

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES B. BROWN, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-2922  
 )  
 NORTH FLORIDA )  
 COMMUNITY COLLEGE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Stephen F. Dean, held a formal hearing in the above-styled case on October 1-3, 2002, in Tallahassee, Florida.

APPEARANCES

For Petitioner: James B. Brown, pro se  
Post Office Box 584  
Madison, Florida 32340

For Respondent: Bruce A. Leinback, Esquire  
Bird and Leinback, P.A.  
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STATEMENT OF THE ISSUE

Whether Respondent discriminated in its hiring practices against Petitioner because of his race, and whether Respondent retaliated against Petitioner because he filed a charge of discrimination, and a complaint.

PRELIMINARY STATEMENT

In October 2000, Petitioner filed a Charge of Discrimination against Respondent. He filed an Amended Charge of Discrimination on May 3, 2001. The Florida Commission on Human Relations (FCHR or Commission) conducted an investigation, determined there was no cause, and gave Petitioner notice of its determination and of his right to a hearing. Petitioner asked for a final hearing and the case was forwarded to the Division of Administrative Hearings. The case was noticed for hearing on October 1 through 3, 2002, by a notice dated August 28, 2002. The case was heard as noticed.

Petitioner testified in his own behalf and subpoenaed Clyde Alexander, Respondent's athletic director and equity coordinator as a witness. Petitioner introduced Petitioner's Exhibits numbered 1-18. The witnesses for Respondent were Amelia Mulkey, Respondent's Dean of Administrative Services; William Hunter, Director of Human Resources; Nancy McClellan, Director of Student Support Services and the College Reach Out Program; Mary Anne Wheeler, Director of Student Services; and David Proctor, a history instructor and department chair for the History and Social Sciences Department. Respondent introduced Respondent's Exhibits numbered 1-36.<sup>1</sup> The five-volume transcript was filed on October 31, 2002. Petitioner

and Respondent both filed post-hearing proposed recommended orders which were read and considered.

FINDINGS OF FACT

1. On or about October 2000, Petitioner filed a Charge of Discrimination with the FCHR. (The Charge of Discrimination was FCHR No. 2101775). Thereafter, on or about May 3, 2001, Petitioner filed an Amended Charge of Discrimination (attached to Petition for Relief filed on July 17, 2002). The essence of the Amended Charge was that he had been discriminated against on the basis of race because whites were employed in positions for which he had applied. Petitioner also alleged retaliation and claimed that after he filed his initial Charge of Discrimination, he was not rehired by Respondent as an adjunct instructor and he was denied compensation.

2. The Commission conducted an investigation and on June 4, 2002, issued a Determination: No Cause. The Commission found that there was "no reasonable cause to believe that an unlawful employment practice has occurred."

3. On the same date, the Commission also issued a Notice of Determination: No Cause, in which it advised Petitioner of his right to request an administrative hearing by filing a Petition for Relief within 35 days of the Notice. Petitioner was also advised that if he failed to request an

administrative hearing within 35 days "the administrative claim under the Florida Civil Rights Act of 1997, Chapter 760, will be dismissed pursuant to Section 760.11, Florida Statutes (1992)." Petitioner did not file his petition for relief until July 17, 2002, 43 days after the date of the Notice of Determination.

4. In his Petition for Relief, Petitioner claimed that he had been denied full-time employment by Respondent since 1998, and when complaints were filed, Respondent retaliated against him by not rehiring him as an adjunct instructor and denying him unemployment compensation.

5. Petitioner is an African-American male. He received a bachelor of science in mathematics education from Tuskegee University in 1967; a master's degree in business management from Rollins College in 1976; and, a Doctor of Education degree from the University of Central Florida in 2000.

6. Petitioner worked in private industry in Central Florida during the period 1972-1992. During portions of that time, he also worked as an adjunct instructor at Valencia Community College, Florida Southern, and Phillips College. He was employed full-time as an instructor at Brevard Community College from 1992-1996. From 1996 to 1998 he taught at Evans High School in Orlando where he also served as the assistant football coach. Petitioner also taught mathematics and

science classes to fifth to eighth grade students at Madison Middle School for part of the 1998/1999 school year. In 1998, Petitioner began teaching as an adjunct instructor at North Florida Community College (College).

