

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
ALACHUA COUNTY, FLORIDA

ED CRAPO, as Alachua County
Property Appraiser,

Appellant/Cross-Appellee,

v.

Case No.: 1D17-1895
Lower Case No.: 2015-CA-001554

ACADEMY FOR FIVE ELEMENT
ACUPUNCTURE, INC., a Florida
Non-Profit Corporation,

Appellee/Cross-Appellant.,
_____ /

On Appeal from the Circuit Court, Eighth Judicial Circuit,
Alachua County, Florida, Civil Division

APPELLEE'S ANSWER BRIEF

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STATEMENT OF THE CASE AND THE FACTS¹

NATURE OF THE CASE AND COURSE OF PROCEEDINGS

Appellant Ed Crapo (“Crapo”), as property appraiser for Alachua County, appeals from a summary final judgment ruling that the Academy for Five Element Acupuncture, Inc. (the “Academy”) is exempt from ad valorem taxation as an “educational institution” under § 196.012(5), Florida Statutes, which states:

“Educational institution” means a federal, state, parochial, or **private school, college or university conducting regular classes and courses of study required for eligibility to certification by**, accreditation to, or membership in **the State Department of Education of Florida**, Southern Association of Colleges and Schools, or the Florida Council of Independent Schools. ...

(R-769-783) Since at least 2001, the Florida Department of Education Commission for Independent Education has issued the Academy annual licenses which state “this is to certify that [the Academy] is hereby licensed.” See § 1005.02(13) (“‘License’ means a certificate signifying that an independent postsecondary educational institution meets standards prescribed in statute or rule ...”) The Academy has been exempt from ad valorem taxation as an educational institution since 2001 in both Broward and Alachua Counties.

¹ References to the pleading, filings and exhibits in the record on appeal will be cited as (R-). Statutory citations are to the 2014 version of the Florida Statutes unless otherwise noted. Emphasis are supplied unless noted as original.

Crapo filed the lower court action in April 2015 over the 2014 tax year after the Alachua County Value Adjustment Board (“VAB”) – again for the second time since 2008 – determined that the Academy was an educational institution exempt from ad valorem taxation. (R-8-13) As detailed below, Crapo did not appeal the VAB’s 2008 decision, and the Academy has at all times since 2008 continuously maintained its tax exempt status in Alachua County. It is undisputed that there was no material change in the facts or the law which prompted Crapo to deny the tax exemption in 2014.

Summary Judgment Proceedings

In February 2016, Crapo filed his motion for summary judgment relying solely on the (1) Affidavit of Angela Paulauska, an employee in the property appraiser’s office whose affidavit consisted of Crapo’s conclusions for denying the exemption and (2) transcript of the 2014 VAB hearing conducted by a special magistrate. (R-35-37, 38-103) Crapo did not conduct any discovery. (See generally Record On Appeal)

Subsequently, the parties reached stipulations over numerous undisputed facts including those detailing the Academy’s masters, bachelor’s and other academic degree programs, classroom instruction and faculty, and filed their Stipulated Record of the Parties including eleven (11) exhibits. (R-177-409) For example, the parties stipulated:

6. Since at least 2007 and to present, the Academy has offered a 36-month Master of Acupuncture degree program, the completion of which enables its graduates to practice as independent health care practitioners in acupuncture and work cooperatively with other health care providers. All instruction is presented on-site by a live instructor. The third year of the graduate program consists of a full 12-month clinical residency involving in-class instruction, seminars and training at the Academy's on-site teaching clinic. The Academy also offers a 27-month certificate program in Chinese Herbal Studies which provides on-site, live instruction on various forms of herbal treatments, preparation methods and clinical study. In 2014, the Academy had 47 students enrolled in the Master of Acupuncture program and 38 students enrolled in Chinese Herbal Studies program. Since 2014, the Academy has offered a bachelor's degree program in Health Science.

(R-178) The parties also stipulated that the “Academy offers all the educational courses and instruction and engages in the educational activities that are outlined in the materials submitted, above” (referring to the Academy’s application and documentation including its detailed catalog submitted to the Florida Department of Education Commission for Independent Education). (R-179, ¶ 8).

On August 4, 2016, the Academy filed its motion for summary judgment, which was amended on March 2, 2017 after Crapo’s appeal of the VAB’s decision granting the exemption for the 2015 tax year was administratively consolidated into the 2014 tax year action. (R-167-176, 423-435). In addition to the previously filed Stipulated Record of the Parties, the Academy’s summary judgment evidence was supported by the sworn statement of Misti Oxford-Pickeral, Executive Director of the

Academy with 15 exhibits, many of which consisted of previously stipulated documentary evidence. (R-415-422, 436-697) Other than facts particular to the 2015 tax year (related to exemption for additional campus space), no new evidence or facts were added. (Id.) Crapo did not seek to reschedule the summary judgment hearing or file any counter-affidavits to the Academy's summary judgment evidence.

