 2014.

After the Order for Case to be Heard on Written Record was entered, Petitioner filed several additional motions. The following recommendation is based on my consideration of the complete record in this case and all materials submitted by the parties, including Petitioner's Exhibits P-1 through P-9 and Respondent's Exhibits R-1 through R-7.

## OUTSTANDING MOTIONS

1. Petitioner's Motion to Exclude the Testimonies Given at Petitioner's Criminal Trial from Record is DENIED. This is not a proceeding to resolve a factual dispute. There is no

allegation that the transcript from Petitioner's criminal trial is not a correct transcript. As a result of the proceeding it records, Petitioner was found guilty of the criminal acts on which this forfeiture is based.

2. Petitioner's Motion to Dismiss Action Against Forfeiture of FRS Retirement Benefits based on the untimely hearing on his Petition is DENIED. Petitioner asserted in his motion that because the Notice of Proceedings and Initial Order of Instructions required, absent a stipulation to the contrary, Respondent to hold a hearing within 60 days from the date of that Order and because no hearing was held in that timeframe, the forfeiture action must be dismissed. Petitioner's motion is denied because he suffered no prejudice in the failure to schedule the hearing beyond the 60 day period. Petitioner requested the hearing date be extended until such time as he could retain a lawyer to assist him. See Respondent's Unopposed Motion to Have Case Heard on Written Record, Exhibit B. Petitioner's Motion to Dismiss Action Against Forfeiture of FRS Retirement Benefits based on the untimely filing of Respondent's Pre-Hearing Statement is also DENIED. Petitioner does not, nor can he, demonstrate prejudice by the Respondent's filing of a Pre-Hearing Statement on February 3, 2014 instead of January 12, 2014. The Respondent's position, conveyed in its agency action letters, did not change, Respondent timely filed its Exhibits, and the timing of the filing of the statement allowed Petitioner 203 days to respond to it.

3. Petitioner's Motion to Have Respondent Correct Respondent's Motion to Have Case Heard on Written Record is DENIED. As to Point One of the Motion, there is no indication in the record that Respondent received Petitioner's February 12, 2014 letter, likely because it used an incorrect ZIP Code, nor is that letter relevant to any matter now at issue. In Point Two of the Motion, Petitioner asserts he was not convicted of sexual assault and that any

use of that term is therefore improper here. Petitioner was convicted by a jury of two first degree felony counts of Sexual Battery while the person is 12 years of age or older but less than 18 years of age while the person is under familial or custodial authority and two second degree felony counts of Lewd or Lascivious Battery of a person who is 12 years of age or older but less than 16 years of age, and the record will so reflect. As to Point Three of the Motion, I have already determined that no disputed issue of material fact has been raised by Petitioner, and the motion is DENIED.

### **MATERIAL UNDISPUTED FACTS**

1. Petitioner was an elementary school teacher with the Pasco County School Board. He was employed by that FRS-participating employer from December 2004 until March 2008. For the academic year 2007-2008, he taught fifth grade.

2. In January 2008, during a Parent-Teacher Conference at the elementary school, Petitioner convinced the mother of one of his fifth grade students (hereinafter "the Student") that the Student needed tutoring because she was falling behind. The Student had been in his class from the beginning of the school year.

3. Petitioner convinced the mother that her daughter was so far behind in school that she needed tutoring at Petitioner's home, that her daughter should live with him during this tutoring, and that she should sign paperwork giving him and his wife authority over the child.

4. The "contract" for the girl was for five years. Petitioner did not charge the mother anything for his tutoring services, and the "contract" provided Petitioner and his wife control over the girl's medical, educational, religious, and recreational decisions. In February 2008, on the day Petitioner had the mother sign the contract, he resigned his job and the girl moved into his home.



5. Petitioner began his sexual overtures toward the Student while they were at the elementary school where he worked, in the teacher's break room; he continued under the guise of his tutoring the Student, and this culminated in his gaining custody over her.

6. Petitioner engaged in sex acts with the student.

7. Petitioner took a total distribution of his FRS Investment Plan account in September 2008 in the amount of [REDACTED]

8. Petitioner was arrested and charged with two felony counts of Sexual Activity While in Custodial Authority pursuant to Section 794.011(8)(b), Florida Statutes.

