STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

YVONNE C. COX,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 03-4672
	)	
UNIVERSITY OF FLORIDA,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Upon due notice, a disputed-fact hearing was held in this case on March 11, 2004, in Gainesville, Florida, before the Division of Administrative Hearings, by its duly-assigned Administrative Law Judge, Ella Jane P. Davis.

APPEARANCES

For Petitioner: Yvonne C. Cox, pro se
Post Office Box 772
Williston, Florida 32696

For Respondent: Charles M. Deal, Esquire
University of Florida
123 Tigert Hall
Gainesville, Florida 32611-2703

STATEMENT OF THE ISSUE

Whether the Respondent is guilty of an unlawful employment practice against Petitioner on the basis of handicap.

PRELIMINARY STATEMENT

This cause was referred by the Florida Commission on Human Relations (Commission) to the Division of Administrative Hearings (Division) on or about December 11, 2003. The record adequately reflects all pre-trial motions and orders.

At the disputed-fact hearing on March 11, 2004, Exhibit ALJ-A, comprising the entire package referred to the Division by the Commission, was stipulated into evidence by the parties.

Petitioner testified on her own behalf and presented the oral testimony of Jackie Rollins, April Sontag, and Huston Seals. Petitioner would have called other witnesses but could not produce valid returns of service for their subpoenas. Therefore, the hearing was not continued or extended to permit her potential witnesses to be compelled to testify. After Petitioner was given the opportunity for an oral response, the undersigned orally granted a written Motion to Quash filed the previous day by one of Petitioner's potential witnesses who had been served less than 48 hours before the hearing. Exhibits P-2, P-3, P-6, P-7, P-8, P-9, P-10, P-11, P-12, P-13, P-14, P-15, P-16, P-17, P-18, P-19, and P-20, were admitted in evidence. Exhibits P-1, P-4, and P-5 were not admitted. After the record had closed, Petitioner orally moved to admit another exhibit. The motion was orally denied.

Respondent presented Petitioner's oral testimony and had Exhibits R-1, R-2, and R-3 admitted in evidence.

A Transcript was filed on March 26, 2004. Only Respondent filed a Proposed Recommended Order. It has been considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. On July 17, 2003, Petitioner filed with the Commission a Charge of Discrimination, in which she complained only that Respondent University of Florida (Respondent or UF) discriminated multiple times by not hiring her on the basis of handicap (dyslexia). The last date of this alleged failure to hire was stated in the Charge as June 8, 2003. The Charge had been typed and signed on July 17, 2003. The Charge contained no allegation that Respondent had terminated Petitioner due to discrimination.

2. On October 27, 2003, the Commission entered its "Determination: No Cause." By its "Notice of Determination: No Cause" of the same date, the Commission notified Petitioner that she had 35 days in which to file her Petition for Relief.

3. The thirty-fifth day after the Determination: No Cause fell on Monday, December 1, 2003.

4. According to the Commission's date stamp, Petitioner filed her Petition with the Commission on December 3, 2003.

5. Petitioner became employed by CCR-Head Start in September 2003. On her job application to CCR-Head Start, she did not list Respondent as a prior employer.

6. The late Petition for Relief alleged, for the first time, that UF had jeopardized Petitioner's education and career opportunities in her job with CCR-Head Start, by character defamation against her and/or due to information that UF had not disclosed. Petitioner explained at hearing that this new allegation was intended to allege that UF had not provided course grades, CLAST results, and other general testing scores, and that UF had not provided a grade point average to Petitioner upon her request. (See Findings of Fact 21, and 23-25.) Again, the Petition contained no allegation that Respondent had terminated Petitioner due to handicap or for any other discriminatory reason. [1/]

7. The late Petition for Relief further newly alleged that Petitioner's current employer, CCR-Head Start, had denied her a high-back chair, computer, desk, and business cards and was seeking ways to terminate her. This allegation against her current employer is totally extra-jurisdictional to these proceedings against Respondent UF.