At the March 29, 2017 hearing on the parties' competing motions for summary judgment, the lower court heard arguments of the parties on the statutory framework governing private postsecondary school programs in the State of Florida and the undisputed evidence including the stipulated record regarding the classes and courses of study required for the Academy to receive its annual certificate from the Florida Department of Education Commission for Independent Education. (See Notice of Filing Transcript) Subsequently, the lower court issued its written decision finding:

There is no issue that the owner here had to apply for and meet certain standards to obtain its license from the Commission [for Independent Education]. In every sense, it had to meet eligibility requirements set forth by the Commission that assured it was qualified to operate in the State of Florida as an educational institution. The application for its license included information pertaining to its regular classes and courses of study and its accreditation by the appropriate accrediting organization. This was not mere "licensing" in any sense that would make it qualitatively less than what would normally be associated with bona fide accreditation and certification. In fact, §1005.02(13) states clearly that such a license is a "certificate signifying that an independent postsecondary educational institution meets *standards prescribed in statute or rules* and is permitted to operate in this state".

(emphasis added). The question, then, is whether an organization which meets the Commission's licensing requirements also meets the definition of an "educational institution" set forth in §196.012(5). To do so, it must be a "private school...conducting regular classes and courses of study required for eligibility to certification by...the State Department of Education.... *Id.*

The statutory framework regarding the licensing of private postsecondary school programs provides the answer to this question. The Commission is not just a random organization with no connection to the Department of Education. Florida is committed to assuring for its citizens that independent private postsecondary educational institutions satisfactorily meet minimum educational standards. §1005.01. The Commission for Independent Education was created by the legislature as *part of* the Department of Education to effectuate this legislative purpose. §1005.21. It's [sic] membership composition is determined by the legislature and the members are appointed by the governor subject to confirmation by the senate. §1005.21(2). Each private postsecondary school in the state must be licensed by the Commission; and the Commission must submit its own budget and rules to the Department of Education for approval. §1005.22. The Commission must report data to the Department annually regarding institutions licensed by it. §1005.22(1). It is directed to administer the provisions of Chapter 1005 with respect to nonpublic postsecondary education. §1005.22(1)(e). Within this statutory framework, the Commission operates as the instrumentality of the Department of Education for assuring that the classes and courses of study of private postsecondary schools are eligible for state certification.

... it is apparent that the legislature has chosen to use Commission licensure as the way by which the Department of Education certifies the eligibility of classes and courses of study for private postsecondary schools. As statutorily created, the Commission is part of the Department of Education. Commission licensure, then, is in fact State Department of Education certification. Therefore, licensure in this context qualifies the licensee as an educational institution exempt from ad valorem taxation.

(R-725-730, Summary Final Judgment (Corrected) for Defendant)² Accordingly, the lower court granted the Academy's amended motion for summary judgment and denied Crapo's motion for summary judgment. (Id.)

Motion for Rehearing Denied

On April 18, 2017, Crapo filed a motion for rehearing purporting to raise new factual and legal issues he never raised in his motion for summary judgment or at the hearing. (R-731-766) Crapo's motion incorrectly claimed, "The Defendant has never tendered any evidence or rule of the DOE establishing the required regular classes or courses of study required for certification or even licensure for a diploma in acupuncture, either to the Plaintiff or to this Court." (R-733) To the contrary, the parties stipulated and the Academy produced detailed undisputed evidence on the courses of study and classroom instruction required for the Florida Department of Education Commission for Independent Education to issue its annual license certifying the Academy meets the required standards. (R-178-79, 415-17) Moreover, Crapo attached to his motion an affidavit of the Assistant Director of the Commission for Independent Education purporting to attach a 2015-2016 Annual Report but failed to provide (1) any reasons or circumstances the lower court should consider this

² The court re-issued its summary final judgment (corrected) for Defendant on April 13, 2017 (10 days after its original summary final judgment) to correct a scrivener's error.

purported information provided for the first time after the closure of the summary judgment proceedings or (2) whether or how the affidavit creates a genuine issue of material fact. (R-735-766) The motion for rehearing was denied. (R-767-768) Accordingly, Defendant was not required to, and indeed had no opportunity to, cross-examine the purported evidence or submit any counter-affidavits.

