

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

JOEY BAUTISTA,	)	
	)	
Petitioner,	)	
	)	
vs.	)	DOAH Case No. 19-4819
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
_____	)	

**FINAL ORDER**

On December 7, 2020, Administrative Law Judge John G. Van Laningham (hereafter "ALJ") submitted his Recommended Order to the State Board of Administration (hereafter "SBA") in this proceeding. A copy of the Recommended Order indicates that copies were served upon counsel for the Petitioner and upon counsel for the Respondent. Both Petitioner and Respondent timely filed Proposed Recommended Orders. Neither party filed exceptions to the Recommended Order which were due December 22, 2020. 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.

**STATEMENT OF THE ISSUE**

The State Board of Administration adopts and incorporates in this Final Order the Statement of the Issue in the Recommended Order as if fully set forth herein.

**PRELIMINARY STATEMENT**

The State Board of Administration adopts and incorporates in this Final Order the Preliminary Statement in the Recommended Order as if fully set forth herein.

## STANDARDS OF AGENCY REVIEW OF RECOMMENDED ORDERS

The findings of fact of an Administrative Law Judge (“ALJ”) cannot be rejected or modified by a reviewing agency in its final order “...unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings were not based upon competent substantial evidence....” See Section 120.57(1)(l), Florida Statutes. *Accord, Dunham v. Highlands Cty. School Brd*, 652 So.2d 894 (Fla 2<sup>nd</sup> DCA 1995); *Dietz v. Florida Unemployment Appeals Comm.*, 634 So.2d 272 (Fla. 4<sup>th</sup> DCA 1994); *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122 (Fla. 1<sup>st</sup> DCA 1987). A seminal case defining the “competent substantial evidence” standard is *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957), in which the Florida Supreme Court defined it as “such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred” or such evidence as is “sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.”

An agency reviewing an ALJ’s recommended order may not reweigh evidence, resolve conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of administrative law judges as the triers of the facts. *Belleau v. Dept of Environmental Protection*, 695 So.2d 1305, 1307 (Fla. 1<sup>st</sup> DCA 1997); *Maynard v. Unemployment Appeals Comm.*, 609 So.2d 143, 145 (Fla. 4<sup>th</sup> DCA 1993). Thus, if the record discloses any competent substantial evidence supporting finding of fact in the Recommended Order, the Final Order will be bound by such factual finding.

Pursuant to Section 120.57(1)(l), Florida Statutes, however, a reviewing agency has the general authority to “reject or modify conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive

jurisdiction.” Florida courts have consistently applied the “substantive jurisdiction limitation” to prohibit an agency from reviewing conclusions of law that are based upon the ALJ’s application of legal concepts, such as collateral estoppel and hearsay, but not from reviewing conclusions of law containing the presiding officer’s interpretation of a statute or rule over which the Legislature has provided the agency with administrative authority. *See Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So.2d 1140, 1141-42 (Fla. 2d DCA 2001); *Barfield v. Dep’t of Health*, 805 So.2d 1008, 1011 (Fla. 1<sup>st</sup> DCA 2001). When rejecting or modifying any conclusion of law, the reviewing agency must state with particularity its reasons for the rejection or modification and further must make a finding that the substituted conclusion of law is as or more reasonable than that which was rejected or modified. Further, an agency’s interpretation of the statutes and rules it administers is entitled to great weight, even if it is not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation. *See, State Bd. of Optometry v. Fla. Soc’y of Ophthalmology*, 538 So.2d 878, 884 (Fla. 1<sup>st</sup> DCA 1998). An agency’s interpretation will be rejected only where it is proven such interpretation is clearly erroneous or amounts 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 (Fla. 1<sup>st</sup> DCA 1998).

### **FINDINGS OF FACT**

The Findings of Fact set forth in the ALJ’s Recommended Order hereby are adopted and are specifically incorporated by reference as if fully set forth herein.

### **CONCLUSIONS OF LAW**

The Conclusions of Law set forth in the ALJ’s Recommended Order are adopted and are specifically incorporated by reference as if fully set forth herein.

**ORDERED**

The Petitioner, Joey Bautista, has forfeited his rights and benefits under the Florida Retirement System Investment Plan pursuant to Sections 112.3173(2)(e)2 and 4., Florida Statutes, except for the return of his accumulated employee contributions, by having pled nolo contendere to the felony counts of official misconduct and grand theft from his public employer, and despite the fact adjudication was withheld.