8. At hearing, Petitioner extended her allegations to include that UF has prevented her being hired for numerous advertised positions inside and outside UF, spread over three

counties from 1999 to the date of hearing. At hearing, Petitioner also presented her view that in 1998-1999, while she was employed in UF's Horticultural Services Department, she was "persecuted" or "harassed" by her supervisor, Carolyn Reynolds, and other UF employees, due to cognitive comprehension problems, which she has self-diagnosed by unilateral computer research as "dyslexia." However, in addition to never having told anyone at UF that she is dyslexic, Petitioner testified that she also has never been professionally diagnosed as dyslexic.[2/]

9. Petitioner graduated from high school prior to her employment with Respondent and began taking some college courses at Santa Fe Community College.

10. When Petitioner was first hired by Respondent in 1996, she scored 57 on a typing test, well above the passing score of 35.

11. On May 2, 2003, Petitioner achieved an AA degree from Central Florida Community College. Petitioner achieved this degree after she ceased to be employed by Respondent in 1999.

12. Petitioner was first employed with Respondent UF from 1997 to 1998 as a clerk in a medical area. In July 1997, she received a raise in salary. The single performance evaluation in evidence, which occurred during this period of time, shows improvement and rated her as satisfactory.

13. In 1998-1999, Petitioner was employed by Respondent UF in the Horticultural Sciences Department. She held a secretarial position involving preparing, typing, and processing travel request and reimbursement forms, handling room and vehicle reservations, and typing correspondence for several professors. Ms. Reynolds was Petitioner's immediate supervisor.

14. Despite graduating from high school and eventually junior college, Petitioner claims to have had "cognitive comprehension problems," especially with sequencing tasks and with mathematics, throughout her whole life. Petitioner also claims that while employed in UF's Horticultural Services Department, these problems required her to repeatedly ask her supervisor to repeat all instructions and to write out some instructions so that she could refer to them. She also claims she had to ask co-employees to interpret or rewrite her supervisor's instructions and to interpret and/or rewrite the written material her professors gave her to type. (See also Finding of Fact 18.) Petitioner never told anyone associated with UF in 1998-1999 that she was dyslexic or that she had "cognitive comprehension problems," and she had no reason to believe that anyone else told UF personnel that she was dyslexic.[3/] Petitioner perceived her requests for help in the Horticultural Services Department as alerting UF personnel to her "condition." She perceived their compliance with her

requests as persecution and/or harassment. Yet, all the specific instances Petitioner described were of Ms. Reynolds and co-workers complying with her requests to repeat oral and written instructions. The co-workers who testified described Petitioner's requests as normal, or at least commonplace, because they understood that no one learns how to do everything at once and everyone sometimes needs help.[4/]

15. Petitioner demonstrated no disability in general life activities, such as walking, talking, or seeing. At most, she testified to having difficulty with mathematics and limited or categorical employment activities involving sequencing tasks.

16. Petitioner assumed that her professors, supervisor, and co-workers in the Horticultural Services Department knew that she was dyslexic because the supervisor and co-workers had worked with her and accommodated her requests for help; because the professors let Ms. Reynolds evaluate her; and because of part of a conversation she overheard. (See Findings of Fact 14 and 17-18).

17. Petitioner came upon Ms. Reynolds and a co-employee, Tami Spurling, talking. When Petitioner entered the room, Ms. Reynolds was saying to Ms. Spurling, "Do I have to write everything down for you? Are you ADHA too?" Then Ms. Reynolds and Ms. Spurling stopped talking. Petitioner never confronted either woman about what Ms. Reynolds had meant. Rather, she

unilaterally inferred that the women stopped talking because they were talking about her. Petitioner also unilaterally inferred from Ms. Reynolds' comment about ADHA that both women knew or perceived Petitioner as dyslexic, or that Petitioner had some other type of learning disability, or that Petitioner had cognitive comprehension problems, whatever those might be. Petitioner's interpretation of this conversation is speculative and not a reasonable interpretation of the event.[5/]

