STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LINDAURA ELLIS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 02-3498
	)	
VILLAGE METHODIST DAY SCHOOL,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case by video teleconference on July 11, 2003, with connecting sites in Fort Lauderdale and Tallahassee, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stewart Lee Karlin, Esquire
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For Respondent: Mark A. Hanley, Esquire
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STATEMENT OF THE ISSUE

The issue for determination is whether Respondent discriminated against Petitioner on the basis of national origin in violation of the Florida Civil Rights Act of 1992, as amended.

PRELIMINARY STATEMENT

Lindaura Ellis filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR) against Village Methodist Day School (Day School) alleging that the Day School discriminated against her on the basis of her national origin (Hispanic). On August 7, 2002, the FCHR issued a determination of no cause and a notice of determination of no cause. On September 3, 2002, Ms. Ellis filed a Petition for Relief from an unlawful employment practice with the FCHR against the Day School. On September 10, 2002, the FCHR referred this matter to the Division of Administrative Hearings.

The hearing was originally scheduled for December 13, 2002. At the time the hearing was set, neither party was represented by counsel. Subsequent to setting the hearing, the Day School obtained counsel. Certain difficulties developed with Ms. Ellis, and the hearing was continued. After the continuance, Ms. Ellis was represented by a qualified representative, Shalom David Ebbo.

The hearing was re-scheduled for May 1, 2003. Prior to the scheduled hearing, Ms. Ellis obtained counsel, who requested a continuance of the hearing, which was granted.

At hearing, Ms. Ellis testified in her own behalf, presented the testimony of one witness, and entered 25 exhibits (Petitioner's Exhibits numbered 1-13, 15-22, 24, 26, 27, and 32) into evidence.[1] The Day School presented the testimony of one witness and entered 12 exhibits (Respondent's Exhibits numbered 1-11, and 13), which included deposition testimony, into evidence.

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for more than ten days following the filing of the transcript. The Transcript, consisting of one volume, was filed on August 5, 2003. An extension of time was granted for the filing of the post-hearing submissions. The parties timely filed post-hearing submissions, which were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Ms. Ellis was born in Peru. She is Hispanic. No dispute exists that she is a member of the protected class as it relates to discrimination.

2. No dispute exists that, at all times material hereto, the Day School was an employer as defined by the Florida Civil Rights Act of 1992, as amended.

3. No dispute exists that Ms. Ellis has day care and pre-school experience. She was a teacher in pre-school and day care in Peru and in the United States after moving to the United States with her husband in 1988. Ms. Ellis was also a previous owner of a day care in the United States.

4. In 1998, Ms. Ellis moved to Florida with her husband. She found employment as a day care teacher. In working as a day care teacher, Ms. Ellis also assisted with cleaning the room in which the children were located.

5. On January 10, 2000, Ms. Ellis requested a teacher's assistant or teacher's aide position at the Day School. She did not know of any openings at the Day School. The Day School had not advertised any vacant positions. Ms. Ellis met with Ms. Louise Brand, the director of the Day School.[2]

6. The Day School was associated with a church and had a diverse student population. The student population included children from different Hispanic countries, Haiti, and the Bahamas. The diverse student population also included children from different socio-economic backgrounds. Additionally, the teachers and teacher's aides, as well, were diverse.[3]

7. At the meeting on January 10, 2000, Ms. Brand inquired as to Ms. Ellis' birthplace, and Ms. Ellis informed her that it was Peru. Ms. Ellis presented to Ms. Brand several certificates, which indicated, among other things, that Ms. Ellis had completed courses and training regarding the care of children. Ms. Ellis also presented documents showing that she had experience in day care centers assisting teachers. Ms. Brand requested a high school diploma from Ms. Ellis. The Day School requires a high school diploma to be hired as a teacher's aide or teacher's assistant, but Ms. Ellis was not informed by Ms. Brand that the Day School was requiring a diploma for the position of a teacher's aide or teacher's assistant. Ms. Ellis had a high school diploma from Peru but did not provide proof of having it to Ms. Brand because Ms. Ellis did not have the diploma with her, since none of the other day care centers at which she worked had requested the diploma.

