

**STATE BOARD OF ADMINISTRATION
OF FLORIDA**

JULIE ROSENBLUM,

Petitioner,

vs.

SBA Case No. 2024-0157

STATE BOARD OF ADMINISTRATION,

Respondent.

FINAL ORDER

On January 8, 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, Julie Rosenblum, and upon counsel for the Respondent. No exceptions to the Recommended Order were filed. 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. Petitioner began employment with the St. Johns County Board of County Commissioners, a Florida Retirement System (FRS) employer, on June 10, 2019. She had a deadline of February 28, 2020, to make an initial election between the Pension Plan and the Investment Plan. Petitioner did not make an election and was defaulted into the Investment Plan, effective March 1, 2020. As a member of the FRS, pursuant to section 121.4501(4)(f), Florida Statutes, Petitioner has the option to utilize her one-time second election and become a member of the Pension Plan if she pays the required “buy in” amount. Specifically, the

statute requires the member to “transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the present value of that employee’s accumulated benefit obligation immediately following the time of [making the transfer].” § 121.4501(4)(f)3., Fla. Stat. There are no exceptions provided by law.

Petitioner seeks to become a member of the Pension Plan without paying the buy in amount. Regarding the FRS, the SBA has only the authority granted to it by the legislature and is not authorized to depart from the statute. *See Balezentis v. Dep’t of Mgmt. Servs.*, Case No. 04-3263, ¶ 10 (DOAH Mar. 2, 2005; DMS Apr. 4, 2005). Accordingly, because the statute requires the buy in amount to transfer to the Pension Plan, Petitioner is not entitled to the relief requested.

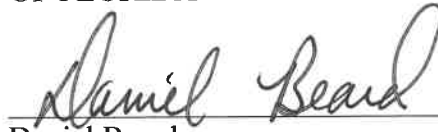
In paragraph 22, the presiding officer found that Petitioner’s argument that the COVID pandemic played a role in her failure to make an Initial Election by February 28, 2020, was not credible. The SBA finds that the issue of whether the COVID pandemic played a role in her failure to make an Initial Election by February 28, 2020, is not an issue of material fact. If it were an issue of material fact, the presiding officer would have been required to stop the hearing and refer the case to the Division of Administrative Hearings, unless waived by all parties. § 120.569(1), Fla. Stat. The issue of why she did not make the election is not material because regardless of the reason, the SBA does not have the authority to allow her to transfer to the Pension Plan without paying the buy in amount.

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 27th day of March, 2025, in Tallahassee, Florida.

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION
OF FLORIDA



Daniel Beard
Chief of Defined Contributions Programs
State Board of Administration of Florida
1801 Hermitage Boulevard, Suite 100
Tallahassee, FL 32308
(850) 488-4406

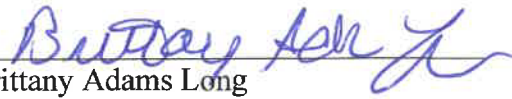
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES, WITH
THE DESIGNATED CLERK OF THE STATE
BOARD OF ADMINISTRATION, RECEIPT OF
WHICH IS HEREBY ACKNOWLEDGED.



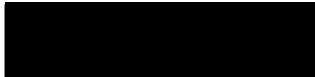
Hillary Eason
Agency Clerk

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing Final Order was served this 27th day of March, 2025, by mail and electronic mail to the following:


Brittany Adams Long
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard, Suite 100
Tallahassee, FL 32308

Julie Rosenblum



Petitioner

Deborah Minnis
Ausley McMullen, P.A.
P.O. Box 391
Tallahassee, FL 32301
dminnis@ausley.com
iwhite@ausley.com
jmcvaney@ausley.com
Counsel for Respondent

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

JULIE ROSENBLUM,

Petitioner,

vs.

CASE NO. 2024-0157

STATE BOARD OF ADMINISTRATION.

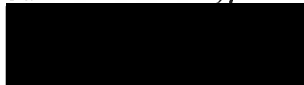
Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on October 14, 2024. 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: Julie Rosenblum, *pro se*



For Respondent: Deborah S. Minnis
Ausley McMullen, P.A.
123 S. Calhoun Street
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether the Petitioner may use her one-time second election to enroll in the Florida Retirement System (FRS) Pension Plan without payment of the amount required by section 121.4501(4)(f)2, Florida Statutes.