18. Petitioner believes that her professors in the Horticultural Services Department in 1998-1999 discriminated against her on the basis of handicap because they did not give her typing assignments as they did other secretaries and because they allowed Ms. Reynolds to evaluate Petitioner's job performance instead of evaluating her themselves. At hearing, Petitioner claimed for the first time that she was retaliated against because Ms. Reynolds forced her to resign in May 1999, (see Finding of Fact 19), because of her February 9, 1999, memo to Ms. Reynolds complaining that the professors were not giving her major typing assignments. Petitioner's memo was admitted in evidence. However, Petitioner presented no evidence that any other secretary got more or better typing assignments than she did; that anyone else in her position was evaluated by the professors instead of by Ms. Reynolds; that the professors ever

knew about her memo to Ms. Reynolds; or that Ms. Reynolds ever gave Petitioner a bad or unfair evaluation.

19. Petitioner testified that sometime in 1999, she became depressed from a combination of the work place "harassment," as she perceived it; the loss of her stepfather; and the loss of her pastor. Apparently, she was absent from work for awhile after February 1999. She testified that when she returned to work, she presented Ms. Reynolds with a doctor's excuse for home rest for two weeks, and Ms. Reynolds then berated her for an hour and a half and gave her an ultimatum to quit or be fired. Petitioner stated first that she resigned because of this alleged "ultimatum" and then testified that she resigned because she was depressed and confused from the medicine she was taking. However, Petitioner's doctor's note was not offered in evidence, and her self-serving testimony was not corroborated. Petitioner's May 27, 1999, resignation letter to Ms. Reynolds states that Petitioner's last day would be June 8, 1999, and gives no reason for quitting. It does not bespeak of coercion. Petitioner further testified that Ms. Reynolds prepared a letter for the UF Personnel Office to get permission to rehire Petitioner in less than 100 days, contrary to a UF rule. Petitioner put in evidence a memo from a different supervisor, Lynn Jernigan, showing that UF employed Petitioner on OPS at UF's Department of Physical Therapy until August 5, 1999, and at

that time, Petitioner refused Ms. Jernigan's request to keep Petitioner's name in the job hiring pool (P-13). Petitioner additionally put in evidence an exhibit that included a letter by Petitioner claiming to have been hired for a full-time job in UF's Physical Therapy Department.[6/] Considering all of the foregoing, the undersigned is not persuaded that Petitioner was involuntarily terminated by Ms. Reynolds, effective either May 27, 1999, or June 8, 1999. At most, the evidence shows that after those dates, Petitioner was in an OPS position in a different department of UF, which position was not funded after August 5, 1999.

20. Petitioner did not present credible evidence to show that Ms. Reynolds or any UF employees "blackballed" her from being rehired by UF or by any other employer in three Florida counties between June 8, 1999 (her last day in UF's Horticultural Services Department), and the date of hearing. She was also vague about what position, if any, with UF she was turned down for on the only date (June 8, 2003) listed in her Charge of Discrimination. (Cf.--Finding of Fact 21 and its Endnotes, discussing other dates and allegations.) Petitioner is credible that she was not hired in numerous positions from August 1999 (when she left Ms. Jernigan's department) until she was hired in September 2003, by CCR-Head Start. However, she did not affirmatively demonstrate that Ms. Reynolds of the UF

Horticulture Services Department had hiring authority in any of the other UF departments Petitioner applied-to during this period of time. Petitioner conceded that Ms. Reynolds did not have hiring or firing authority in Ms. Jernigan's department, where Petitioner worked in August 1999. Petitioner did not know who made any of the hiring decisions rejecting her after she left Ms. Jernigan's department in 1999. Petitioner did not know who applied for any of the job openings within UF or with outside employers or who made the interview or hiring decisions for any of the jobs for which she applied. She did not present threshold evidence that she was minimally eligible for any of the jobs for which she applied or any evidence that the persons hired were less qualified than herself or were equally qualified but without a handicap. The possibility that a genuinely handicapped person was hired for each of these positions was not eliminated. The possibility that the jobs she applied for were not awarded to more qualified applicants was not eliminated. Finally, Petitioner did not demonstrate a nexus between any hiring decision of UF or any hiring decision of any other employer in the three-county area and her alleged handicap, and she showed no nexus between other potential UF supervisors or outside employers and her prior relationship with UF or Ms. Reynolds. Petitioner's mere speculations are not probative of discrimination.

