

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

CHAD KING,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2021-0237
	)	
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
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**FINAL ORDER**

On October 20, 2021, the Presiding Officer submitted her Recommended Order to the State Board of Administration (“SBA”) in this proceeding. A copy of the Recommended Order indicates that copies were served upon the *pro se* Petitioner, Chad King, and upon counsel for the Respondent. Neither party filed exceptions to the Recommended Order which were due on November 4, 2021. 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. The Petitioner’s request to be allowed to rescind his default into the Florida Retirement System (FRS) Investment Plan so that he could be deemed to have been a member of the FRS Pension Plan from the beginning date of his FRS-covered employment hereby is

denied. Petitioner claimed that he had been provided with erroneous information by someone hired by his employer. However, Section 121.021(10), Florida Statutes, specifically provides that employers are not agents of the SBA and that, therefore, the SBA by law is not responsible for any erroneous information that may be provided by employer representatives. Petitioner had received several emails reminding him of the necessity of making a plan election by the choice period deadline or else he would be defaulted into the Investment Plan. Petitioner also had access to multiple educational resources, such as the Plan Choice Kit, the MyFRS.com website and the MyFRS Financial Guidance Line, to help ensure that he was aware of the default provisions if he failed to timely make a plan choice election.

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 19th day of January, 2022, in Tallahassee,  
Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

*Mimi Watson  
for Daniel Beard*

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**Daniel Beard**  
Chief of Defined Contribution Programs  
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*

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Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Chad King, *pro se*, both by email transmission to [KingC2@Manateeschools.net](mailto:KingC2@Manateeschools.net) and by UPS to 8120 29<sup>th</sup> Street East, Ellenton, Florida 34222; and by email transmission to Deborah Minnis, Esq. ([dminnis@ausley.com](mailto:dminnis@ausley.com)) and Ruth Vafek ([rvafek@ausley.com](mailto:rvafek@ausley.com)), [jmcvaney@ausley.com](mailto:jmcvaney@ausley.com), Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 19th day of January, 2022.



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

CHAD KING, JR.,

Petitioner,

vs.

CASE NO. 2021-0237

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 August 24, 2021, with all parties appearing telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

**APPEARANCES**

For Petitioner: Chad King, Jr., *pro se*  
8120 29<sup>th</sup> Street East  
Ellenton, FL 34222

For Respondent: Ruth Vafek  
Ausley McMullen, P.A.  
123 South Calhoun Street (32301)  
Post Office Box 391  
Tallahassee, FL 32302

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner was correctly placed in the Florida Retirement System (FRS) Investment Plan after he was hired into an FRS-eligible position by the Manatee County School Board.

## **PRELIMINARY STATEMENT**

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

A transcript of the hearing was made, filed with the agency, and provided to the parties on September 14, 2021. The parties were invited to submit proposed recommended orders within thirty 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.

## **UNDISPUTED FACTS**

1. Petitioner began employment with the Manatee County School Board, an FRS-participating employer, in August of 2020.

2. Petitioner had an initial choice window with a deadline of 4:00 p.m. Eastern Time on April 30, 2021, to elect either the defined benefit Pension Plan or the defined contribution Investment Plan.

3. A Benefit Comparison Statement, providing Petitioner with information about the plan options and his deadline, was created and mailed to Petitioner at his address of record, as provided by his employer, on September 21, 2020.

4. On or about September 30, 2020, Petitioner emailed Dawn Vickers, an employee of the Manatee County School Board, telling Ms. Vickers that he "would like to be enrolled in the pension plan, not the investment plan at this time." In response, Ms. Vickers informed Petitioner

that he would be “automatically enrolled in the pension plan, if [he did] not contact FRS in 8 months [he would] continue to be enrolled in the pension plan.”

5. Two letters reminding Petitioner of his choice deadline were subsequently mailed to him, on behalf of Respondent, on January 11, 2021 and April 12, 2021.

6. Five separate emails were sent to Petitioner at his email address of [kingc2@manateeschools.net](mailto:kingc2@manateeschools.net), reminding him of his choice period deadline, on November 20, 2020, December 15, 2020, February 5, 2021, March 1, 2021, and April 29, 2021.

7. As with other FRS-eligible employees, Petitioner also had access to retirement plan information on [MyFRS.com](http://MyFRS.com), and toll-free access to the MyFRS Financial Guidance Line.

8. Respondent has no record of Petitioner calling the MyFRS Financial Guidance Line prior to his April 30, 2021 deadline.

9. Petitioner did not make an election prior to the choice period deadline, and was placed into the Investment Plan by operation of law.

10. On or about May 21, 2021, Petitioner submitted a Request for Intervention requesting that he “remain in the pension plan and still have [his] one time option to switch at a later date if wanted.” He stated that he “was told via email by Dawn Vickers (Employee Benefits Specialist, Manatee County School District) on 9/30/20 that [he is] automatically enrolled in the pension plan and would remain in the pension plan if [he chose] to not contact FRS in [his] initial 8-month period.” Petitioner’s request was denied.

11. On June 18, 2021, Petitioner filed a Petition for Hearing reiterating his request. This administrative proceeding followed.