Notice of Appeal and Cross-Appeal

Crapo's notice of appeal purports to appeal the lower court's denial of his motion for rehearing but he made no arguments in his Initial Brief that the lower court committed reversible error by denying his motion; accordingly, Crapo has abandoned and waived any argument regarding the lower court's denial of his motion for rehearing. Instead, Crapo's challenge on appeal is limited to the lower court's determination that the Academy is an educational institution for purposes of the tax exemption.

Finally, the Academy cross-appeals the lower court's determination that Crapo was not barred by the doctrines of estoppel, res judicata and administrative finality from denying or challenging the exemption. (R-784-785) As the lower court acknowledged, Crapo failed to appeal a prior adverse administrative ruling by the Value Adjustment Board in 2008 involving the same parties and the same issues, and it is undisputed that there was no material change in the use of the property. (R-727)

STATEMENT OF THE FACTS

The Academy is an Educational Institution Certified and Regulated as Required by the Exemption

Academy for Five Element Acupuncture, Inc. is certified and regulated by the Florida Department of Education Commission for Independent Education. [R-415, Oxford-Pickeral Aff. ¶ 1] Since at least 2008, the Florida Department of Education Commission for Independent Education has issued an “Annual License” to the Academy, which states, “This is to certify that Academy for Five Element Acupuncture, Inc. ... Is hereby licensed to offer postsecondary program(s) of instruction.” [R-415, Oxford-Pickeral Aff. ¶ 2; Academy’s Composite Exhibit 1; Stipulated Record ¶ 15] The Alachua County Value Adjustment Board has repeatedly determined that the license issued by the Florida Department of Education Commission for Independent Education is a certification within the meaning of § 196.012(5). [R-671-678, 688-690, 692-697]

The Florida Department of Education has confirmed that

“License means a certificate signifying that an independent postsecondary educational institution meets standards prescribed in statute or rule and is permitted to operate in this state.” § 1005.02 (13) F.S.

[R-416, Oxford-Pickeral Aff. ¶ 3; R-448, Academy’s Exhibit 2] To obtain an annual license and be certified by the Florida Department of Education, the Academy must

meet the Florida Department of Education Commission for Independent Education's standards and procedures. The Academy must submit for review and approval its program outlines, enrollment agreement, schedule of classes, institutional data on faculty, faculty handbook, audited financial statements and student catalog. [R-416, Oxford-Pickeral Aff. ¶ 4]

The Academy has provided post-secondary academic instruction and clinical training in acupuncture and herbal studies for over 20 years. [R-416, Oxford-Pickeral Aff. ¶ 5; R-177, Stipulated Record ¶ 1] Since at least 2007 and to present, the Academy has offered a 36-month Master of Acupuncture degree program, the completion of which enables its graduates to practice as independent health care practitioners in acupuncture and work cooperatively with other health care providers. All instruction is presented on-site by live instructors. The third year of the graduate program consists of a full 12-month clinical residency involving in-class instruction, seminars and training at the Academy's on-site teaching clinic. The Academy also offers a 27-month certificate program in Chinese Herbal Studies which provides on-site, live instruction on various forms of herbal treatments, preparation methods and clinical study. In 2014, the Academy had 47 students enrolled in the Master of Acupuncture program and 38 students enrolled in Chinese Herbal Studies program. [R-416-17, Oxford-Pickeral Aff. ¶ 5; R-178, Stipulated Record ¶ 6]

Since 2014, the Academy has offered a bachelor's degree program in Health Science, which the Florida Department of Education Commission for Independent Education approved. The August 27, 2014 letter from the Florida Department of Education Commission for Independent Education states:

The Commission, meeting in regular session on January 08, 2014, approved your request for the following program(s):
Health Science - Bachelors - 123.5 Credit Hours.

[R-417, Oxford-Pickeral Aff. ¶ 6; R-450, Academy's Exhibit 3; R-179, Stipulated Record ¶ 9] The Academy offers all the educational courses and instruction and engages in the educational activities that are outlined in its curriculum and other materials submitted to the State. [R-417, Oxford-Pickeral Aff. ¶ 7; R-179, Academy's Composite Exhibit 4; Stipulated Record ¶ 8]

The Academy has a diverse, well educated, experienced faculty. The Academy has local faculty members, and those who live across the nation and travel to Gainesville to teach during intensive sessions. The vast majority of the Academy's faculty members hold Master's degrees and have been teaching for the Academy for more than 10 years. Most of the local faculty are graduates of the Academy and, in addition to classroom instruction, they also provide clinical supervision during the 12-month residency. All teaching and supervising faculty maintain private practices. [R-417-418, Oxford-Pickeral Aff. ¶ 8; R-178-79, Stipulated Record ¶ 7]