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 4th day of March, 2021, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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



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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 by electronic mail to Soeurette Michel, Esq., Counsel for Petitioner, [smichellaw@gmail.com](mailto:smichellaw@gmail.com) , and by UPS to: The Michel Law Firm, LLC, 3440 Hollywood Blvd., Suite 415, Hollywood, FL 33021-6933; and by electronic mail to Rex D. Ware, Esq., at Moffa, Sutton & Donnini, P.A., 3500 Financial Plaza, Suite 330, Tallahassee, Florida 32312, [RexWare@FloridaSalesTax.com](mailto:RexWare@FloridaSalesTax.com) , this 4th day of March, 2021.



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Ruth A. Smith  
Assistant General Counsel  
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Tallahassee, FL 32308

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JOEY BAUTISTA,

Petitioner,

vs.

Case No. 19-4819

STATE BOARD OF ADMINISTRATION,

Respondent.

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RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham, Division of Administrative Hearings ("DOAH"), for final hearing by Zoom teleconference on October 19, 2020.

APPEARANCES

For Petitioner: Soeurette Michel, Esquire  
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For Respondent: Rex D. Ware, Esquire  
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STATEMENT OF THE ISSUE

The issue in this proceeding is whether Petitioner was convicted of specified criminal offenses, requiring the forfeiture of all his rights and

benefits under the Florida Retirement System, except for the return of accumulated contributions.

#### PRELIMINARY STATEMENT

In a Notice of Forfeiture of Retirement Benefits dated August 14, 2019, Respondent State Board of Administration (“SBA”) notified Petitioner Joey Bautista (“Bautista”) that his rights and benefits under the Florida Retirement System are forfeit as a result of his pleas of nolo contendere, in 2019, to charges of official misconduct and grand theft. These crimes were allegedly committed while Bautista was employed as a principal in the Miami-Dade County Public School District. Bautista timely requested a formal hearing to contest this forfeiture determination, and, on September 12, 2019, his petition was filed with DOAH.

The final hearing took place on October 19, 2020, with both parties present. SBA called no witnesses. Respondent’s Exhibits 1 through 8, however, were received in evidence without objection. Bautista testified on his own behalf and offered Petitioner’s Exhibits 1 through 6, which were admitted.

The final hearing transcript was filed on November 4, 2020, and shortly thereafter the parties timely filed their respective proposed recommended orders, which have been considered.

Unless otherwise indicated, citations to the official statute law of the State of Florida refer to Florida Statutes 2020.

#### FINDINGS OF FACT

1. From 1999 until 2017, Bautista was an employee of the Miami-Dade County Public Schools (“MDPS”). On August 24, 2017, Bautista resigned from

his position as principal of the Miami Jackson Adult Education Center, an office he had held since 2011. Bautista departed shortly after being arrested on charges of organized fraud, official misconduct, and grand theft.

2. In the criminal Information leading to Bautista's arrest, the State Attorney of the Eleventh Judicial Circuit alleged, in summary, that Bautista had used his position as principal to misappropriate between \$20,000.00 and \$50,000.00 of MDPS's funds for personal expenses, and had destroyed official payroll records to cover his tracks.

3. On or about July 10, 2019, Bautista pleaded nolo contendere in the Eleventh Judicial Circuit Court to one count of official misconduct, a felony of the third degree pursuant to section 838.022, Florida Statutes, and to one count of grand theft under section 812.014, Florida Statutes, also a third-degree felony. The court withheld adjudication of guilt and placed Bautista on community control, to be followed by probation. In addition, Bautista was ordered to pay restitution to MDPS in the amount of \$41,798.22.

4. SBA is an agency of the state of Florida whose jurisdiction includes the administration of the Florida Retirement System Investment Plan (the "Plan"). By letter dated August 14, 2019, SBA notified Bautista that his rights and benefits under the Plan are forfeit as a result of his pleas of no contest to the aforementioned criminal charges, which had arisen from acts allegedly committed by Bautista as an MDPS employee. SBA offered Bautista an opportunity to request a formal administrative proceeding to contest the determination, and Bautista timely requested a hearing.

5. As grounds for opposing the forfeiture, Bautista claims that his former employer, MDPS, failed to provide him due process of law during the run-up to his forced resignation. He complains, as well, that "procedural irregularities" in the criminal prosecution likewise deprived him of due process. Next, Bautista notes that he never admitted guilt and insists that he is, in fact, innocent of the charges to which he pleaded no contest. Finally, Bautista argues that he was not "convicted" for purposes of forfeiture of

retirement benefits, because the court withheld adjudication of guilt on the criminal charges against him.