21. For purposes of the present case, Petitioner filed a Charge of Discrimination with the Commission on July 17, 2003, alleging that she was last not hired for a job on June 8, 2003. (See Findings of Facts 1-4 and 6, and n. 1.) However, about June 24-25, 2003, Petitioner also signed a "Workforce Innovation Complaint" form of the Commission, alleging against UF "constant surveillance"; on-the-job harassment; not being hired; and sabotage of her home computer line. This form represented that UF's discrimination against her was "June 1999" and the latest discrimination was "estimated at June 24, 2003." When or if her lawyers on that case ever actually filed the Workforce Innovation Complaint with the Commission is not clear.[7/] However, the same lawyers seem to have helped Petitioner get her UF employment records. (See Finding of Fact 25.) From the chronology, it is clear that neither Petitioner's separation from UF in 1999 nor any failure to hire her on June 8, 2003, could possibly have been the result of retaliation for her filing either the June 24, 2003, Workforce Innovation Complaint or the July 17, 2003, Charge of Discrimination.[8/] Neither is there any credible evidence that Petitioner was not hired at any time thereafter as a result of filing either the Complaint or the Charge.

22. Petitioner testified, again without corroboration, that she had discussed her problems concerning Ms. Reynolds with

someone in the UF Personnel Office in 1999, had been persuaded that further action was not necessary, and had elected not to pursue her allegations of discrimination at that time. Given all the evidence, this statement is less than credible, but assuming, arguendo, that the conversation occurred, it would be unreasonable and illogical to suppose UF would interfere with Petitioner's subsequent attempts at employment for four years in retaliation for her not filing a charge of discrimination in 1999.

23. With regard to Petitioner's late claim that UF withheld papers from her, there is no evidence in this record that Respondent withheld any employment records that impeded Petitioner being hired by anyone, including but not limited to CCR-Head Start. UF employees would have to have been clairvoyant to even guess that Petitioner was applying to CCR-Head Start. (See Finding of Fact 5.)

24. Apparently, in 2002, Petitioner wanted some results of a CLAST test taken at her community college, but graded by UF. Exhibits in evidence show that UF permitted her to challenge these scores in April and August 2002, but the score was not changed. However, Petitioner put on no evidence that any portions of these standardized tests may legally be released to any test-taker. She did not demonstrate any reason that UF

would have her college grades, test scores, or grade point average from other institutions.

25. Petitioner testified that sometime in 2002, at the request of her lawyers for the Workforce Innovation Complaint, (see Finding of Fact 21), UF provided her with papers that purported to be her UF employment records but an UF employee removed some papers from the pile before handing the rest to her. Petitioner admitted that she did not know the UF employee and did not know what was in the pile of papers removed. Her only reason for believing UF misused her at that time was her unilateral belief that someone would not remove papers from a pile assembled for her lawyers unless they were hiding something from her. This is not a reasonable interpretation of the event described.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, only as discussed below, pursuant to Chapter 760, and Section 120.57(1), Florida Statutes.

27. The October 27, 2003, "Notice of Determination: No Cause" meant that Petitioner had 35 days, or until December 1, 2003 to timely file her Petition for Relief. She did not timely file her Petition for Relief on December 1, 2003. Because her

Petition for Relief was not filed until December 3, 2003, her entire case is time-barred and the Division is without jurisdiction of the entire case. See § 760.11(7), Fla. Stat; Garland v. Dept. of State, DOAH Case No. 00-1797 (RO: July 24, 2000; FO: February 8, 2001); McGill v. U.S. Marine/Bayliner Marine Corp., DOAH Case No. 95-6018 (RO: March 18, 1996; FO approved); Hall v. Boeing Aerospace Operation, DOAH Case No. 94-6976 (RO: March 29, 1995; FO approved); Wright v. HCA Central Florida Regional Hospital, Inc., DOAH Case No. 94-0070 (RO: July 27, 1995; FO: January 26, 1995); Pusey v. Knapp, DOAH Case No. 96-3321 (RO: November 25, 1996; FO: October 16, 1997).