The Academy is accredited by Accreditation Commission For Acupuncture and Oriental Medicine (ACAOM), a nationally recognized accrediting association. [R-418, Oxford-Pickeral Aff. ¶ 9; R-635-640, Academy’s Exhibit 5] As an accredited postsecondary educational institution, the Academy has participated in federal student financial aid programs since at least 2008 and has “satisfied the definition of an eligible institution under the Higher Education Act of 1965, as amended (HEA).” [R-418, Oxford-Pickeral Aff. ¶ 10; R-642-651, Academy’s Composite Exhibit 6]

**The Academy has Maintained its Long-Standing (over 15 Years)
Tax Exempt Status in Broward and Alachua Counties**

The Academy was founded in South Florida and has operated as a Florida not-for-profit educational institution since 1995. [R-418, Oxford-Pickeral Aff. ¶ 11; R-653-664, Academy’s Composite Exhibit 7; R-177, Stipulated Record ¶ 2] It has continuously maintained not-for-profit status as an educational institution under section 501(c)(3) of the Internal Revenue Code since at least 1997. [R-418, Oxford-Pickeral Aff. ¶ 12; R-666, Academy’s Exhibit 8; R-178, Stipulated Record ¶ 3] Since at least 2003, the Academy has been exempt from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased. [R-418, Oxford-Pickeral Aff. ¶ 13; R-668, Academy’s Exhibit 9; R-178, Stipulated Record ¶ 4]

The Academy enjoyed uninterrupted property tax exempt status as an educational institution in Broward County from 2001 to 2007. [R-419, Oxford-Pickeral Aff. ¶ 14] In 2007, the Academy re-located its campus from South Florida to 305 SE 2nd Ave. Gainesville, FL 32601 in the historic downtown area behind the federal courthouse. [R-419, Oxford-Pickeral Aff. ¶ 15; R-178, Stipulated Record ¶ 5]

After relocating to Gainesville, the Academy applied for property tax exemption for the 2008 tax year, which Plaintiff Ed Crapo denied. Following an evidentiary hearing and a recommended decision by a special magistrate that the tax exemption should be granted, the Alachua County Value Adjustment Board (“VAB”) overturned the property appraiser and determined that the Academy was a tax exempt educational institution. [R-419, Oxford-Pickeral Aff. ¶ 16; R-671-677, Academy’s Exhibit 10]

Crapo did not appeal the 2008 determination of the VAB, and the Academy continued to enjoy its uninterrupted tax exempt status in Alachua County. [R-419, Oxford-Pickeral Aff. ¶ 17] Moreover, Alachua County waived the requirement of a subsequent annual application pursuant to §196.011(9)(a), which requires the property appraiser to mail by February 1 notification of an intent to deny the exemption if the exemption will be denied for the tax year. [R-419, Oxford-Pickeral

Aff. ¶ 18; R-179, Stipulated Record ¶ 10] Following the granting of the tax exemption by the VAB for 2008, the Academy did not receive from the property appraiser any notification of an intent to deny the exemption for the subsequent tax years 2009 through 2014. [R-419, Oxford-Pickeral Aff. ¶ 18]

Instead, on or about June 6, 2014, Crapo issued, as *fait accompli*, a “Notice of Disapproval of Application for Property Tax Exemption or Classification” to the Academy for the real property on which its campus is located (Parcel ID 14571-000-000) and for its tangible personal property (Tangible ID 037071), which instructed the Academy to file an appeal with the VAB if it disagreed with the decision. This was the first notice the Academy received from Crapo that the Academy’s property tax exemption was denied for the 2014 tax year. [R-419-420, Oxford-Pickeral Aff. ¶ 19; R-679-80, Academy’s Exhibit 11; R-179, Stipulated Record ¶ 11] Accordingly, the Academy timely filed a petition with the VAB over the denial of the exemption as to both the real and tangible properties. [R-420, Oxford-Pickeral Aff. ¶ 20; R-682, Academy’s Exhibit 12; R-180, Stipulated Record ¶ 12]

On January 15, 2015, the VAB issued a Final Decision dated January 15, 2015 granting the petition in full and determining, “Petitioner has shown, by a preponderance of the evidence, that it meets the criteria in FS 196.012(5) and,

therefore, the petition is granted.”³ [R-421, Oxford-Pickeral Aff. ¶ 22; R-688-89, Academy’s Exhibit 14; R-180-81, Stipulated Record ¶ 14]