7. The College is located in Madison, Florida. It serves the six counties of Hamilton, Madison, Jefferson, Suwannee, Lafayette, and Taylor. The College's district is, geographically, the largest community college district in Florida.

8. Respondent offers a variety of programs ranging from its college transfer program with an associate of arts (AA) or associate of science (AS) degree to two vocational certificate programs. Total enrollment varies from 3,000 to 4,000, depending on vocational enrollments which are demand-based. The current FTE (full-time equivalency) is just under 800. Classes are taught at the campus in Madison and at public high schools in each of the six counties in the service district.

9. Approximately 72 percent of the population of the district is white and 28 percent is non-white. Enrollment at the College mirrors to a large extent the population of the district, except in the college transfer program, where the African-American enrollment is approximately 20 percent, white enrollment is 75 percent, and other groups, including Hispanics, comprise five percent of the students.

10. The Hispanic population of Respondent's six-county district has increased from 1,699 or 1.92 percent of the population in 1990, to 5,019 or 4.73 percent of the population in 2000. This represents a 195 percent increase. Statewide, Florida's Hispanic population grew by 70 percent during the same period.

11. Search committees are appointed by the president of the College and efforts are made to ensure that a member of Respondent's equity committee and a minority, if at all possible, are assigned to each committee.

12. A search committee was appointed by Respondent for each of the applications at issue in this case. Each search committee was charged with reviewing the applications which met the minimum qualifications for each position and then determining the most qualified individuals to be interviewed.

After the interviews, the search committee was to recommend the best qualified individual to be offered the position.

13. Search committees are not told to interview individuals of a particular race or gender, but they are encouraged to give special consideration to minorities. If the top two applicants are equal in terms of qualifications and one is a minority candidate and the other is not, they are told to recommend the hiring of the minority applicant over the non-minority.

14. There are 23 full-time instructors in the AA and AS degree programs at the College. Four of those are math instructors. In 1998, Petitioner applied for a position as a full-time mathematics instructor. There were no vacancies in the mathematics department at that time, nor has there been a vacancy for a full-time mathematics instructor at the College at any time since 1991.

15. In 1998, Respondent advertised for an instructor to teach computer science courses in the Business Department. The courses were designed to develop basic computer operation skills, and focused primarily on Microsoft Office Suite software.

16. At the hearing, Petitioner introduced a copy of a letter which was sent to Mr. Doug Brown, a college administrator, in July 1998. In the letter, Petitioner stated that he was "applying for a position in the business or education disciplines." Petitioner discussed his private sector employment experience and his college-level teaching experience, but did not state whether he had any computer science teaching or work experience.

17. The computer science vacancy was filled by a white female who had a master's degree in business and 18 graduate hours in computer science. She had been an adjunct computer science instructor at the College for two years prior to being

hired as a full-time instructor. She also taught computer science courses at Madison High School, and she had her own computer business.

18. In 1999, Respondent advertised for the position of program administrator for the North Florida Workforce Development Board. At the time, Respondent was the administrative entity and fiscal agent for the Workforce Development Board. Petitioner applied for the position. None of the applicants were interviewed and the position was never filled because it appeared that Respondent was going to be replaced as administrative entity and fiscal agent, which, in fact, occurred.

19. In December 1999, Respondent advertised to fill the position of project coordinator for the College Reach Out Program (CROP). The program targets economically and educationally disadvantaged youth enrolled in grades 6-12 in the schools in Respondent's service district, who have the potential to finish college but who are likely, without intervention, to drop out of high school. The goal of the program is to keep the students in high school, get them to graduate, and enroll in college. Requirements for the position of project coordinator included a bachelor of arts degree from a four-year college or university and three years



of experience working with alternative education programs, at risk youth, or teaching in a youth program department.

20. Approximately 30 persons, including Petitioner, applied for the position of CROP coordinator. A five-member search committee was appointed to review the applications and select individuals to be interviewed. The members of the search committee included Amelia Mulkey, who at the time was Respondent's Director of Financial Aid, Purchasing and Reports; Mary Anne Wheeler, Director of Student Support Services; and Clyde Alexander, an African-American who is Respondent's athletic director and equity coordinator.