8. A teacher's assistant, teacher's aide, and assistant teacher are one in the same. These terms and positions were used interchangeably in testimony. Teacher's assistant and teacher's aide are used interchangeably in this Recommended Order.

9. Ms. Brand was aware that Ms. Ellis was Hispanic.

10. At hearing, it was evident that Ms. Ellis speaks with an accent which is Hispanic. Additionally, an interpreter was used when Ms. Ellis testified to make it easier for her (Ms. Ellis) to respond to the questions asked.

11. Ms. Ellis speaks basic English.

12. The Day School requires a teacher's aide to be able to "speak, read and write English." Ms. Brand did not inform Ms. Ellis that speaking English was a requirement to be a teacher's aide at the Day School. Ms. Ellis was not aware that speaking English was a requirement.

13. Ms. Brand instructed Ms. Ellis to return the next day for work. When Ms. Ellis left the Day School, she was expecting to be hired as a teacher's assistant.

14. Ms. Ellis returned to the Day School the next day, dressed to teach, and brought a completed employment application with her. To Ms. Ellis' surprise and dismay, Ms. Brand informed her that no position for a teacher's assistant was available; that only a cleaning position was available; and that Ms. Ellis could take the position of a cleaning/housekeeping person until a teacher's assistant position became available. Ms. Ellis agreed to take the cleaning/housekeeping position.[4] Ms. Brand was Ms. Ellis' supervisor.

15. The Day School requires a housekeeping person to be able to "speak, read and write English."

16. As the cleaning/housekeeping person at the Day School, Ms. Ellis had several responsibilities. Her responsibilities included mopping; vacuuming; cleaning out refrigerators; cleaning curtains; assisting the cook; cleaning the area where the children ate; taking out the garbage, which weighed approximately 60 to 70 pounds; moving and placing donated canned goods; and taking out bags of mulch. Ms. Ellis' duties spanned two buildings.

17. Ms. Ellis complained to no avail to Ms. Brand regarding all of the duties given her. Ms. Ellis considered the work to be too much and some of the work to be too heavy.

18. In February 2000, while at work, Ms. Ellis slipped on the floor at the Day School and ammonia was spilled over her body. She was on her way to complain to Ms. Brand about the inordinate amount of work that she was doing. Ms. Ellis had headaches for two weeks after the accident. No evidence was presented that Ms. Ellis reported the accident to Ms. Brand.

19. After slipping on the floor, Ms. Ellis inquired of Ms. Brand as to when she was going to be hired as a teacher's assistant. Ms. Brand ignored her question and told her to return to work.

20. In February 2000, Ms. Ellis attempted to give Ms. Brand a copy of her diploma. Ms. Brand informed her that she (Ms. Brand) did not need a copy.

21. Subsequent to the inquiry about a teacher's assistant position, Ms. Ellis observed individuals, who were white and who had not completed high school, being hired as, believed by Ms. Ellis, teacher's assistants. Ms. Ellis questioned Ms. Brand regarding hiring her as a teacher's assistant. Ms. Brand ignored her and told Ms. Ellis to return to work.

22. No dispute exists that, in the summer of 2000, high school students, who were non-Hispanic, were hired as part-time teacher's aides. Also, some worked more hours than part-time.

23. Ms. Ellis continued to inquire of Ms. Brand about being hired as a teacher's assistant. Ms. Brand told Ms. Ellis that "Spanish are only good for cleaning" and to return to work. Ms. Ellis continued to work as the cleaning/housekeeping person.

24. On Friday, August 4, 2000, around noon, Ms. Ellis injured her back while attempting to throw garbage into the dumpster. She had taken garbage, weighing approximately 60 or 70 pounds, to the dumpster. Ms. Ellis attempted several times to lift and throw the garbage into the dumpster but could not. On her last attempt, she heard something click in her back and remained at the dumpster, without trying to move. After an elapse of some time, Ms. Ellis went to Ms. Brand's office, holding her lower back, and explained to Ms. Brand what happened. Ms. Brand told Ms. Ellis to return to work. Ms. Ellis then requested to go to the hospital, but Ms. Brand

denied the request, informing Ms. Ellis that she could go wherever she wanted after 5:30 p.m., which was the end of Ms. Ellis' workday. Ms. Ellis remained on the job until 5:30 p.m.

