

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FIRST DISTRICT

EDWARD A. CRAPO,)
)
 Appellant,)
 v.) Case No.: 1D17-1895
)
 ACADEMY FOR FIVE ELEMENT) L.T. No.: 2015-CA-1554
 ACUPUNCTURE, INC., etc.)
)
 Appellees.)

AMICUS CURIAE BRIEF OF
THE DEPARTMENT OF EDUCATION,
COMMISSION FOR INDEPENDENT EDUCATION

ON APPEAL FROM THE CIRCUIT COURT,
EIGHTH JUDICIAL CIRCUIT, IN AND
FOR ALACHUA COUNTY, FLORIDA

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STATEMENT OF INTEREST

The Department of Education, Commission for Independent Education (Commission), hereby submits its amicus curiae brief pursuant to the Court's order dated January 18, 2018. The sole interest of the Commission in this cause is compliance with the Court's order. The Commission has no authority over the subject of the pending case. This brief is not intended, nor should it be relied upon, as a "statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule." §120.52(16), Fla. Stat. (2016). The Commission licenses private, postsecondary institutions in the State of Florida under Chapter 1005, Florida Statutes. The Court has requested the Commission's input regarding whether institutions licensed by the Commission are "educational institutions" as defined in section 196.012(5), Florida Statutes.

SUMMARY

It appears that educational institutions licensed by the Commission for Independent Education are "educational institutions" as defined in section 196.012(5), Florida Statutes. Although the Commission is charged with the independent exercise of its authority to issue licenses, its

statutory relationship with the Department of Education is such that the license could reasonably be interpreted to be a certification issued by the Department. The Commission specifically issues a certificate to those institutions that the Commission approves. Additionally, the Commission licenses educational institutions after having reviewed their curriculum for compliance with specific standards. Lastly, any remaining ambiguity in the statute may be resolved by looking at the legislative history of licensure of schools currently licensed by the Commission. That review supports the conclusion that such schools meet the definition of educational institutions under section 196.012(5), Florida Statutes.

DISCUSSION

Section 196.012(5), Florida Statutes, in pertinent part defines "educational institution" as:

a . . . 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

§196.12(5), Fla. Stat. (2016). The critical issues responsive to the Court's request, therefore, appear to be whether licensure by the Commission can be characterized as action by the State Department of Education of Florida; whether that licensure can

be characterized as certification; and whether the Commission requires schools, colleges and universities to conduct regular classes and courses of study in order to be eligible for licensure.

**A. THE DEPARTMENT OF EDUCATION AND
THE COMMISSION FOR INDEPENDENT EDUCATION**

The Commission for Independent Education is a collegial body established in the Department of Education comprised of seven members appointed by the Governor subject to confirmation by the Senate. §1005.21(1), (2), Fla. Stat. (2016). The Commission is specifically directed to "exercise independently all powers, duties, and functions prescribed by law." §1005.21(1), Fla. Stat. (2016). The Commission exclusively is directed to hold meetings, appoint an executive director, and adopt and use an official seal. Significant limitations, however, are prescribed by law relating to the Commission's operation in conjunction with the department and the State Board of Education, the agency head for the Department of Education. §20.15(1), Fla. Stat. (2016).

Although the Commission is specifically authorized to adopt rules to implement its statutory authority, those rules must be submitted to the State Board of Education for review prior to being filed with the Department of State. §1005.22(1)(e)1., Fla. Stat. (2016). Additionally, the Commission is required to

submit its annual budget to the State Board of Education.

§1005.22(1)(e)2., Fla. Stat. (2016). Commission expenditures are likewise subject to approval by the Department of Education.

§1005.22(1)(e)4., Fla. Stat. (2016). Funds collected as a result of Commission operations are required to be deposited in the Institutional Assessment Trust Fund, §1005.22(1)(e)3. (2016); a trust fund administered by the Department of Education, §1010.83, Fla. Stat. (2016). And lastly, the Commission is specifically identified in a statute directed to "councils and committees of the Department of Education . . ." §20.15(6), Fla. Stat. (2016). In light of the manner in which the Commission is authorized to operate and the statute's specific identification of the Commission as a council or committee of the department, actions by the Commission for Independent Education could reasonably be attributed to the Department of Education.