6. To be sure, if Bautista was not afforded due process or was otherwise victimized by prosecutorial abuse or inadequate legal representation, as he alleges, then Bautista might have suffered an injury for which the law affords redress. But this proceeding is not the vehicle, and DOAH is not the forum, for hearing such disputes. It does not minimize the seriousness of Bautista's allegations to recognize that, even if true, none of them changes the undisputed facts that he pleaded nolo contendere to the crimes of official misconduct and grand theft, each of which is a "specified offense" under section 112.3173(2)(e), Florida Statutes. Conviction of a specified offense results in the forfeiture of retirement benefits pursuant to the plain language of section 112.3173(3).<sup>1</sup> Thus, the MDPS investigation and any "irregularities" in the criminal prosecution are irrelevant to the issues at hand, and the undersigned declines to make findings of fact concerning Bautista's allegations in this regard.

#### CONCLUSIONS OF LAW

7. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

8. Article II of the Florida Constitution (1976) provides, in pertinent part:

SECTION 8: Ethics in government.--A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

\* \* \*

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges

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<sup>1</sup> As mentioned, Bautista disputes the conclusion that he was "convicted," but this is a legal issue, which will be addressed below.

under a public retirement system or pension plan in such manner as may be provided by law.

9. Section 112:3173 provides, in pertinent part:

(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 guilt 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.

(b) "Court" means any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense.

(c) "Public officer or employee" means an officer or employee of any public body, political subdivision, or public instrumentality within the state.

(d) "Public retirement system" means any retirement system or plan to which the provisions of part VII of this chapter apply.

(e) "Specified offense" means:

1. The committing, aiding, or abetting of an embezzlement of public funds;
2. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;
3. Bribery in connection with the employment of a public officer or employee;
4. Any felony specified in chapter 838, except ss. 838.15 and 838.16;

\* \* \*

(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.

10. As the party asserting that Bautista's rights and benefits under the Plan are forfeit, SBA bears the burden of proof in this proceeding. *See, e.g., Fla. Dep't of Transp. v. J.W.C. Co., Inc.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981). Because none of the material historical facts is in dispute, however, neither the burden, nor the standard, of proof is outcome determinative.

11. There is no dispute that: (i) Bautista was a "public officer or employee" as defined in section 112.3173(2)(c); (ii) the Plan is part of a "public retirement system" within the meaning of that term as used in section 112.3173(2)(d); (iii) the crime of official misconduct, to which Bautista pleaded no contest, is a "specified offense" pursuant to section 112.3173(2)(e)4.; and (iv) Bautista pleaded nolo contendere to a charge of grand theft from his public employer, which is also a "specified offense" as defined in section 112.3173(2)(e)2.

12. There is, further, no dispute that the offenses to which Bautista pleaded no contest were allegedly committed prior to his retirement. Rather, as a matter of undisputed fact, all the relevant underlying acts took place while Bautista was a regular, full-time employee of MDPS.

13. The only remaining issue is whether Bautista was "convicted" of the specified offenses to which he pleaded no contest. Bautista argues that he was not convicted because the court withheld adjudication of guilt. This argument is unpersuasive, however, because the clear and unambiguous language of section 112.3173(2)(a) defines the term "conviction" to mean, in relevant part, "a plea of ... nolo contendere." Notably, this definition is not subject to an exception for pleas of no contest where adjudication of guilt is withheld.

14. Even if the definition of “conviction” were considered ambiguous, moreover, the Fourth District Court of Appeal has construed the term, as used in section 112.3173(2)(a), to include no contest pleas for which adjudication of guilt was withheld. *See Brock v. Dep’t of Mgmt. Servs.*, 98 So. 3d 771, 774 (Fla. 4th DCA 2012). *Brock* is on all fours with respect to this dispositive question of law, and hence, the appellate court’s decision is controlling authority.

15. The undersigned concludes, as he must, that Bautista was “convicted” of “specified offenses.” Accordingly, Bautista has forfeited his retirement benefits pursuant to the clear and unambiguous mandate of section 112.3173(3).

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the State Board of Administration enter a final order determining that Joey Bautista forfeited all his rights and benefits under the Plan, except for the return of any accumulated contributions, when he pleaded nolo contendere to “specified offenses” committed prior to his retirement from public service.

DONE AND ENTERED this 7th day of December, 2020, in Tallahassee, Leon  
County, Florida.



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JOHN G. VAN LANINGHAM  
Administrative Law Judge  
Division of Administrative Hearings  
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Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of December, 2020.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.