25. After 5:30 p.m., Ms. Ellis saw a physician, Seth H. Portnoy, D.O., who determined that she had injured her back, a lumbar strain. Dr. Portnoy wrote a prescription of restrictions, which indicated that Ms. Ellis should not perform any bending, lifting, pushing, or pulling for 10 to 14 days and that she needed rest.

26. On the following Monday, August 7, 2000, Ms. Ellis gave the prescription to Ms. Brand, who threw it on the floor and told Ms. Ellis to go to work. Ms. Ellis went to work even though she was in pain and taking prescribed medication for pain.

27. For the next two weeks, Ms. Ellis continued to come to work although she performed very light and little, if any, work. During the entire time, she was in pain and taking prescribed medication for her back. Ms. Ellis continued to request time off for her injury from Ms. Brand, but Ms. Brand refused to pay Ms. Ellis while she was off, thereby not working, so Ms. Ellis continued to come to work.

28. On August 17, 2000, while at the Day School, Ms. Ellis was having severe pain and sat down, not proceeding to a

building to which Ms. Brand had directed her to go. When Ms. Ellis failed to report to the building, Ms. Brand directed someone to send Ms. Ellis to her (Ms. Brand's) office.

29. Before getting to Ms. Brand's office, Ms. Ellis and Ms. Brand met one another at the kitchen. Ms. Brand had a list of duties that Ms. Ellis was expected to perform in order to continue to work at the Day School, including taking out garbage. Also, at that time, Ms. Brand wanted Ms. Ellis to take out a heavy bag of garbage; however, Ms. Ellis refused to take out the garbage.

30. Ms. Brand told Ms. Ellis to follow her to her (Ms. Brand's) office. At the office, Ms. Ellis and Ms. Brand got into a shouting match. Ms. Brand made abusive remarks to Ms. Ellis and poked Ms. Ellis with her finger. Ms. Ellis tried to leave Ms. Brand's office, but Ms. Brand prevented her from leaving. A small and short scuffle ensued, with Ms. Brand grabbing Ms. Ellis' shirt, tearing it, and Ms. Ellis suffered a bruise on her buttocks from falling on Ms. Brand's desk. Ms. Ellis was shortly thereafter able to leave Ms. Brand's office, and left shouting "She [Ms. Brand] fired me. She fired me!"

31. When Ms. Ellis left Ms. Brand's office, she (Ms. Ellis) believed that Ms. Brand had fired her. Ms. Ellis did not return to the Day School to work.

32. No dispute exists that between January 2000 and December 2000, the Day School employed full-time and part-time teachers and teacher's aides, some of whom were Hispanics.

33. One such Hispanic teacher's aide was Maria Guerrero who is from the country of Colombia. Ms. Guerrero was hired by Ms. Brand at the Day School around February or March 2000, to work in the afternoons as a teacher's aide and anywhere she was needed. Ms. Guerrero has a high school diploma.

34. Not only was Ms. Guerrero a teacher's aide, but she also had the duties of helping in the kitchen, sweeping floors, taking children on the outside and not remaining inside at any time, and taking out the garbage. As to the garbage, Ms. Guerrero dragged the garbage bags because they were too heavy to lift. At times, some of the non-Hispanic teachers and teacher's aides assisted in doing these same additional duties to "help out," but none were required to do so as often as Ms. Guerrero. Ms. Guerrero considered such treatment of Hispanics by Ms. Brand to be different than the treatment of non-Hispanics by Ms. Brand. Ms. Guerrero resigned from her position in June 2000 because she could no longer handle the many duties imposed upon her by Ms. Brand; because she felt that she was being treated unfairly by Ms. Brand; and because constantly being in the outside heat was too much for her.

35. In addition to being a teacher's aide, Ms. Guerrero was a "floater." The duties of a floater are generally the same as were Ms. Guerrero's additional duties, i.e., filling in where needed.