**The Academy’s Use of Property for Educational Purposes
Continued with New Property for 2015, as Determined by the VAB**

In late 2014, the Academy purchased an adjacent parcel located at 315 SE 2nd Ave. Gainesville, FL 32601 (Parcel ID No. 14570-000-000). Since 2015, the Academy has exclusively used the entirety of this property for educational purposes, less and except approximately 3,400 gross square feet (less than 50% of the total square footage) which is leased to a third party subject to a pre-existing lease. [R-421, Oxford-Pickeral Aff. ¶ 23]

In June 2015, Crapo denied the Academy’s educational tax exemption for both of its real properties, which the Academy appealed. In November 2015, after an evidentiary hearing, the special magistrate issued a recommended decision that the educational exemption should apply to both locations (as to the second property, to the extent of the ratio that the predominant use bears to the nonexempt use). In December 2015, the VAB affirmed and issued a Final Decision determining as to both properties that “Petitioner has shown, by a preponderance of the evidence, that

³ Crapo’s assertion that the Academy “did not pursue the exemption for its TPP” is simply incorrect. The petition – there was only one – over both real and tangible personal property was granted in full, and any typographical error in the VAB’s decision not specifically referring to TPP is of no moment.

it meets the criteria in FS 196.012 and, therefore, the petition is granted.” [R-421, Oxford-Pickeral Aff. ¶ 24; R-692-97, Academy’s Exhibit 15]

The Property Appraiser’s Challenges Are Barred by the Doctrines of Res Judicata, Decisional Finality, Collateral Estoppel and Issue Preclusion

Despite consistent and multiple final decisions from the Alachua County VAB affirming the Academy’s educational tax exempt status for each of the challenged tax years 2008, 2014 and 2015, in June 2016, Crapo again denied the Academy’s educational tax exemption for the 2016 tax year, which the Academy appealed to the VAB. After an evidentiary hearing, yet another special magistrate determined the educational exemption should apply to both locations (as to the second property, to the extent of the ratio that the predominant use bears to the nonexempt use). In January 2017, the VAB – for the fourth time – affirmed the educational exemption as to both properties. [R-422, Oxford-Pickeral Aff. ¶ 25]

Since the exemptions were first granted, there has been no change in the educational use of the Academy’s properties. [R-422, Oxford-Pickeral Aff. ¶ 26]

SUMMARY OF ARGUMENT

Crapo purports to appeal the lower court's denial of his motion for rehearing but fails to cite the applicable standard of review or law. And, his initial brief does not present any arguments that the lower court committed reversible error by denying his motion for rehearing. Accordingly, Crapo has abandoned and waived this argument.⁴ Moreover, Crapo does not challenge the record evidence or the factual findings of the lower court. There is no dispute as to the Academy's use of the property for educational purposes and activities.

The Academy is a private post-secondary educational institution certified and regulated by the State Department of Education of Florida. It conducts regular classes and course of study in acupuncture, herbal studies and health science. Under § 196.012(5), Florida Statutes:

“Educational institution” means a federal, state, parochial, or private school, college or university conducting regular classes and courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Schools, or the Florida Council of Independent Schools.

⁴ Likewise, Crapo does not raise and thus has waived his technical argument raised below that the Academy had waived the 2014 tax exemption by not filing an application for the 2014 tax year, though the exemption was automatically renewed, Crapo failed to provide statutorily required notice of any intent to deny the exemption and the Academy filed a petition with the VAB as directed. (R-725-730, Summary Final Judgment (Corrected) at pp. 2-3)

Accordingly, it is entitled to the educational tax exemption, as the Alachua County VAB has repeatedly determined. See § 196.198 (“Educational institutions ... and their property used by them ... exclusively for educational purposes are exempt from taxation.”); § 196.192(2), Florida Statutes (property owned by educational institutions and “used predominantly for exempt purposes are exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use”); Art. VII, § 3(a), Fla. Const. (“Such portion of property as are used predominantly for educational ... purposes may be exempted by general law from taxation.”).

The Academy has held uninterrupted, long-standing (15 years) tax exempt status as an educational institution: since 2008 to present in Alachua County and from 2001 through 2007 in Broward County. In the times the property appraiser has attempted to deny the tax exempt status (once in 2008 and then in 2014, 2015 and 2016), the Alachua County VAB has consistently determined that the Academy is an educational institution within the meaning of § 196.012(5) and granted the educational tax exemption. The property appraiser did not appeal the 2008 determination by the VAB, and there has been no change in the law or the facts to depart from the VAB’s determination that it is exempt from ad valorem taxation. Therefore, Crapo is barred by the doctrines of res judicata, decisional finality, collateral estoppel and issue preclusion.

