

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CAROLYN E. ALLEN,)
)
 Petitioner,)
)
 vs.) Case No. 04-3183
)
 DIAMOND ACADEMY, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on March 14 and July 27, 2005, in Quincy, Florida, before Diane Cleavinger, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Carolyn E. Allen, pro se
39 Pine Tree Lane
Quincy, Florida 32351

For Respondent: Valerie E. Janard, Esquire
237 East Washington Street
Quincy, Florida 32351

STATEMENT OF THE ISSUE

The issue in this case is whether the Respondent committed unlawful employment acts against Petitioner based on her race in violation of Chapter 760, Florida Statutes (2004).

PRELIMINARY STATEMENT

On August 27, 2003, Petitioner, Carolyn E. Allen, filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR). The Charge of Discrimination alleged that Respondent had subjected Petitioner to unlawful employment actions based on her race. Specifically, the Charge of Discrimination alleged that Respondent discriminated against Petitioner during her employment when an allegedly less qualified, white female was hired for a similar position at a higher salary than Petitioner and when Respondent allegedly terminated her employment.

On July 28, 2004, the (FCHR) filed a Notice of Determination: No Cause. Thereafter, on September 1, 2004, Petitioner filed a Petition for Relief alleging the same facts as contained in her earlier Charge of Discrimination. The matter was referred to the Division of Administrative Hearings for a formal hearing.

At the hearing, Petitioner offered the testimony of eight witnesses and introduced one composite exhibit into evidence. Respondent offered the testimony of one witness and introduced six exhibits into evidence.

After the hearing, Petitioner filed a Proposed Recommended Order on August 9, 2005. Respondent filed a Proposed Recommended Order on August 10, 2005.

FINDINGS OF FACT

1. Diamond Academy, Inc., is a Florida not-for-profit, tax exempt corporation created to operate an education program for area residents who qualify for such program. The Academy provides a family literacy program combined with a licensed childcare facility. The program is provided to families in poverty and helps family members improve their parenting skills, further their educational needs and goals by aiding the parents with completing a high school, college or career degree or certification, and improve their life skills and family condition through help with employment, housing, etc. The children are offered the benefits of a research-based curriculum, stimulation for brain development, and development of social and academic skills that are needed to attend public school. Parents interact with their children under the supervision of staff to help improve their parenting skills and better understand how to teach their children at home.

2. The first location of the Academy was in Quincy, Florida. The staff at the Quincy location was black and Caucasian with the majority of the staff being black. Most of the families served at the Quincy location were black. In early Spring, 2003 the academy opened a second facility in Chattahoochee, Florida. The Chattahoochee location served mostly Hispanic families. Because of the school's Hispanic

population, there was a need at the Chattahoochee location for staff that was bi-lingual. Initially, the Chattahoochee location staff was Hispanic and Caucasian. Eventually, black employees were hired for the Chattahoochee location.

3. Judith Bergantino, who is white, is the founder and director of the Academy at both locations. Her daughter-in-law, Virginia "Missy" Bergantino, who is also white, was the child care coordinator and supervisor at the Chattahoochee location.

4. Salaries at the Academy were primarily based on the level of the employment sought, the employee's experience in related fields, whether the employee was temporary and the degree of college education achieved by the employee. Higher salaries were given to those with college degrees or nearly completed degrees, or a significant amount of hours in relevant fields if the employee had no degree.

5. The Petitioner, Carolyn E. Allen, was employed by the Respondent, Diamond Academy, Inc., in December 2002 as a paraprofessional/teacher at its Quincy location. At the time of her hire, Allen had a high school G.E.D. a childhood development associates credential (CDA), and had earned 34 credit hours at Tallahassee Community College. She was not close to completing a college degree. Allen's starting salary was \$15,000.00 and complied with the Academy's policy on salaries. Sylvia Sanders, who is black, was Ms. Allen's immediate supervisor and received

a salary appropriate for her supervisory role and in compliance with the Academy's policy. The evidence did not demonstrate that Ms. Allen's salary was based on her race.

6. At the onset of her employment with the Academy, Ms. Allen received a document titled "Child Care Teachers and Aides." The document established the Academy's high standard of behavior, with positive and respectful attitudes expected of its teachers and aides. A critical requirement was that each teacher/aide be punctual each morning and stay until the daily work was completed.