9. During its investigation into whether Petitioner had forfeited his FRS benefit, Respondent determined that on October 12, 2012, the State Attorney's Office for the Sixth Judicial Circuit of Florida executed a Felony Information Affidavit, with a Witness Affidavit of Detective Kurt Romanosky. The affidavits averred that Petitioner had obtained familial or custodial authority of the Student and that once the Student was living in Petitioner's home, he began sexually abusing her.

10. At his criminal trial for these acts, Petitioner testified that he was the victim's elementary school teacher and had gained custody of her. The victim in the case testified that Petitioner used his position as a teacher to enable him to condition her in order to commit the felonies enumerated. Specifically, he gained the trust of the Student and officials making the decision about her home life. The victim unequivocally identified Petitioner as her teacher, guardian, and the person who sexually battered her.

11. On October 4, 2013, in the Sixth Judicial Circuit Court in and for Pinellas County, Florida, Case Number 12-18256CFANO-D, Petitioner was found guilty by a jury of felony

violation of Chapters 794.011(8)(b) (two counts) and Chapter 800.01 (two counts), Florida Statutes, stemming from the conduct identified in the Affidavit of the State Attorney.

12. Petitioner was subsequently adjudicated guilty of these four felonies, is currently incarcerated for a term of life without the possibility of parole, and is designated a sexual predator.

13. Because Petitioner used his employment as a teacher with the Pasco County School Board in order to aide in his commission of these felonies, his FRS Investment Plan account totaling [REDACTED] was deemed forfeited by Respondent. By the time this occurred, Petitioner had already taken a total distribution of the [REDACTED] in his Investment Plan account.

14. Petitioner filed a Petition for Hearing seeking reversal of the forfeiture determination, as he is now obligated to repay the money he withdrew from his Investment Plan account.

### CONCLUSIONS OF LAW

15. The Florida Constitution makes plain that "[a]ny public officer or employee who is convicted of a felony involving a breach of the public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law." ART. II, § 8(d), FLA. CONST. Section 112.3173, Florida Statutes, implements this part of the Florida Constitution and states, in pertinent part:

**112.3173. Felonies involving breach of public trust and other specified offenses by public officers and employees; forfeiture of retirement benefits**

(1) Intent. – It is the intent of the Legislature to implement the provisions of s. 8(d), Art. II of the State Constitution.

(2) Definitions. – As used in this section, unless the context otherwise requires, the term:

(a) "Conviction" and "convicted" mean an adjudication of guilty by a court of competent jurisdiction; a plea of guilty or of nolo

contendere; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate of an impeachable offense.

...  
(e) "Specified offense" means:

...  
6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position.

(This is the "catch-all" provision.)

...  
(3) Forfeiture.--Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

...  
(5) Forfeiture determination.—

(a) Whenever the official or board responsible for paying benefits under a public retirement system receives notice pursuant to subsection (4), or otherwise has reason to believe that the rights and privileges of any person under such system are required to be forfeited under this section, such official or board shall give notice and hold a hearing in accordance with chapter 120 for the purpose of determining whether such rights and privileges are required to be forfeited. If the official or board determines that such rights and privileges are required to be forfeited, the official or board shall order such rights and privileges forfeited.

(b) Any order of forfeiture of retirement system rights and privileges is appealable to the district court of appeal.

...

§ 112.3173, Fla. Stat. (2010)(emphasis added).

16. The above makes clear that an employee who is convicted of a “specified offense” committed prior to retirement from the FRS shall forfeit all rights and benefits. *Childers v. Department of Management Services*, 989 So.2d 716 (Fla. 4th DCA 2008). If this standard is met, Respondent has no discretion as to whether to proceed with forfeiture of a participant’s Investment Plan account; forfeiture is mandatory. The forfeiture simply enforces the terms of the retirement “contract” entered into between the State and the employee. As stated in *Childers*,

Here, the State entered into a contract with the employee, promising to pay him benefits upon his retirement. That contract included a condition precedent: the employee must refrain from committing specified offenses prior to retirement. The non-occurrence of that condition foreclosed the employee’s right to performance. It is as direct and to the point as that.

...

While forfeiture, in general, has historically been understood as punishment, courts of this state have recognized that statutes providing for forfeiture of government benefits merely enforce the terms of a contract rather than impose punishment. This statute does not require a finding of scienter.