28. Assuming, arguendo, but not ruling, that the Petition had been filed on time, this Recommended Order still could not address any events that occurred before July 18, 2002. Because Petitioner filed her Charge of Discrimination on July 17, 2003, any events more than 365 days prior to the date her charge was filed could not be considered either by the Commission or the Division. This is a statute of limitations. See § 760.11(1), Fla. Stat; Burt v. City of Tallahassee, DOAH Case No. 03-2456 (RO of Dismissal: September 23, 2003; FO: April 15, 2004); Greene v. Seminole Electric Cooperative, Inc., 701 So. 2d 646 (Fla. 5th DCA 1997); Florida State University v. Sondel, 685 So. 2d 923 (Fla. 1st DCA 1996); Florida Dept of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991); and St. Petersburg

Motor Club v. Cook, 567 So. 2d 488 (Fla. 2d DCA 1990). Accordingly, Petitioner's separation from her employment with Respondent in August 1999 or on June 8, 1999, her allegedly forced or duped resignation letter of May 27, 1999, and her treatment during her 1997-1999 employment with Respondent may not be considered in this case.[9/] Regardless, Petitioner has failed, on the merits, to establish any discrimination related to these time-barred events.

29. Assuming, arguendo, but not ruling, that the Petition had been filed on time and that this case could be decided on the remaining issues, the Division does not have jurisdiction of any new charges added into the Petition for Relief or that were presented for the first time at hearing if they could have been raised in the Charge of Discrimination. New or different types of discrimination cannot be alleged in the Petition for Relief or at the disputed-fact hearing under Section 120.57(1), Florida Statutes, unless they have been alleged in the Charge of Discrimination. The Commission must first investigate the allegations of the Charge, and only when the Commission has entered its "proposed final agency action," by way of a "determination" of cause or no cause on the contents of the Charge, may a Petition for Relief attacking that proposed final agency action be filed. Young v. Dept. of Business and Professional Regulation, DOAH Case No. 03-1140 (RO: July 1,

2003; FO: February 26, 2004); Ward v. Florida Dept. of Juvenile Justice, 212 F. Supp 2d 1349 (N. D. Fla. 2002); Luke v. Pic 'N' Save Drug Co., Inc., DOAH Case No. 94-0294 (RO: August 25, 1994; FO: December 8, 1995); Austin v. Florida Power Corp., DOAH Case No. 90-5137 (RO: June 20, 1991; FO: October 24, 1991, filed October 30, 1991).

30. The only possible exceptions to the foregoing ruling is where the type of discrimination alleged in the Charge continued in an on-going pattern to, and/or beyond the date of the Petition or where there was a subsequent retaliation by the employer against the employee for pursuing or filing the Charge itself. However, this is an extremely narrow exception, and the vagueness and ever-changing nature of Petitioner's theories should not be rewarded. Lieberman v. Miami-Dade County, 2000 WL 1717649. Regardless, neither of these theories of the case has been established by any standard of proof. No retaliation was proven. No pattern of "blackballing" was proven. Most important of all, no "handicap" or discrimination on the basis of handicap was proven.

31. Pursuant to Brand v. Florida Power Corp., 633 So. 2d 504 (Fla. 1st DCA 1994), Petitioner must prove the following in order to establish a prima facie case of handicap discrimination:

> A. He is handicapped within the meaning of the Florida Civil Rights Act;
>
> B. He was otherwise qualified for his job; and
>
> C. He was harassed, terminated, (or, in this case, not hired) solely by reason of his handicap.