ARGUMENT

I. THE LOWER COURT DID NOT ABUSE ITS DISCRETION IN DENYING CRAPO'S MOTION FOR REHEARING

First, though Crapo's notice of appeal purports to appeal the lower court's denial of his motion for rehearing on summary judgment, Crapo does not cite the applicable standard of review or the law for the denial of a motion for rehearing in his Initial Brief. Moreover, Crapo does not present any arguments that the lower court committed reversible error by denying his motion for rehearing. Accordingly, Crapo has abandoned and waived any argument regarding the lower court's denial of his motion for rehearing, and he cannot rely on appeal any new arguments or purported facts or evidence which were never presented in the summary judgment proceeding, were not considered by the lower court and which the Academy did not have an opportunity to address.

Moreover, the lower court did not abuse its discretion in denying the motion and refusing to consider the purported additional evidence. See Willis v. L.W. Foster Sportswear Co., Inc., 352 So.2d 922, 923 (Fla. 2nd DCA 1977) (reviewing the denial of a motion for rehearing for an abuse of discretion). Florida Rule of Civil Procedure 1.510(c) which governs summary judgments requires the motion to "specifically identify any affidavits, answers to interrogatories, admission, depositions, and other

materials as would be admissible evidence (‘summary judgment evidence’) on which the movant relies” which must be served at least 20 days before the time fixed for the hearing. The adverse party must identify any summary judgment evidence on which the adverse party relies at least 5 days (2 business days if by delivery) prior to the hearing. Id. Subsection (f) provides that the court “may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.” As explained in Willis:

the rule provides adequate safeguards to assure a nonmoving party a fair opportunity to come forward and show that a genuine issue of fact exists before the court rules on a motion for summary judgment. However, once a summary judgment has been entered, the granting or denial of rehearing is a matter within the sound discretion of the trial court ...

352 So.2d at 923. Accordingly, where there was no attempt by a party to file any counteraffidavits before summary judgment was entered and no showing of exigent circumstances for failing to do so, it was not an abuse of discretion for the trial court to decline to consider any counteraffidavit filed on motion for rehearing. Id. at 924. Absent exigent circumstances, to permit a party to later create an issue of fact through a motion for rehearing is to sanction a nonmoving party to sit back, review the entire proceedings and not attempt to negate the nonexistence of a material issue of fact until rehearing, contrary to the orderly administration of justice that Rule 1.510 seeks to accomplish. Id.

Here, Crapo’s motion for rehearing merely repeated his legal arguments with which the lower court disagreed. Moreover, he sought to interject new factual issues through a counteraffidavit never presented before, without explaining whether or how they are material or create a genuine issue of fact. And, Crapo failed to provide any reasons or exigent circumstances why he did not seek to introduce this affidavit before and why the lower court should consider it late - either in opposition to the Academy’s motion for summary judgment or in support of his competing motion for summary judgment – after he has reviewed the entire summary judgment proceeding and obtained an adverse ruling. Accordingly, the lower court’s denial of the motion for rehearing and refusal to consider the affidavit and any new information – which the Academy did not have an opportunity to contest – was not an abuse of discretion.

II. THE LOWER COURT’S DETERMINATION THAT THE ACADEMY IS ENTITLED TO THE EDUCATIONAL EXEMPTION IS CLOTHED IN A PRESUMPTION OF CORRECTNESS AND NOT CLEARLY ERRONEOUS

A. Standard of Review

The lower court’s determination on summary judgment is clothed in a presumption of correctness; it is Appellant’s burden to establish the existence of clearly erroneous error requiring reversal. Wal-Mart Stores, Inc. v. McDonald, 676 So. 2d 12, 15-16 (Fla. 1st DCA 1996) (“The movants agreed that the issue before the

trial court was solely a question of law ... We affirm the rulings on the appellants' motions for summary judgment, as these determinations come to us clothed in a presumption of correctness, and Wal-Mart has not shown the rulings to be clearly erroneous."); Morgan v. Pake, 611 So. 2d 1315, 1316 (Fla. 1st DCA 1993) (stating on appeal seeking review of summary final judgments that "[d]ecisions of the trial court come to this court clothed in a presumption of correctness. It is the appellant's burden to establish the existence of reversible error.").