21. After reviewing the applications, the search committee selected five individuals, including Petitioner and Nancy McClellan, to be interviewed. When the interviews were completed, the search committee chose not to rank the applicants. Instead the members unanimously recommended Nancy McClellan for the position.

22. Nancy McClellan was a white female with a bachelor's degree in psychology and a master's degree in social work. A major factor in the selection committee's decision was her ten years of experience working with at-risk adolescents at DISC Village in Leon County, Florida, where she coordinated a comprehensive vocational services program. Her work at DISC Village included assessment, case management, community

networking, career exploration, providing employability skills classes, coordinating with education and training providers, grant work, supervising staff, and counseling with parents.

23. In September 2001, Respondent advertised for a case manager for the College Reach Out Program (CROP) in Lafayette and Suwannee Counties. The qualifications for the position were identified as a bachelor's degree in secondary education, social work, or the social services field, with the provision that working with at-risk youth could substitute for education on a month-by-month basis.

24. Case managers are responsible for implementing the CROP programs in the counties to which they are assigned. They market, recruit, and provide services to students in the counties. They work closely with teachers, guidance counselors, students, and parents to enroll the students in the program and to ensure that the students remain in school and graduate. The case managers work with the students on a one-to-one basis. Experience has shown that a social work case management background is an important asset in a CROP case manager in Respondent's district. Students recruited for CROP have a multitude of family issues in their family lives which impact on their ability to remain in school. These include poverty, abuse, neglect, divorce, mental health, and disability issues, all of which social workers are taught to

identify, assess, and address. Case managers also educate parents of students regarding available financial aid and college preparation courses which their children should be taking.

25. Eight people, including Petitioner, applied for the position. Two individuals, Lynn Waller and Cheryl Chandler, were interviewed.

26. Lynn Waller was selected for the position. She has a bachelor's degree in social psychology. At the time she was selected, she had been employed as a children's case manager at Apalachee Center for Human Services, working with students in the Madison County School System. She was responsible for recruiting students, working with them, their parents, teachers, and guidance counselors to assess needs, perform psychological assessments, and coordinate same.

27. In his application, Petitioner stated that he had been employed as the CROP Coordinator by Respondent and by Brevard Community College. In fact, Petitioner had never been employed as the CROP Coordinator by Respondent or by Brevard Community College.

28. Petitioner had been employed as one of four part-time facilitators by Respondent from January through June 2000. His duties were to recruit students, organize them into groups, meet with the groups two days per week and schedule

one Saturday field trip per month. Nancy McClellan elected not to interview Petitioner for the case manager position, based upon her experience with Dr. Brown as a CROP field facilitator in 2000.

29. When Nancy McClellan assumed her role as CROP Coordinator, Petitioner had not recruited any students from Suwannee County. Eventually, he recruited a total of eight students for CROP. By contrast, in April 2000, Lafayette County had 23 students, Taylor County had 15, and Madison County had 35 students. While Petitioner was case facilitator for Suwannee County, Nancy McClellan received complaints from Suwannee County regarding Petitioner's failure to bring application forms to the County's schools, to pick them up when they had been filled out, and to attend scheduled meetings with students. Petitioner also failed to take the eight students who enrolled in the program on any field trips.

By contrast, the other field facilitators were taking the students on regular field trips which was an important part of motivating students to stay in school.

30. In June 2001, Respondent advertised for two positions: learning resource coordinator and transfer advisor. Both were grant-funded positions.

31. The learning resource coordinator is the manager of the tutoring lab for developmental students. These are

students who do not have the placement test scores to begin college level work. In the lab they receive assistance in developing their skills in mathematics and English. The learning resource coordinator supervises the transfer advisor, who works with students in developing skills in English, and the retention advisor, who works in developing students' mathematics skills. The learning resource coordinator also supervises and trains tutors, peer mentors, and does some individual tutoring. In addition to the requirement for a four-year degree, the advertisement for the position stated that language proficiency in Spanish was preferred.

32. The preference for Spanish proficiency was based upon the growing Hispanic population on Respondent's campus and the need for a staff person who could tutor the students in their own language, as well as to speak with the families who often accompany them to campus. Experience had shown that Hispanic students were better able to grasp concepts, as in mathematics, when they received tutoring in their native language.