PRELIMINARY STATEMENT

Pursuant to Section 120.57(2), Florida Statutes, this case was heard in an informal proceeding via a telephonic hearing on October 14, 2024, via telephone conference. 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 & Compliance. Respondent's Exhibits R-1 through R-3 were admitted into evidence without objection. Petitioner did not offer any exhibits.

A transcript of the hearing was made, filed with the agency, and provided to the parties on October 28, 2024. The parties were invited to submit proposed recommended orders within 30 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 began employment with the St. Johns County Board of County Commissioners, an FRS employer, on June 10, 2019. On July 22, 2019, a Benefit Comparison Statement was created and mailed to Petitioner at the same address appearing on her Request for Intervention and Request for Hearing.

2. Petitioner was given a deadline of February 28, 2020, to make her initial election between the Pension Plan or the Investment Plan.

3. The Plan Choice Administrator has no record of receiving an election from Petitioner on or before the February 28, 2020, deadline. Pursuant to section 121.4501(4)(b)3a, Florida Statutes, Petitioner defaulted membership to the Investment Plan with an effective date of

March 1, 2020.

4. Petitioner did not place any calls to the MyFRS Financial Guidance Line prior to the February 28, 2020, election deadline.

5. Petitioner testified that she was hired by St. Johns County as a part-time employee and was informed by the County that part-time employees are not eligible for benefits. Based on this information, Petitioner believed she was not eligible to participate in FRS. According to Petitioner's testimony, at all times relevant to the Initial Election period, she was unaware that she was actively participating in and contributing to FRS. She further testified that family member illnesses from COVID during the Initial Election period contributed to her being unaware of her FRS status.

6. In addition to the Benefit Comparison Statement mailed to Petitioner on July 22, 2019, Petitioner was sent letters on November 12, 2019, and February 10, 2020, reminding her of the election deadline.

7. Five reminder emails were also sent to Petitioner at [REDACTED] on September 20, 2019, October 15, 2019, December 5, 2019, January 2, 2020, and February 27, 2020.

8. Other resources, such as the following, were available to Petitioner prior to the initial choice deadline:

- a. Toll free access to the MyFRS Financial Guidance Line;
- b. Access to public information on [MyFRS.com](https://www.mysfrs.com) (including detailed information on the choice process, copies of all publications provided in the choice kit and FAQ's);
- c. Employee workshops; and

d. Employer Human Resources Offices, which were afforded workshop training on the choice, supplied with printed materials, and received email updates on the choice.

10. Petitioner does not deny receiving emails from FRS and acknowledges that she received other notifications from FRS.

11. As of the date of the hearing, Petitioner has her one-time second election remaining.

12. Petitioner has been provided with a buyback estimate.

13. There is no record of any interaction between Petitioner and anyone affiliated with Respondent or any agent of the MyFRS Financial Guidance Line prior to March 2024.

CONCLUSIONS OF LAW

14. Pursuant to Section 121.4501(4)(b)1, Florida Statutes, employees hired into FRS eligible positions on or after January 1, 2018, have the opportunity to make an election between the Pension Plan and the Investment Plan. With certain exceptions, which are inapplicable in this case, if the employee fails to make an election during the 8-month period following the month of hire, he or she is defaulted into the Investment Plan retroactively to the date of hire. F.S. § 121.4501(4)(b)3.a.

15. Petitioner was initially hired into an FRS-qualifying position on June 10, 2019, and was given an initial choice deadline of February 28, 2020. The Petitioner did not make an initial election and, pursuant to section 121.4501(4)(b)3a, Florida Statutes, was deemed to have elected membership in the Investment Plan by default.

16. According to Petitioner, she was not only unaware of the initial election period or that she would default into the Investment Plan, but she was also unaware that she was eligible for and enrolled in the Florida Retirement System. She blames the confusion on one or more

misstatements from her employer's human resources department, which informed her she was not eligible for benefits from the employer.