B. The Academy is an Educational Institution Certified and Regulated by the State

The educational tax exemption is authorized under Article VII, section 3(a) of the Florida Constitution: "Such portions of property as are used predominantly for educational ... purposes may be exempted by general law from taxation." See also § 196.198 ("Educational institutions ... and their property used by them ... exclusively for educational purposes are exempt from taxation."); § 196.192(2) (property owned by educational institutions and "used predominantly for exempt purposes are exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use"). There is no dispute that the Academy's property is used for educational purposes, and the sole dispute by Crapo is whether the Academy meets the statutory definition of "educational institution."

Pursuant to § 196.012(5):

‘Educational institution’ means a federal, state, parochial, or private school, college or university conducting regular classes and courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Schools, or the Florida Council of Independent Schools. . .

It is axiomatic that the statute be construed to give effect to legislative intent.

Larimore v. State, 2 So.3d 101, 106 (Fla. 2008). “To discern legislative intent, a court must look first and foremost at the actual language in the statute.” Id.

Moreover,

[t]he doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature’s intent ... Similarly, [r]elated statutory provision must be read together to achieve a consistent whole, and ... [w]here possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.

Id. (quotations marks and citations omitted). Courts will examine the entire act with others *in pari materia* in order to ascertain the overall legislative intent if an otherwise clear meaning of a statute leads to an inconsistent result when considered *in pari materia* with others. Id.; see also Bautista v. State, 863 So.2d 1180, 1186 (Fla. 2003) (notwithstanding its inclusion in chapter 316 with motor vehicle offenses, examining DUI manslaughter within the context of homicide offenses under a

different chapter).

The Commission for Independent Education is part of the State Department of Education of Florida. § 1005.21(1) (“There is established in the Department of Education the Commission for Independent Education.”) Since at least 2001, the Florida Department of Education Commission for Independent Education has issued the Academy annual licenses which state in part “this is to **certify** that [the Academy] is hereby licensed.” For this, the Academy had to meet eligibility requirements set forth by the Commission that assured it was qualified to operate in the State of Florida as an educational institution. Its annual application included information pertaining to its regular classes and courses of study and its accreditation by the appropriate accrediting organization; the Academy is required to obtain State approval before it can offer new courses or offer new bachelor’s program. § 1005.31(1)(a) & (2); Rule 6E-2.004, F.A.C. The Academy is also required to publish in its catalog to its students that it is “licensed by the Commission for Independent Education, **Florida Department of Education.**” Rule 6E-2.004(11)(b)2f, F.A.C. Accordingly, the annual license is a certification by the State Department of Education of Florida within the meaning of § 196.012(5). See § 1005.02(13) (“‘License’ means a **certificate** signifying that an independent postsecondary educational institution meets standards prescribed in statute or rule ...”) (e.s.)

The statutory scheme governing the State of Florida’s public and private education system is instructive and consistent with the overall legislative scheme to grant educational exemption to private postsecondary educational institutions such as the Academy. The Florida Education Code (Chapters 1000-1013) is highly regulated and organized under the Florida Statutes.

<i>Subject</i>	<i>Chapter</i>
TITLE XLVIII	
K-20 EDUCATION CODE	
K-20 general provisions	1000
...	
K-20 goverance	1001
...	
Student and parental rights an educational choices	1002
...	
Public K-12 education	1003
...	
Public postsecondary education	1004
...	
Nonpublic postsecondary education	1005
General provisions, part I	
Commission for Independent Education, part II	
Licensure of nonpublic postsecondary educational institutions, part III	
<u>(See Florida Statutes, Title and Chapter Index)</u>	

Within the Department of Education is the Commission for Independent

Education, as illustrated in Chapter 1001:

PART I
STATE-LEVEL GOVERNANCE

...

C. Department of Education

- 1001.20 Department under direction of state board.
- 1001.21 Office of Private Schools and Home Education Programs.
- 1001.213 Office of Early Learning.
- 1001.215 Just Read, Florida! Office.
- 1001.22 **Commission for Independent Education.**
- 1001.23 Specific powers and duties of the Department of Education.

(See Florida Statutes, pp. 1633, 1637)

In creating the Commission for Independent Education and defining its role, the Legislature stated:

The Legislature encourages privately supported higher education and intends to aid in protecting . . . independent postsecondary educational institutions that currently operate or intend to begin operating in this state. **The Legislature finds that both individuals and independent postsecondary educational institutions benefit from a state system that assures that all institutions satisfactorily meet minimum educational standards.** The Legislature further recognizes the role of federally recognized accrediting associations in setting standards for independent postsecondary educational institutions and encourages the use of recognized accreditation standards as general guidelines for the licensure of independent postsecondary educational institutions.

§ 1005.01(1).