32. This Petitioner is not statutorily handicapped (disabled) because her condition, whatever it is, does not substantially limit her major life activities under the test employed in Toyota Motor Mfg., Kentucky, Inc. v. Williams, 112 S. Ct. 681 (2002). "Handicap" for our purposes here, as well as "disability" under the Americans With Disabilities Act, must extend to life activities, not just limited or categorical employment activities. See Sutton v. United Air Lines, Inc., 19 S. Ct. 2139, 527 U.S. 471 (1999). No one with hiring authority at UF seems to have even perceived Petitioner as handicapped, but regardless, Petitioner's sequencing and memory problems seem to have been accommodated each time she requested help. See Brand v. Florida Power Corp., 633 So. 2d 504 (Fla. 1st DCA 1994); Cabany v. Hollywood Memorial Hospital, 12 FALR 2020 (FCHR 1990) Kelly v. Bechtel Power Corp., 633 F. Supp 927 (S.D. Fla. 1986). They clearly do not appear to be adverse employment actions. See Mattern v. Eastman Kodak Company, 104 F.3d 702 (5th Cir. 1997); Landgraf v. USF Film Products, 968 F.2d 427 (5th Cir. 1992).

33. No prima facie case of discrimination on the basis of handicap was established with regard to June 8, 2003, the only date alleged in the Charge of Discrimination, or any other dates. Petitioner has been unsuccessful in getting hired for positions at UF and with a variety of employers, in three counties but her lack of success is not necessarily linked to any lack of ability on Petitioner's part or to any condition that impairs her every day living. It also has not been linked to any discriminatory efforts of Respondent UF. Sometimes, getting a job is just the luck of the draw. Where the evidence establishes neither a handicap nor that a similarly situated, equally qualified, non-handicapped person was hired, the case must fail on the merits.

RECOMMENDATION

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

RECOMMENDED: that the Florida Commission on Human Relations enter a final order dismissing the Charge of Discrimination and Petition for Relief.

DONE AND ENTERED this 15th day of June, 2004, in Tallahassee, Leon County, Florida.

ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of June, 2004.

ENDNOTES

[1/] Exhibit ALJ-A, comprising the entire package referred to the Division by the Commission, was stipulated into evidence by the parties. It is deemed to be the most accurate evidence. Findings of Fact 1-4 and 6 are based thereon. However, it is noted that Exhibit P-12, also in evidence, constitutes a handwritten Charge of Discrimination which Petitioner purportedly signed on July 1, 2003, stating that the last date of discrimination was "estimated" to be August 27, 2002. Exhibit P-12 was date stamped-in by the Commission on July 9, 2003, not July 17, 2003.

[2/] Petitioner's Exhibits P-1, P-4, and P-5 are unreliable hearsay documents and were not admitted in evidence because no medical, psychological, or vocational expert with first-hand knowledge of their contents or with the ability to interpret their contents appeared for confrontation/examination by Respondent. However, in an abundance of caution, they have been treated as proffers. Even as proffers, these exhibits do not support Petitioner's contention in her pleadings that she has

been professionally diagnosed with dyslexia or her position at hearing that she suffers from another cognitive comprehension condition that qualifies as a "handicap." (See Conclusions of Law.)

P-4 is a May 17, 1993 UF Health Sciences Center, Department of Psychiatry report rendered to Petitioner's supervisor at Santa Fe Community College where Petitioner was then working. There is no reason to suppose that any of Petitioner's professors, supervisors, or co-workers at UF in 1996-1999 saw or knew of this report. One of the testers noted that Petitioner was mildly "dyspraxic" ("having difficulty recalling program for use of utensil into learned act sequence"), not "dyslexic." She tested in the low range of intellectual functioning.

P-5 is a March 5, 2002 Good Will report for a Vocational Rehabilitation office, which UF could not have had in 1996-1999. It relates that Petitioner claimed to have dyslexia and referred her for further testing to determine if she has a learning disability in mathematics.

P-1 is a May 12, 2002 report by Clinical Psychology Associates, which UF also could not have had in 1996-1999. It relates that Petitioner provided a "family history" of ADHA (attention deficit hyperactivity disorder); this would not constitute Petitioner's own personal medical history. Its tester diagnosed that Petitioner had an undefined "cognitive problem"; that her math and spelling problems arose while she was at Santa Fe Community College; that she did not meet the legal scale for a learning disability; and that she had a low average IQ.