33. There were 18 applicants for the position of learning resource coordinator, among them Petitioner. Petitioner was not selected to be interviewed by the search committee because he did not have proficiency in Spanish. The three individuals who were chosen to be interviewed were

proficient in Spanish: two were native Spanish speakers and one had a degree in Spanish.

34. Maria Elizabeth Gonzalez was selected to fill the position. She was a native of Colombia and a native Spanish speaker. She identified herself on her application as Hispanic. At the time she was selected, she had been working for the previous three years as a tutor and as a lab assistant.

35. The transfer advisor position is a grant-funded advisor position in the tutoring lab for developmental students. The transfer advisor works with developmental students in English; the retention advisor works with those students in mathematics.

36. The advertisement for the transfer advisor listed as one of the qualifications a bachelor's degree with an emphasis in English.

37. There were 20 applicants for the Transfer Advisor position. Petitioner was one of the applicants. Four individuals were chosen by the selection committee to be interviewed; all had an undergraduate degree with an emphasis in English. Petitioner was not chosen to be interviewed because his degree did not have an emphasis in English.

38. Carmen Renee Perez was selected to fill the position. She had a bachelor's degree in English and two

years of graduate work in English. She had also taught English as a second language. On her application she identified herself as Hispanic/Cuban/Caucasian.

39. In March 2000, Respondent advertised to fill the position of instructor of business and economics. The advertisement stated that the duties of the position would include teaching courses in business, management, accounting, finance, business law, and economics. The minimum requirements included an MBA from an accredited institution or a master's degree with a minimum of 18 semester hours of subject specific graduate course work.

40. There were between 20 and 30 applicants for the position. The search committee chose to interview five of the applicants. Among them were Petitioner; Ellen Stevens, a white female; and Scott Tori, a white male. Following the interviews, the search committee concluded that Dr. Brown had "great math credentials," but his business and economics credentials "were considerably less" than some of the other applicants. The committee concluded that both Ellen Stevens and Scott Tori were better qualified than Petitioner for the position. Ellen Stevens had a masters in business administration, and Scott Tori had a doctorate in economics. Scott Tori was offered the position and he accepted. In addition to his Ph.D., he had a master's degree in economics,

and a bachelor's degree in business administration, with an emphasis in finance. At the time he was hired, Tori was an assistant professor of economics and finance at Thomas University.

41. In the late winter of 2002, Respondent advertised to fill a vacancy caused by the retirement of the chemistry and physics instructor. The advertisement stated that the successful candidate would teach chemistry courses through the sophomore level, a year-long organic chemistry sequence, an algebra and calculus-based physics course sequence, and physical science courses, as needed.

42. Petitioner submitted a letter application to Respondent dated March 2, 2002, for a "mathematics/physics/science instructor" position. This was not the title of the open position. In his letter, Petitioner identified himself as a "professor of mathematics." Petitioner was considered for the position but not selected.

43. Terrence M. Zimmerman was determined by the search committee to be the best qualified to fill the position. He had a bachelor's degree in chemistry cum laude, a master's degree in science education, and all but a dissertation for a doctorate in chemistry. He had been an adjunct instructor in chemistry at Tallahassee Community College, an adjunct in chemistry and environmental science at Santa Fe Community



College and, at the time he was hired, he was teaching chemistry and environmental science for Respondent as an adjunct. From 1988 until the time he was hired, he also taught chemistry, environmental science, and general science at Taylor County High School in Perry, Florida.

44. Respondent presented credible evidence for each of the positions for which Petitioner applied establishing a non-discriminatory reason for Respondent's decision to hire someone other than Petitioner.

45. In 1998, Petitioner began teaching mathematics courses for Respondent as an adjunct instructor (Adjunct). Adjunct instructors (Adjuncts) are part-time faculty members who are hired by Respondent on a semester-by-semester basis to teach specific classes in subjects in which they are qualified to teach. Adjuncts teach classes at various locations throughout Respondent's six-county district. They are employed on an as-needed basis and execute a new contract for each semester they are hired.