Accordingly, as the lower court found, the statutory framework supports to the educational exemption for the Academy:

The Commission is not just a random organization with no connection to the Department of Education. Florida is committed to assuring for its citizens that independent private postsecondary educational institutions satisfactorily meet minimum educational standards. §1005.01. The Commission for Independent Education was created by the legislature as *part of* the Department of Education to effectuate this legislative purpose. §1005.21. It's [sic] membership composition is determined by the legislature and the members are appointed by the governor subject to confirmation by the senate. §1005.21(2). Each private postsecondary school in the state must be licensed by the Commission; and the Commission must submit its own budget and rules to the Department of Education for approval. §1005.22. The Commission must report data to the Department annually regarding institutions licensed by it. §1005.22(1). It is directed to administer the provisions of Chapter 1005 with respect to nonpublic postsecondary education. §1005.22(1)(e). Within this statutory framework, the Commission operates as the instrumentality of the Department of Education for assuring that the classes and courses of study of private postsecondary schools are eligible for state certification.

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A ruling to the contrary would mean that no private educational institution would ever be deemed to have certification from the Florida Department of Education for purposes of the tax exemption. Crapo has not presented any case law or competent substantial evidence – because there is none – regarding any educational

institution which satisfies the criteria he urges. Crapo’s interpretation would render the statutory language meaningless and make it a mere surplusage as there is no nonpublic college – private post-secondary school that would qualify. See Larimore, 2 So.3d at 106 (“significance and effect must be given to every word, phrase, sentence, and part of the statute is possible, and words in a statute should not be construed as mere surplusage.”) (internal quotation and citation omitted).

There is no dispute that the Academy uses its property to conduct regular classes and courses of study as outlined in its catalog, curriculum and other materials submitted to the State. Accordingly, the Academy is entitled to the educational tax exemption.

III. THE LOWER COURT SHOULD HAVE FOUND CRAPO IS PROHIBITED FROM RE-LITIGATING THE TAX EXEMPTION WHEN THERE IS NO MATERIAL CHANGE IN THE LAW OR THE FACTS

In 2008, the Alachua County Value Adjustment Board decided on the merits that the Academy is a tax exempt educational institution, after a full evidentiary hearing and presentation of arguments by the same parties before a special magistrate who recommended that the educational exemption be granted. In 2008, the property appraiser was represented by the same law firm of Dent & Johnson and presented the same arguments over the same issue. The property appraiser did not appeal the 2008 VAB decision to the circuit court, and the Academy maintained its tax exempt status

until it was challenged by the property appraiser again in 2014. There was no change in the facts or the law when the property appraiser challenged the exemption half a decade later. The VAB affirmed the Academy's tax exemption in 2014 and 2015 (as well as in 2016).

Administrative finality, collateral estoppel and res judicata bar the property appraiser from re-litigating the same issue where, as here, there is a complete identity of the parties, identical cause of action and no change in the law or facts. See e.g., Florida Power Corporation v. Garcia, 780 So.2d 34, 44 (Fla. 2001) (“A decision, once final, may only be modified if there is a significant change in circumstances or if modification is required in the public interest.”) (holding administrative finality applies to preclude subsequent application based on prior determination of Florida Public Service Commission); Trevino v. Department of Revenue, 2011 WL 680267 (Order on Motion to Dismiss, February 22, 2011) (“res judicata attaches to bar the subsequently filed August 18, 2010 petition for benefits seeking the same benefits”). “The doctrine of decisional finality provides that there must be a ‘terminal point in every proceeding both administrative and judicial, at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein.’” Gacia, 780 So.2d at 44.

The parties and the public should be entitled to rely on the 2008 decision of the

VAB - which became final when the property appraiser did not challenge the same though he could have – as final and dispositive of the rights and issues involved. The property appraiser’s continuing challenge to a party’s tax exemption – without a change in the facts or the law – is contrary to the doctrines of finality and res judicata, places unnecessary burden on the parties and administrative and judicial resources, and is against public policy.

CONCLUSION

For the reasons discussed above, the lower court properly determined the Academy is entitled to the educational exemption, and Crapo’s appeal should be denied.

Moreover, the Academy’s cross-appeal should be granted because the lower court should have determined Crapo was barred from re-litigating the same tax exemption issue based on the principles of administrative finality, collateral estoppel and res judicata.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served via e-mail on this 18th day of September, 2017 on the following counsel of record: John Dent and Jennifer McClain, Counsel for Ed Crapo, Alachua County Property Appraiser.

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I hereby certify that this brief complies with the font requirements of Fla.R.App.P. 9.210(a)(2).

s/ Paul A. Donnelly