36. Ms. Guerrero was present when Ms. Brand made the remark to Ms. Ellis regarding Spanish people. Ms. Guerrero heard Ms. Brand state that "Spanish is good for cleaning." The undersigned finds no difference in this statement and the statement indicated by Ms. Ellis, i.e., "Spanish are only good for cleaning." Ms. Guerrero's testimony is found to be credible.

37. At the time Ms. Ellis was in Ms. Brand's office on August 17, 2000, Dorothy Scowronski's, who is the present director of the Day School, worked in the administrative office and was referred to as the "front desk" person. Ms. Scowronski's desk was approximately five feet from Ms. Brand's office. Only a wall and a door separated Ms. Scowronski from Ms. Brand's office. Ms. Brand had two doors in her office which were usually open but were closed at this time. Although Ms. Scowronski was unable to hear what was being said between Ms. Ellis and Ms. Brand, she knew that the two of them were shouting.

38. Ms. Scowronski agrees that Ms. Ellis left Ms. Brand's office shouting that she was fired but also recalls Ms. Brand

walking behind Ms. Ellis and telling Ms. Ellis that she was not fired. The undersigned does not find the testimony credible that Ms. Brand told Ms. Ellis that she was not fired.

39. Ms. Brand terminated Ms. Ellis from employment with the Day School.

40. No evidence was presented that Ms. Brand sent or Ms. Ellis received written communication that Ms. Ellis was terminated from employment.

41. Since August 17, 2000, when she was terminated, Ms. Ellis has not worked and has not been able to work, which includes seeking employment, because of her back injury. She has herniated discs, is totally disabled,[5] and is in constant pain. She cannot sleep. She has no insurance. Ms. Ellis has a pending workers' compensation claim based on the injury to her back at the Day School.

42. Ms. Ellis pays $80.00 a month for prescribed medication for depression. No evidence was presented as to a psychological or psychiatric report regarding her depression. The evidence is insufficient to draw an inference that the depression is a result of her experience at and termination from the Day School.

43. Ms. Ellis' position as the cleaning/housekeeping person paid $7.25 per hour. She worked eight hours a day, five days a week.

44. The evidence does not show that an allegation of hostile work environment was set forth in Ms. Ellis' complaint of discrimination or Petition for Relief. Further, the evidence does not show that the FCHR investigated an allegation of hostile work environment.

45. Ms. Ellis was represented by counsel in this matter.

CONCLUSIONS OF LAW

46. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto, pursuant to Sections 760.11, 120.569, and 120.57(1), Florida Statutes (2003).

47. Section 760.10, Florida Statutes (2000), provides in pertinent part:

> (1) It is an unlawful employment practice for an employer:
>
> (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.
>
> (b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

48. Ms. Ellis' charge of discrimination is not limited to her termination but also includes disparate treatment as to her not being hired as a teacher's aide at the Day School.

49. The instant case does not involve a case of direct evidence of discrimination. A three-step burden and order of presentation of proof have been established for such unlawful employment practices. McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 688 (1973); Aramburu v. The Boeing Company, 112 F.3d 1398, 1403 (10th Cir. 1999). The initial burden is upon Ms. Ellis to establish a prima facie case of discrimination. McDonnell Douglas, at 802; Aramburu, at 1403. Once she establishes a prima facie case, a presumption of unlawful discrimination is created. McDonnell Douglas, at 802; Aramburu, at 1403. The burden shifts then to the Day School to articulate some legitimate, nondiscriminatory reason for its action. McDonnell Douglas, at 802; Aramburu, at 1403. If the Day School carries this burden, Ms. Ellis must then prove by a preponderance of the evidence that the reason offered by the Day School is not its true reason, but only a pretext for discrimination. McDonnell Douglas, at 804; Aramburu, at 1403.

50. However, at all times, the ultimate burden of persuasion that the Day School intentionally discriminated against Ms. Ellis remains with her.

Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981).