**B. LICENSURE AND CERTIFICATION BY
THE COMMISSION**

Subject to a few exceptions, operation of a college or school in Florida requires a license from the Commission for Independent Education. §1005.31(1)(a), Fla. Stat. (2016). The Administrative Procedures Act defines "licensure" as "a franchise, permit, **certification**, registration, charter, or similar form of authorization required by law, but it does not

include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act."

§120.52(10), Fla. Stat. (2016), emphasis added. The statutory chapter pertaining specifically to the Commission states 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), Fla. Stat. (2016), emphasis added. Licensure by the Commission is a state certification and, as previously discussed, attributable to the Florida Department of Education.

**C. CLASSES AND COURSES OF STUDY REQUIRED
FOR ELIGIBILITY TO CERTIFICATION BY
FLORIDA DEPARTMENT OF EDUCATION**

Colleges and schools in Florida must obtain a license from the Commission. §1005.31(1)(a), Fla. Stat. (2016). As a point of reference, the Commission has 866 active licensees, 154 of which have identified themselves as non-profit organizations. A college is defined as an:

"educational entity offering a substantially complete program that confers or offers to confer at least an associate degree requiring at least 15 semester hours or the equivalent of general education, or that furnishes or offers to furnish instruction leading toward, or prerequisite to, college credit."

§1005.02(4), Fla. Stat. (2016). A school is defined as an educational entity that:

- (a) Offers to provide or provides any complete, or substantially complete, postsecondary program of instruction through the student's personal attendance; in the presence of an instructor; in a classroom, clinical, or other practicum setting; or through correspondence or other distance education;
- (b) Represents, directly or by implication, that the instruction will qualify the student for employment in an occupation for which a degree is not required in order to practice in this state;
- (c) Receives remuneration from the student or any other source based on the enrollment of a student or the number of students enrolled; or
- (d) Offers to award or awards a diploma, regardless of whether it conducts instruction or receives remuneration.

§1005.02(16), Fla. Stat. (2016). As directed by section 1005.31(2), Florida Statutes, the Commission has adopted standards for its licensees' educational programs and curricula, compliance with which are required for licensure. Rule 6E-2.004(4), F. A. C.

To be identified as a college or school under the controlling statutes, institutions are required to offer substantial courses of instruction. Those educational programs are subject to a qualitative review under the rules adopted by the Commission. Because those programs are required to meet the standards adopted by the Commission, regular classes and courses of study are required for eligibility to hold a license to

operate a college or school under Chapter 1005, Florida Statutes.

**D. LEGISLATIVE HISTORY SUPPORTS
ELIGIBILITY OF COMMISSION
LICENSED SCHOOLS**

The Commission for Independent Education is the result of the merger of two separate collegial bodies, the State Board of Independent Colleges and Universities created in 1970 and the State Board of Independent Postsecondary Vocational Trade and Business Schools created in 1974, that later became known as the State Board of Nonpublic Career Education. See Ch. 246, Fla. Stat. (1999). The legislature specifically directed that a license by the State Board of Nonpublic Career Education "shall not be considered an accreditation for the purpose of tax exemption under state law." §246.225, Fla. Stat., (1999). Applied in the context of the subject definition of "educational institution", the reference to accreditation is somewhat ambiguous, but a Senate Summary of the bill that created the Board simply states that "[t]he granting of a license under this act shall not be considered for tax exemption purposes." Senate Summary of Senate Bill 56, September 6, 1973, obtained from the State Archives on January 25, 2018. Although the licenses issued by the State Board of Colleges and Universities were explicitly declared not to be an accreditation, that provision

includes no reference to tax exemption. §246.141, Fla. Stat. (1999).

Chapter 1005 and the Commission for Independent Education were created in 2002 merging the functions of the two predecessor boards. The statutory scheme that governing the Commission contains and excludes elements from the statutes governing each of the Commission's predecessors. The Legislature elected to omit the specific reference excepting licensure by the Commission from consideration for tax exemption purposes that had been applicable to the Board of Nonpublic Career Education.

CONCLUSION

For the foregoing reasons, the Commission for Independent Education submits that institutions holding a license from the Commission meet the definition of educational institutions pursuant to section 196.12(5), Florida Statutes.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Courier New, 12-point font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by electronic mail on January 31, 2018, to the following counsel of record:

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