46. Each semester, Respondent publishes a class schedule for the following semester. If Respondent has confirmed that a particular adjunct is going to be teaching a particular class, the adjunct's name will appear on the schedule. If an adjunct has not been confirmed to teach a particular class,

the designation of the instructor for that class will appear as "staff."

47. Petitioner was identified by name on the class schedule for one class each in the Spring and Fall of 1999, two classes in the Spring of 2000, and one class in the Fall of 2000. He taught classes in which the name of the instructor appeared on the class schedules as "staff" as follows: one class in the Fall of 1998, two classes in the Summer of 2000, and two classes in the Fall of 2000.

48. The department chair has the discretion to determine which individuals will be hired to teach as adjuncts. Generally, if there is an adjunct who is local, competent, and willing, he or she will be rehired. There is no prescribed procedure for contacting adjuncts. Sometimes the adjuncts contact the department chair; sometimes the department chair contacts the adjuncts.

49. In the Fall semester of 2000, David Proctor, a history professor, was department chair for Respondent's entire AA program. In addition to teaching three classes, one of which was in Hamilton County, he was responsible for scheduling full-time faculty instructors and 34 adjuncts to teach courses in the AA program. He was also responsible for preparing budgets for each department, evaluating faculty, and preparing class schedules.

50. David Proctor intended that Petitioner would teach some of the introductory and intermediate algebra and developmental arithmetic classes during the 2001 Spring Semester. He did not hear from Petitioner in the Fall of 2000 regarding Petitioner's interest in teaching for the 2001 Spring Semester while he was preparing the schedule for the semester; therefore, he used the term "staff" in place of the instructor's name for four classes, intending that Petitioner would teach some of them.

51. In October 2000, after the schedule for the Spring 2001 semester was published, Petitioner approached Proctor on the sidewalk outside the general classroom building on Respondent's campus and asked why his name was not in the schedule. Proctor assured Petitioner that he had every intention of having Petitioner teach during the Spring semester and suggested that they meet and decide what classes Petitioner would teach.

52. Proctor was subsequently unable to meet with Petitioner as scheduled, so he left a note for Petitioner in which he highlighted classes on the schedule and asked Petitioner to tell him which two classes he would like to teach. This occurred in late October or early November.

53. In December 2000, Proctor saw Petitioner outside Proctor's office in the adjunct mailbox area on campus and

remembered that he had not heard from Petitioner regarding Petitioner's choice of classes to teach during the Spring semester. Proctor approached Petitioner and suggested they look at the schedule together and identify the classes Petitioner wanted to teach. Petitioner informed Proctor that he was looking elsewhere for employment and he would not be teaching for Respondent. Proctor was surprised, but wished Petitioner well and offered to write letters of recommendation for him.

54. When Petitioner informed Proctor that he did not intend to teach for Respondent, Proctor asked a Hispanic adjunct instructor, Ephraim Bonilla, to pick up these additional courses.

55. The only subsequent contact Petitioner made with Respondent regarding teaching again as an adjunct was a single telephone call at an unspecified date to the new mathematics department chairman, Mr. Harris, during which Petitioner inquired if there were any courses available. Harris told him there were none. Petitioner asked another individual to call with the same question. The individual Petitioner asked to call reported to Petitioner that he had met with the same response.

56. When he prepared the schedule for the Summer of 2001, Proctor assumed that Petitioner was no longer interested

in teaching for Respondent, and when he did not hear from him, he did not put his name in the schedule.

57. When Proctor prepared the schedule for the 2001 Spring semester he was unaware that Petitioner had filed a charge of discrimination with the Commission. He was aware of it by the time he prepared the schedule for the Summer of 2001, but that knowledge played no role in his decision not to list Petitioner by name as an adjunct instructor when he prepared the class schedule for the Summer of 2001.

58. Petitioner filed a claim for unemployment compensation benefits effective December 17, 2001, because he was not employed by the College as an adjunct instructor during the 2001 Spring semester.

59. When Respondent received a copy of Petitioner's claim for unemployment compensation, Respondent's Director of Human Resources, Bill Hunter, spoke with David Proctor and learned from him that Petitioner had rejected the opportunity to teach during the 2001 Spring Semester. Bill Hunter provided this information on Respondent's copy of the claim and returned it to the Agency for Workforce Innovation.