51. Ms. Ellis establishes a prima facie case of discrimination by showing: (1) that she belongs to a protected group; (2) that she was subjected to an adverse employment action; (3) that her employer treated similarly situated employees outside the protected group differently or more favorably; and (4) that she was qualified to do the job. McDonnell Douglas, supra; Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997); Aramburu, supra.

52. Applying the prima facie standards, no dispute exists that Ms. Ellis satisfies the first element.

53. Ms. Ellis satisfies the second element in that the evidence shows that Ms. Ellis was not hired in the position as a teacher's aide and was terminated from her position as a cleaning/housekeeping person.

54. As to the third element, Ms. Ellis must show that she and the other employees (the comparator employees) are "similarly situated in all relevant respects." Holifield, supra, at 1562. In making such a determination, consideration must be given to "whether the employees are involved in or accused of the same or similar conduct and are disciplined in different ways." Ibid.

55. The comparator employees "must be similarly situated in all material respects, not in all respects." McGuinness v. Lincoln Hall, 263 F.3d 49,53 (2d Cir. 2001); Shumway v. United Parcel Service, Inc., 118 F.3d 60, 64 (2d Cir. 1997). "In other words, . . . those employees must have a situation sufficiently similar to plaintiff's to support at least a minimal inference that the difference of treatment may be attributable to discrimination." McGuinness, supra, at 54. Similarly situated "only requires similar misconduct from the similarly situated comparator." Anderson v. WBMG-42, 253 F.3d 561, 565 (11th Cir. 2001).

56. Ms. Ellis satisfied the third element as to the teacher's aide position. She established that applicants who were non-Hispanic and who did not have a high school diploma were hired as teacher's aides.

57. However, Ms. Ellis failed to satisfy the third element as to her termination. The evidence was insufficient to establish that other similarly situated employees outside of her protected group were treated differently or more favorably by Ms. Brand. Consequently, Ms. Ellis failed to satisfy the prima facie requirement for her termination.

58. Ms. Ellis satisfied the fourth element, as to the teacher's aide position, by establishing that she was qualified for the position. Applicants who did not have a high school

diploma were hired in the position. Ms. Brand did not have a high school diploma from Ms. Ellis, although it was made available by Ms. Ellis.

59. The requirement of speaking English for the teacher's aide position must also be addressed. This same requirement applied to the cleaning/housekeeping position. The Day School asserts that Ms. Ellis qualified for the cleaning/housekeeping position but failed to qualify for the teacher's aide position based on this same requirement. The Day School's assertion is not persuasive.

60. Once Ms. Ellis establishes a prima facie case, a presumption of unlawful discrimination is created.

61. Regarding the second-step burden of proof, the Day School failed to demonstrate a legitimate, nondiscriminatory reason for its employment action. As to not hiring Ms. Ellis as a teacher's aide, none of the high school students hired as teacher's aides had a high school diploma.

62. Further, regarding the second-step burden of proof, the Day School further argues that Ms. Brand was under no obligation to hire Ms. Ellis because Ms. Ellis' developed a poor attitude after her injury on August 4, 2000, due to Ms. Ellis complaining about her work. The poor attitude that the Day School points out occurred in August 2000, but the evidence establishes that high school students were hired as teacher's

aides before August 2000. The Day School's argument is not persuasive.

63. As to Ms. Ellis' termination, as indicated previously, she failed to satisfy the prima facie case requirement. Assuming that she had satisfied the prima facie requirement, the Day School showed that Ms. Ellis had not followed a directive by her supervisor, Ms. Brand, to continue with her work, which was light duty. As a result, Ms. Ellis had not complied with a direct order from her supervisor, which was a legitimate reason for terminating her.

64. Ms. Ellis must now demonstrate by a preponderance of the evidence that the reason offered by the Day School for not hiring her as a teacher's aide is not its true reason, but only a pretext for discrimination. McDonnell Douglas, at 804; Aramburu, at 1403.