## CONCLUSIONS OF LAW

12. For the majority of the seventeen years between the initiation of the Investment Plan and the beginning of Petitioner's FRS-eligible employment, the applicable statutes provided that FRS members who did not make an affirmative election during their initial choice window would default into the Pension Plan. However, in 2017, the Florida Legislature changed the governing statute to provide that employees such as Petitioner, who initially enrolled in the FRS on or after January 1, 2018 and who did not make an affirmative election during their initial "choice window," defaulted into the Investment Plan.

13. This provision appears in subsection 121.4501(4)(b), Florida Statutes. Subsection 121.4501(4)(b)1., and provides in pertinent part as follows:

With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position commencing on or after January 1, 2018, or who did not complete an election window before January 1, 2018, any such employee shall be enrolled in the pension plan at the commencement of employment and may, by the last business day of the eighth month following the employee's month of hire, elect to participate in the pension plan or the investment plan.

14. While the above places new FRS participants in the Pension Plan, the statute is then modified by Subsection (4)(b)3.a. as follows:

Except as provided in subparagraph 4.[applying to Special Risk class employees], **if the employee fails to make an election to either the pension plan or the investment plan during the 8-month period following the month of hire, the employee is deemed to have elected the investment plan and shall default into the investment plan retroactively to the employee's date of employment.** The employee's option to participate in the pension plan is forfeited, except as provided in paragraph (f) [pertaining to the 'second election' option].

(emphasis added). The net effect is that new FRS eligible hires are placed into the Pension Plan, and if they do not make an affirmative election within eight months, are moved to the Investment



Plan. The governing statutes are complex; an agent of Petitioner's employer provided him incorrect information regarding the default provisions and his obligation to make an affirmative election in order to remain in the Pension Plan. Respondent SBA cannot, however, ignore or circumvent the controlling statutes cited above.

15. And while it seems clear that an employee of the Manatee County School Board gave Petitioner erroneous information, Section 121.021(10), Florida Statutes explicitly provides 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 erroneous information provided by representatives of employers." Petitioner had access to multiple educational resources, including the Plan Choice Kit, the toll-free MyFRS Financial Guidance Line, and the [MyFRS.com](http://MyFRS.com) website, to inform his choice and several months during which he could have sought clarification, given the discrepancies between the information provided by his employer and the information sent to him by Respondent SBA.

16. Respondent SBA has no authority to undo Petitioner's Investment Plan default or to retroactively re-enroll him in the Pension Plan. Petitioner still has the option, pursuant to Subsection 121.4501(4)(f), to switch to the Pension Plan while still in an FRS-eligible position, although there may be a "buy-in" amount required, as determined by actuarial calculations provided by the Division of Retirement, Department of Management Services.

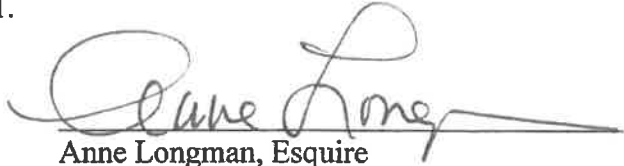
17. The SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System. Balezentis v. Dep't of Mgmt. Servs., Div. of Retirement, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2, 2005) (noting that agency "is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction").

18. Despite Petitioner having received inaccurate information from his employer, applicable law prohibits Respondent from granting the relief requested. In the absence of an affirmative election made during his choice window to remain in the Pension Plan, Respondent is without authority to retroactively place him in that plan.

**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.

DATED this 20<sup>th</sup> day of October 2021.



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](mailto:Tina.joanos@sbafla.com)  
[mini.watson@sbafla.com](mailto:mini.watson@sbafla.com)  
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(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

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8120 29<sup>th</sup> Street East  
Ellenton, FL 34222  
[KingC2@Manateeschools.net](mailto:KingC2@Manateeschools.net)  
Petitioner

and via electronic mail only to:

Deborah Minnis, Esquire  
Ruth E. Vafek, Esquire  
123 South Calhoun Street  
P.O. Box 391  
Tallahassee, Florida 32301  
[dminnis@ausley.com](mailto:dminnis@ausley.com)  
[rvafek@ausley.com](mailto:rvafek@ausley.com)  
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GOVERNOR  
CHAIR

JIMMY PATRONIS  
CHIEF FINANCIAL OFFICER

ASHLEY MOODY  
ATTORNEY GENERAL

LAMAR TAYLOR  
INTERIM EXECUTIVE  
DIRECTOR &  
CHIEF INVESTMENT OFFICER

## MEMORANDUM

**Date:** January 13, 2022

**To:** Lamar Taylor  
Interim Executive Director & CIO

**From:** Daniel Beard  
Chief of Defined Contribution Programs

**Subject:** Delegation of Authority

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I will be out of the office from **8:00 a.m.** on **Friday, January 14, 2022** through **5:00 p.m.** on **Friday, January 21, 2022**. I hereby appoint **Mini Watson** as my designee to carry out the duties and responsibilities that have been delegated to me by the members of the State Board of Administration/Executive Director.

Prior to carrying out these duties and responsibilities, **Mini** will consult and coordinate with Executive Service Staff and other employees of the State Board of Administration, as needed.

If, because of unforeseen circumstances, this absence from the office extends beyond **5:00 p.m. Friday, January 21, 2022**, the delegate listed above will continue to be my designee as described above for a reasonable period thereafter.

01/12/22 1:40 PM

X Daniel Beard ✓

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Beard\_Daniel DocuSign

**Daniel Beard**  
Chief of Defined Contribution Programs

cc: Executive Service Staff  
WorkSmart Portal