60. Petitioner's claim for unemployment compensation was subsequently rejected by state officials and he appealed. Following a telephone hearing during which David Proctor and Petitioner testified, the appeals referee concluded that

Petitioner had refused Respondent's offer of an adjunct teaching position for the 2001 Spring Semester and, therefore, was properly barred from receiving unemployment compensation benefits. Petitioner subsequently sought review by the Unemployment Appeals Commission, which affirmed the decision of the appeals referee.

61. In August 2000, Petitioner, and several other college employees, filed a complaint against Respondent with the U.S. Department of Education, Office for Civil Rights (OCR), alleging that Respondent was discriminating against students on the basis of race with regard to recruitment and financial aid. The complaint also alleged that Respondent was discriminating on the basis of race in its hiring practices.

62. In a letter dated September 13, 2000, OCR notified Respondent's former president, Dr. Beverly Grissom, of the Complaint. In an attachment to the letter, OCR advised Dr. Grissom that "OCR does not reveal the name or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against an institution that violates the laws, or unless such information is required to be disclosed under the FOIA or the Privacy Act."

63. OCR subsequently determined that there was insufficient evidence to support the student financial aid and

recruitment allegations. OCR also determined that there was no statistically significant difference between the number of African-American administrators and faculty members actually employed and the expected employment rate based on the relevant labor market. OCR, therefore, concluded that it lacked jurisdiction to further investigate the matter. Finally, OCR referred the individual employment allegations in the complaint to the U. S. Equal Employment Opportunity Commission because it did not have jurisdiction over such claims. Consistent with its September 13, 2000, letter to Dr. Grissom, OCR did not identify the individual complainants, and Respondent was not otherwise aware of this until the hearing in this case that Petitioner had been one of the complainants.

64. Respondent's decisions with regard to filling the vacancies for which Petitioner applied were not based on race, nor were they based on any retaliatory motive.

65. Respondent's decision regarding the absence of Dr. Brown's name from the Spring 2001 class schedule was not based upon a retaliatory motive, nor was there a retaliatory motive involved in informing the unemployment compensation office that Petitioner had refused the offer of a position as an adjunct instructor for the 2001 Spring Semester.

CONCLUSIONS OF LAW

66. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.569 and 120.57(1), Florida Statutes.

67. Respondent moved to dismiss the instant complaint because Petitioner filed his Petition for Relief 43 days after the date of the Notice of Determination: No Cause, and his request for an administrative hearing was untimely. It is well settled that a forum has jurisdiction to consider a motion to dismiss for lack of jurisdiction.

68. Section 760.11(7), Florida Statutes, provides in pertinent part as follows:

(7) If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause and any such hearing shall be heard by an administrative law judge and not by the commission or a commissioner. If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred.

69. Pursuant to Section 760.11(7), Florida Statutes, Petitioner's claim is barred as a matter of law and the Division of Administrative Hearings has no jurisdiction over this matter. However, because the Commission in the past has



failed to enter its final order dismissing untimely claims, this Order will consider the merits of Petitioner's claims.

70. Under the provisions of Section 760.10, Florida Statutes, it is unlawful employment practice for an employer:

(1)(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

71. It is also an unlawful employment practice for an employer "to discriminate against any person because that person has opposed a practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section."

Section 760.10(7), Florida Statutes.

72. The Commission and the Florida Courts have determined that federal discrimination law should be used as guidance when construing the provisions of Section 760.10, Florida Statutes. See Brand v. Florida Power Corporation, 633 So. 2d 504, 509 (Fla. 1st DCA 1994); Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

73. Petitioner has the burden of proof in this case to show that he was discriminated against on the basis of race

and unlawful retaliation. See St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993). There is, however, a shifting burden of persuasion. McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973).

74. Petitioner must establish a prima facie case of discrimination; once he has done so, Respondent must articulate some legitimate, non-discriminatory reason for the employment action. When Respondent does so, Petitioner must prove that Respondent's reason was a mere pretext for unlawful discrimination. McDonnell Douglas Corporation v. Green, supra.