65. Ms. Ellis met her burden. The Day School asserts that it did not hire Ms. Ellis as a teacher's aide because she did not have a high school diploma and could not speak English. The evidence shows that Ms. Ellis attempted to provide Ms. Brand with her diploma, but Ms. Brand told her that the diploma was not needed. The evidence further shows that non-Hispanic high school students were hired as teacher's aides and, without question, they did not have a high school diploma. Furthermore, the evidence shows that being able to speak English was a

requirement to be a teacher's aide and a cleaning/housekeeping person; however, Ms. Ellis was denied being a teacher's aide. If she met the requirement for one position, she should have met the same requirement for the other position. Moreover, the comment by Ms. Brand that "Spanish are only good for cleaning" supports the conclusion that the reason offered by the Day School for not hiring Ms. Ellis as a teacher's aide was a pretext for discrimination.

66. Consequently, the Day School discriminated against Ms. Ellis on the basis of her national origin.

67. Section 760.11(6), Florida Statutes (2000), provides in pertinent part:

> . . . If the administrative law judge, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the administrative law judge shall issue an appropriate recommended order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay.

68. As an affirmative relief, Ms. Ellis should receive the rate of pay of a teacher's aide for the established time period that the Day School had non-Hispanic students working as teacher's aides. As a result, Ms. Ellis' salary, when she was the cleaning/housekeeping person, should be adjusted as such, commencing at the time that the non-Hispanic teacher's aides were hired until the time that her injury prevented her from

working, which was August 17, 2000. At hearing, no evidence was presented to establish the rate of pay for a teacher's aide with Ms. Ellis' experience; therefore, such evidence would have to be presented at a subsequent hearing if the FCHR adopts this Recommended Order.

69. Since Ms. Ellis was unable to work and did not seek further employment because of her back injury and since she has a pending workers' compensation claim, back pay would not be appropriate. Further, Ms. Ellis has not presented any argument or case law indicating that she should receive back pay.

70. Because Ms. Ellis obtained the services of an attorney to represent her in this matter, attorney's fees should be awarded. Evidence, regarding attorney's fees, would have to be presented at a subsequent hearing if the FCHR adopts this Recommended Order.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

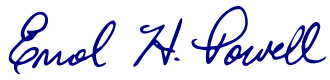
RECOMMENDED that the Florida Commission on Human Relations enter a final order:

1. Finding that the Village Methodist Day School (Day School) discriminated against Lindaura Ellis on the basis of her national origin and ordering the Day School to cease such discrimination.

2. Ordering compensation to Ms. Ellis reflected in an adjustment in her rate of pay consistent with this Recommended Order.

3. Ordering the payment of attorney's fees.

DONE AND ENTERED this 1st day of December, 2003, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of December, 2003.

ENDNOTES

[1/] Because the hearing was by video teleconference, the parties forwarded their exhibits to this Administrative Law Judge. Ms. Ellis' counsel failed to timely forward her exhibits and had to be reminded to do so. On November 20, 2003, Ms. Ellis' counsel forwarded her exhibits by next day service. The tracking information for the courier company indicates that the exhibits were received by the Division of Administrative Hearings (DOAH) on November 21, 2003; however, the Clerk's office of DOAH does not show that the exhibits were filed and cannot locate the exhibits. As a result, Ms. Ellis' counsel was requested to forward a copy of the exhibits to DOAH, which was received and filed on December 1, 2003. All of the exhibits, except for Petitioner's Exhibit 27, which was the shirt worn by

Ms. Ellis on August 17, 2000, were received. Petitioner's Exhibit 27 is not a material piece of evidence which affects the outcome of the instant matter. The outcome of the instant matter would be the same even if Petitioner's Exhibit 27 did not exist. Consequently, not having Petitioner's Exhibit 27 does not affect the determination of the instant matter.

[2/] The Day School presented the testimony of Ms. Brand by video deposition and through a transcript of the deposition. At the time of the video deposition, Ms. Ellis was represented by the qualified representative.

[3/] The same situation existed at the time of hearing.

[4/] Ms. Ellis introduced into evidence a statement indicating that the cleaning/housekeeping position was a temporary position.

[5/] After the hearing, Ms. Ellis' former qualified representative filed a document regarding her disability. The document is not considered in this Recommended Order.

COPIES FURNISHED:

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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 should be filed with the agency that will issue the final order in this case.