One or more of these exhibits refer to Petitioner's providing a personal history of having problems with sequencing, especially with math, for most of her life but being able to deal with the problem until she was forced to take college level math courses. One or more of these exhibits use terms such as "cognitive problem" "comprehension problem," or "cognitive comprehension problem." None of these terms was demonstrated to be a standard, recognized diagnosis. No diagnosis of dyslexia or any other learning disability was assigned through any of these tests, although subsequent tests were recommended.

[3/] See n. 2, above, concerning unadmitted P-4, a 1993 psychiatric report. There is no reason to suppose that any of Petitioner's professors, supervisors, or co-workers at UF in 1996-1999 saw or knew of this report.

[4/] Had there been any clear proof that Respondent knew or even falsely perceived that Petitioner was afflicted with dyslexia or even perceived her to have a handicap, which there was not, these acts of assistance would amount to "reasonable accommodations." (See Conclusions of Law).

[5/] "ADHA" stands for "attention deficit hyper-activity disorder." Petitioner has never alleged that she has ADHA. She has not been diagnosed with ADHA. (See also, n. 2, above.

[6/] In connection with her Workforce Innovation Complaint, discussed in Finding of Fact 21, infra, Petitioner wrote a letter stating that after being fired, she was "hired on a full time job in the Physical Therapy Department but due to hierarchy influences I was tricked into signing an OPS form for a senior clerk/part-time job while being trained and focusing my attention on my trainer or make me loose [sic] sight of what I was actually signing. All this happened after I was hired as a full-time secretary." (P-11)

[7/] The Workforce Innovation Complaint, which claimed discrimination occurred last on June 24, 2003, bears a date stamp of June 33 [sic.], 2003, for the "Agency for Workforce Innovation, Office for Civil Rights," at the same address as the Commission.

Interestingly enough, Petitioner's lawyers believed, contrary to the evidence in this case, that Petitioner was employed by UF in the Horticulture Sciences Department from 1996-1997 and at the UF Mercy Area Housing Department from 1997-1999. (See Findings of Fact 10-13.)

[8/] See nn. 2 and 7, above.

Even if one chooses the dates in P-12 or in the Workforce Innovation Complaint, the chronology does not establish retaliation.

Also, an abundance of caution, unadmitted Exhibit P-5 has been treated as a proffer in the context of Petitioner's testimony that UF knew after March 5, 2002 that she was dyslexic from her request that UF pay for the vocational retraining recommended in that document and retaliated by "blackballing" her. Exhibit P-5 is a March 2002 Good Will evaluation of Petitioner's capabilities, which recommended that she retrain for a career other than as a secretary. First, the exhibit does

not reflect that it ever went to UF. Even if it could be inferred therefrom that someone, somewhere within UF, knew, as of March 5, 2002, that Petitioner had some kind of problem, the document does not define "cognitive comprehension problem" and does not diagnose dyslexia. In the absence of something more, neither the March 5, 2002, report nor a request for vocational retraining by a non-employee at that point in time is sufficient to establish a nexus for handicap discrimination in the Horticultural Sciences Department in 1998-1999, for a failure to hire before its date, for alleged "blackballing" before its date, or to prove-up any retaliation discrimination in hiring practices after its date. (See Findings of Fact 19-20.) A Good Will evaluation or a request for training, by a non-employee, if such request was ever made, is not a protected employee action for which any type of retaliation discrimination claim after its date may lie.

[9/] The different dates from P-12 recited in n. 1 would not alter this ruling.

COPIES FURNISHED:

Yvonne C. Cox
Post Office Box 772
Williston, Florida 32696

Charles M. Deal, Esquire
University of Florida
123 Tigert Hall
Gainesville, Florida 32611-2703

Cecil Howard, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Denise Crawford, Agency Clerk
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

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.