

**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re: School Board of Seminole County, Florida, OGC Case No. 19-1468

Petitioner.

_____ /

**FINAL ORDER GRANTING PETITION FOR VARIANCE FROM
RULE 62-602.270(1)(a), F.A.C**

On August 14, 2019, the School Board of Seminole County, Florida (Petitioner) filed a petition for variance under section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code (F.A.C.) from the requirements of Rule 62-602.270(1)(a), F.A.C., with the Department of Environmental Protection. The Petitioner seeks a variance or waiver from the cited provision in order to allow students enrolled in the Project H2O Tx learning program at Lake Brantley High School in Seminole County to take the Level C Wastewater Exam for the Operator Certification Program prior to high school graduation.

BACKGROUND AND APPLICABLE REGULATORY CRITERIA

1. The Florida Department of Environmental Protection (“Department”) is the state agency charged with the duty and power to establish eligibility criteria for the Level C /Wastewater Operator Examination.

2. The Petitioner seeks a variance or waiver from Rule 62-602.270(1)(a), F.A.C., which provides in pertinent part:

- *Rule 62-602.270(1)(a), F.A.C: Eligibility for Operator Examinations:*

(1) To be eligible for operator licensing examinations, the applicants must meet the following criteria:

(a) Have a high school diploma or its equivalent.

3. Petitioner is located at 400 East Lake Mary Boulevard, Sanford, Florida, 32773-7127.

4. The Department published Notice of Receipt of the petition in the Florida Administrative Register on August 16, 2019 and received no comments in response to the Notice.

SECTION 120.542, F.S., VARIANCE AND WAIVER PROVISION

Section 120.542(2), F.S., provides in pertinent part:

- (1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances... Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section.
- (2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Section 120.02(18), F.S. defines variance to mean:

- (18) "Variance" means a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance shall conform to the standards for variances outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5), F.S.

Section 120.02(19), F.S. defines waiver to mean:

- (19) "Waiver" means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule.

SECTION 403.872(4), FLORIDA STATUTES

5. Section 403.872(4), F.S., is the relevant underlying statute that the cited rule provision implements and includes as a criterion for licensure the requirement of a "high school diploma or its equivalent" in order to be a licensed wastewater treatment plant operator. Rule 62-602.270(1)(a), F.A.C., implements the cited statute, and provides that in order to be eligible to take the operator examination, the applicant must have obtained a high school diploma or its equivalent. The granting of this variance is appropriate as the Petitioner has demonstrated that the purpose of the underlying statute will be or has been achieved by other means, because the Department will not release student examination scores until the Department receives a copy of the student's high school diploma.

PRINCIPLES OF FAIRNESS AND SUBSTANTIAL HARDSHIP TO THE PETITIONER

6. "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

7. The Petitioner seeks a variance or waiver from Rule 62-602.270(1)(a), F.A.C., in order to allow students enrolled in the Project H2O Tx learning program at Lake Brantley High School to take the Level C Wastewater Exam for the Operator Certification Program prior to high school graduation.

8. Information provided by the Petitioner demonstrates that principles of fairness would be violated if the Petitioner is made to comply with the current examination requirement. The requirement to have a high school diploma or its equivalent to be eligible to sit for examination is a rule requirement, and because the Department will not release scores until receipt of the copy of the high school diploma for each student, the purpose of the underlying statute will continue to be met, as proof of the high school diploma will be required before a student's score is released. Petitioner has demonstrated that its students will suffer a substantial hardship if they are precluded from taking the exam prior to obtaining the high school diploma; entry into the workforce upon graduation would be delayed and an economic hardship would occur.

THEREFORE, IT IS ORDERED

9. For the forgoing reasons, Petitioner has demonstrated that it has met the requirements for a variance or waiver from Rule 62-602.270(1)(a), F.A.C., subject to the following conditions:

- a. The opportunity to be eligible to take the Level C Wastewater examination for operator certification prior to obtaining a high school diploma is limited to high school seniors in the Project H2O Tx learning program at Lake Brantley High School.
- b. Seniors in the Project H2O Tx learning program are only eligible for examination after January 1 in the second semester of their senior year.
- c. The School Board of Seminole County, Florida shall provide documentation in writing that each student has met all graduation requirements, is projected to graduate on time, and has met all requirements of the Operator Certification Program, prior to each senior being allowed to register for the Level C Wastewater examination.
- d. Within 10 days of receipt of a copy of each student's high school diploma, the Department's Operator Certification Program will release the examination scores to Lake Brantley High School and the student.
- e. Scores will not be released prior to the Department's receipt of a high school diploma.

- f. This variance shall be for a period of 5 years from the date of this Final Order and does not relieve applicants from meeting all other examination and licensure requirements.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Section 120.569 and 120.57, F.S. before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the request for a variance or waiver.

A person whose substantial interests are affected by the Department's Order may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. Pursuant to Rule 28-106.201, Florida Administrative Code, a petition must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the Department action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must contain the information set forth and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, and Tallahassee, Florida 32399-3000. Also, a copy of the petition shall be mailed to the Seminole County School Board, 400 East Lake Mary Boulevard, Sanford, Florida, 32773-7127, at the time of filing.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the School Board of Seminole County, Florida, must be filed within twenty-one days of receipt of this order. Petitions filed by any persons other than the School Board of Seminole County, Florida, and other than those entitled to written notice under section 120.60(3), Florida Statutes must be filed within twenty-one days of publication of the notice or within twenty-one days of receipt of written notice, whichever occurs first. Under section 120.60(3), Florida Statutes, however, any person who asked the Department for notice of agency action may file a petition within twenty-one days of receipt of such notice, regardless of the date of publication.

The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120569 and 120.57, Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will only be at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, Florida Administrative Code.

Under Rule 62-110.106(4) of the Florida Administrative Code, a person whose substantial interests are affected by the Department's action may request an extension of time to file a petition for an administrative hearing. Requests for extension of time must be filed (received by the clerk) with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the end of the time period for filing a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise contain the same information as set forth above, as required by rule 28-106.301, F.A.C.

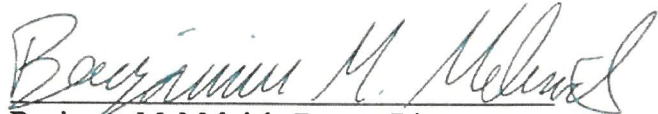
Mediation is not available for this proceeding.

Once this permitting decision becomes final, any party to the final agency action has the right to seek judicial review of it under section 120.68 of the Florida Statutes, by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, or via email at agency_clerk@dep.state.fl.us, 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 must be filed within thirty days after this order is filed with the clerk of the Department.

DONE AND ORDERED this 18th day of October, 2019, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Benjamin M. Melnick, Deputy Director
Division of Water Resource Management
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Deputy Donna M. Stovridge 10/18/19
CLERK DATE

Electronic Copies Furnished to:
School Board of Seminole County, Petitioner (johnsogz@scps.k12.fl.us)
Ronald McCulley, DEP Program Administrator (ronald.mcculley@dep.state.fl.us)
Betsy Hewitt, DEP Office of General Counsel (betsy.hewitt@dep.state.fl.us)
Lea Crandall, DEP Agency Clerk (agency_clerk@dep.state.fl.us)
Suzanne Printy, Chief Attorney, Joint Administrative Procedures Committee
(printy.suzanne@leg.state.fl.us)