75. To establish a prima facie case of unlawful discrimination on the basis of race in this case, Petitioner must show that (1) he is a member of a protected group; (2) who was qualified for the positions for which he applied; (3) who suffered an adverse employment action; and (4) under circumstances giving rise to an inference of discrimination. See McDonnell Douglas Corporation v. Green, supra; St. Mary's Honor Center v. Hicks, supra.

76. To establish a prima facie case of retaliation, Petitioner must prove: (1) protected opposition to discrimination; (2) an adverse employment action; and (3) a causal connection between the protected activity and the

adverse employment action. Little v. United Technologies, 103 F.3d 956 (11th Cir. 1997).

77. With regard to Petitioner's allegations regarding discrimination in hiring, Petitioner showed he was a member of a protected class. He was basically qualified for all of the positions with exception of the chemistry instructor position.

He lacked the ancillary language requirement (Spanish) for one position and the emphasis in English in another position.

However, Respondent presented evidence showing a legitimate non-discriminatory reason for hiring each of the persons it hired, and in one instance, that no one was hired and the position was eliminated.

78. If Petitioner establishes a prima facie case, the burden shifts back to Respondent to articulate a legitimate business reason for its actions. Here, Respondent's burden is "exceedingly light." Meeks, supra. If the employer articulates a legitimate non-retaliatory or non-discriminatory reason for the action, the presumption raised by the prima facie case drops from the case. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 255, n. 10 (1981). The burden of persuasion then shifts to plaintiff to show that the articulated reasons were merely a pretext for unlawful discrimination. See Clark v. Huntsville City Board of Education, 717 F.2d 525 (11th Cir. 1983). Petitioner did not

show that the reasons set forth for Respondent's hiring decisions were pretextual.

79. With regard to Respondent's allegations of retaliation in denying him employment as an adjunct in the Spring semester of 2001, the better evidence shows that there was no adverse employment action. Respondent did not deny Petitioner the opportunity to teach. On the contrary, Respondent, through David Proctor, made reasonable efforts to hire Petitioner as an adjunct instructor for the Spring semester. Those efforts were rejected by Petitioner who, in December 2000, informed David Proctor that he would not be available to teach. Petitioner has, therefore, failed to establish a prima facie case of retaliation with regard to this issue.

80. Further, to prove causation in a retaliation context, Petitioner must show "that the protected activity and the adverse action are not completely unrelated." Meeks v. Computer Association, Interiors, 15 F.3d 1013, 1021 (11th Cir. 1994).

81. David Proctor was unaware of either of Petitioner's discrimination claims when he prepared the 2001 Spring semester schedule. Respondent's management was unaware of Petitioner's role in the 2000 OCR Complaint until the hearing in this case. The instant claim was filed after these events.

Petitioner failed to prove a causal connection between the alleged failure to continued his employment as an adjunct and a protected activity.

82. To the extent that Petitioner may have claimed continuing retaliation, the only time Petitioner ever contacted Respondent after the Fall of 2000 regarding adjunct employment opportunities, was when he called the new mathematics department chairman to inquire about adjunct vacancies and was told that there were no vacancies. A call by another individual, at Petitioner's request, garnered the same response. Petitioner chose not to contact David Proctor regarding the 2001 Summer semester schedule, and Proctor did not contact him because Petitioner had stated in December 2000 that he was going to be pursuing other employment opportunities.

83. Having presented no evidence to show that any of Respondent's articulated reasons for the actions were pretexts for unlawful discrimination, Petitioner has failed in his burden of proof with regard to this last issue.

#### RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED:

That the Florida Commission on Human Relations enter its final order dismissing the case.

DONE AND ENTERED this 12th day of December, 2002, in Tallahassee, Leon County, Florida.

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Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of December, 2002.

ENDNOTE

1/ Respondent introduced Exhibits 1-34 at the hearing. At the conclusion of the hearing, the Administrative Judge granted Respondent leave to file two post-hearing exhibits. The first was correspondence sent to Respondent by the Office of Civil Rights of the U. S. Department of Education along with the affidavit of the custodian of records; the second was census data on the Hispanic population in Florida and in Respondent's six-county district.

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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 shall be filed with the agency that will issue the Final Order in this case.