989 So.2d 716 (internal citations omitted)(emphasis added).

17. Section 112.3173(2)(e)6., Florida Statutes, is referred to as the “catch-all” provision in the forfeiture statute. *Holsberry v. Department of Management Services*, 2009 WL 2237798 (Fla.Div.Admin.Hrgs. July 24, 2009). It follows a list of enumerated offenses, and is the statutory section Respondent cites here as its basis for forfeiture. It requires forfeiture for acts not otherwise included in the list of “specified offenses” in Section 112.3173(2)(e) 1. – 5. and 7. when a sufficient nexus is shown between the position held by the public employee and the commission of the crime such that a breach of the public trust is proven. *Jenne v. Dep’t of Management Services, Div. of Retirement*, 36 So.3d 738 (Fla. 1st DCA 2010)(catch-all provision

required forfeiture for conviction of felony for conspiracy to commit mail fraud where sheriff used his position and ability to award contracts to gain benefit for himself where illegal payments to him were made via the mail); *Holsberry*, 2009 WL 2237798 at \*3 (catch-all provision required forfeiture for conviction of felony child abuse by a teacher where teacher testified he would not have met the child but for his position as a teacher at her school); *Marsland v. Department of Management Services*, 2008 WL 5451423 (Fla. Div. Admin. Hrgs. December 15, 2008)(catch-all provision required forfeiture for conviction of felony involving sexual battery by teacher on a student where sex occurred at the school and teacher testified but for his position he would not have had an opportunity to have sex with the student); *Jacobo v. Board of Trustees of the Miami Police*, 788 So.2d 362 (Fla. 3d DCA 2001)(catch-all provision required forfeiture for conviction of “Official Misconduct” where officer falsified an arrest affidavit); *DeSoto v. Hialeah Police Pension Fund Bd. of Trustees*, 870 So.2d 844 (Fla. 3d DCA 2003)(catch-all provision required forfeiture for conviction of felonies including conspiracy to possess and distribute cocaine, commit robbery, and carry a firearm during robbery by a police officer while on suspension).

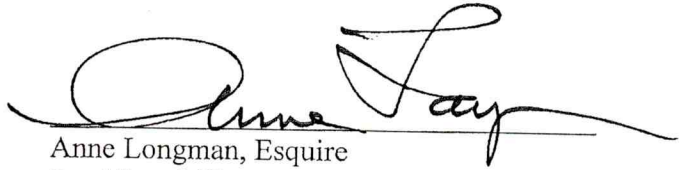
18. Petitioner has been convicted of multiple felony charges of sexually abusing a minor student in his care through the use of his position. Under *Jenne*, *Holsberry*, *Marsland*, *Jacobo*, and *DeSoto*, he has forfeited his right to a retirement benefit under the Florida Retirement System. Because he exploited his authority as a public officer by using his position with the school district to sexually abuse a minor student, his conduct constitutes a breach of the public trust and requires forfeiture of his retirement benefits under section 112.3173(2)(e)6., Florida Statutes. There is no question here that the proper nexus exists between his public position and the crimes he committed.

19. Forfeiture under these circumstances is mandatory.

**RECOMMENDATION**

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

RESPECTFULLY SUBMITTED this 1st October day of ~~September~~, 2014.



Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
315 South Calhoun Street, Suite 830  
Tallahassee, FL 32301-1872

**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 Blvd., Suite 100  
Tallahassee, FL 32308  
Tina.joanos@sbafla.com  
Daniel.B Beard@sbafla.com  
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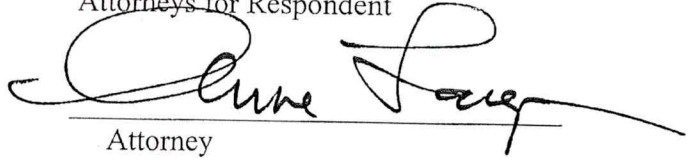
This 1<sup>st</sup> day of October, 2014.

Copies furnished to:  
Via U.S. Mail



Petitioner

Via electronic delivery:  
Brian A. Newman, Esquire  
Brandice D. Dickson  
Pennington, P.A.  
Post Office Box 10095  
Tallahassee, FL 32302-2095  
[slindsey@penningtonlaw.com](mailto:slindsey@penningtonlaw.com)  
Attorneys for Respondent

  
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Attorney