19. Petitioner does not allege that her misunderstanding is the result of any statements, actions, or inactions by Respondent, or anyone associated with SBA or FRS. To the extent that Petitioner's failure to make an initial election derives from her reliance on inaccurate information, it is clear from the testimony that the misinformation came from her employer; not Respondent.

20. Respondent sent Petitioner multiple communications electronically and by U.S. mail, each of which had sufficient information from which Petitioner could have ascertained her rights and obligations with respect to FRS membership. Petitioner acknowledges receiving the communications.

21. Respondent is not responsible for erroneous information provided to Petitioner by her employer's Human Resources representatives and Respondent cannot be bound by such erroneous information. 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 employers."

22. Petitioner's argument that the COVID pandemic played a role in her failure to make an Initial Election by February 28, 2020, is not credible. While it is unfortunate that her family was affected by COVID, Petitioner testified that she was unaware she was eligible for FRS at the time she was hired, which was in June 2019, long before the effects of the pandemic. Any misunderstanding as to FRS participation clearly predates the COVID pandemic and there is nothing in the record that suggests this misunderstanding might have been resolved but for

COVID. Petitioner also had a period of 8 months from her date of hire – nearly all of which pre-date the COVID pandemic – to make an election, and did not do so.

23. Movement between the Investment Plan and the Pension Plan is governed by Section 121.4501(4)(f), Florida Statutes, which states, in pertinent part:

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.

§121.4501(4)(f), Fla. Stat. The process outlined in section 121.4501(4), for transferring from the Investment Plan to the Pension Plan, is the only process under which such a transfer can be achieved after expiration of the initial election period, and Respondent has no discretion to modify or disregard the requirements of this section. Since the initial election period expired several years ago, Petitioner has one opportunity to transfer to the Plan; and that is by using her second election, which she can do as long as she is accruing service under FRS.

24. In accordance with section 121.4501(4)(f)2, Florida Statutes, in order to move from the Investment Plan to the Pension Plan, members must transfer from their investment plan account, **and/or from other member moneys, if necessary**, a sum equal to the present value of the employee's accumulated benefit obligation. Commonly referred to as the "buy-in" amount, this sum represents the present value of a what the member's benefit would be, if the member had been in the Pension Plan since their date of hire. All funds in a transferring member's Investment Plan account are used towards payment of the buy-in amount and the member is responsible for any remaining balance.

25. While the decision to move from the Investment Plan to the Pension Plan is discretionary on the part of an FRS member, payment of the buy-in amount is not. In order for Petitioner to move to the Pension Plan, this amount must be transferred from some source into the

System. While Petitioner appears to believe the Respondent should be responsible for the cost, nothing in the record supports such a conclusion.

26. Although the cost associated with purchasing credited service under a defined benefit plan such as the FRS Pension Plan can be prohibitive, the Respondent has no discretion in this matter. It is required by law to transfer into the Florida Retirement System the buy-in amount to cover the actuarial cost of Pension Plan service. Just as the Respondent has no authority to waive the buy-in requirement, it has no authority to modify the method under which the buy-in amount is calculated.

27. As a statutorily created entity, Respondent has only that authority granted to it by the legislature. Florida Statutes creating and governing the Florida Retirement System, and Petitioner's rights and responsibilities under them, are clear and the SBA cannot deviate from them. *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").

28. As such, Respondent does not have the authority to grant the relief sought by Petitioner.

29. Here, Petitioner cannot demonstrate entitlement to the relief she has requested under the applicable law and her Petition for Hearing should therefore be denied.

RECOMMENDATION

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

DATED this 8th day of January, 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

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
Tallahassee, FL 32308
Hillary.Eason@sbafla.com
Nell.Bowers@sbafla.com
Mini.watson@sbafla.com
Ruthie.Bianco@sbafla.com
Allison.Olson@sbafla.com
Lindy.Still@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Julie Rosenblum, *pro se*



Petitioner

and via electronic mail only to:

Deborah Minnis, Esquire
123 South Calhoun Street
Post Office Box 391
Tallahassee, FL 32301
dminnis@ausley.com
iwhite@ausley.com
jmcvaney@ausley.com
Counsel for Respondent