7. In early December 2002, just after Ms. Allen was hired, Judith Bergantino was at an out-of-town conference on the federal requirements governing the even start grant under which Respondent was operated. During her absence the Quincy location was short-staffed. Missy Bergantino was functioning as the supervisor at the school. During this time, Ms. Allen became angry at Missy Bergantino, other staff, and parents and children at the Quincy school. The outburst occurred when Ms. Allen was told by Missy Bergantino that she needed to accompany the parents and their children off-campus to the "Born to Read" Program at the Gadsden County Public Library. The task was within Ms. Allen's job description. Ms. Allen did not feel she should have to accompany these families. Ms. Allen put her finger in the face of Missy Bergantino and, in a disrespectful

manner, yelled that she would go this time, but didn't think it was her job and that the matter was not over. The outburst caused Missy Bergantino to call Judith Bergantino on her cell phone while she was at the conference. Because she could not resolve the problem over the phone, Judith Bergantino closed the school for the day.

8. Upon her return, Judith Bergantino elected to send Ms. Allen home with pay for the rest of December, with the understanding that she would return in January 2003 after Missy Bergantino transferred to the Academy's soon-to-be-opened site in Chattahoochee. Also, upon her return from the conference, Judith Bergantino informed Ms. Allen that she could not be a teacher at the Academy because the new federal guidelines required the position of teacher to be filled by someone with a college degree or very close to completing a college degree. Therefore, Ms. Allen, with her current credentials, was only qualified for the paraprofessional position at the Academy. Ms. Allen was upset over the impact of the guidelines on her position and potential for future salary increases.

9. In January of 2003, Judith Bergantino hired Karen Davis, who was white, to work at the Chattahoochee location. The Chattahoochee staff was hired prior to the school's opening to the public so that they could help fix up the building in which the Academy was located. When not at the school, staff

were expected to train at home. The evidence demonstrated that this altered work schedule was necessary due to the preparations required to open the Chattahoochee location. There was no evidence that the altered work schedule was motivated by racial considerations.

10. Ms. Davis was a high school graduate who had completed 130 hours of college credits in the field of criminology. Although Ms. Davis did not have a CDA, as Ms. Allen did, she otherwise had an impressive resume in the area of helping children with special needs such as those served by the Academy. Her community service experience included tutoring with the Gadsden County Literacy Program; Dance Instructor for Special Olympics; Chief Advisor to the Boy Scouts of America, Explorer Post 202; Volunteer Medical Director for a local Boy Scout camp; volunteer service with Gadsden Association for Retarded Citizens, and charter membership with the Apalachee Mental Health Advisory Board. Her resume also reflected that she had worked with disabled and orphaned children in Jerusalem. In addition, Ms. Davis had six years of experience with the Gadsden County Sheriff's Department as a child abuse investigator and had a favorable letter of recommendation from the Sheriff.

11. Judith Bergantino initially offered Ms. Davis a starting salary of \$15,000.00. Ms. Davis asked for more, and based upon Ms. Davis's substantial past experience and her 130

hours of college credits, Judith Bergantino and Ms. Davis agreed to a starting salary of \$18,000.00. The higher salary was justified because Ms. Davis had more than enough hours to have obtained a college degree and had significant experience in related fields, including work with people similar to those served by the Academy. The higher salary, also, complied with the Academy's salary policy. The evidence did not demonstrate that the higher salary was based on the race of Ms. Davis.

12. Judith Bergantino initially and incorrectly entered Ms. Davis in the Academy's personnel system in the position of teacher with a associate's degree. The information was not corrected until this hearing and it came to Ms. Bergantino's attention that the information was incorrect. The correction was not intended to create misleading information or evidence for this hearing.

13. On January 27, 2003, Ms. Allen signed a document titled "Terms for Employment at Diamond Academy." This document spelled out the three most important characteristics expected of a staff member: a positive and productive manner; knowledge of each member's job, including ongoing education; and orientation of the daily schedules and activities to the requirements of the Even Start grant and the Day Care license. By signing this document, Ms. Allen again agreed, among other things, to come to work on time and stay until the day's work was completed, and to

remain flexible in fulfilling daily tasks, as determined by the supervisor. She also agreed to maintain a cheerful, positive demeanor with the children and adults enrolled in the program to help elevate their self-esteem and the atmosphere of the school.

14. At some point, Judith Bergantino in discussing the goals of the school stated that black families in Gadsden County maintained a matriarchal way of child rearing with emphasis on physical discipline and yelling. The comment was not directed at anyone, but was made to illustrate the type families served by the Academy and that the Academy policies were oriented around an opposite approach to parenting. This type statement does not appear overtly offensive. The evidence did not demonstrate the exact words of the statement. However Ms. Allen claims she was offended by it, but did not complain at the time. However, only one statement with equivocal interpretations is insufficient to establish racial bias on the part of Ms. Bergantino or the Academy.

15. Around March 2003, both Ms. Allen and Ms. Davis attended a three or four-day training course called "Parents as Teachers." The course was held in Chipley, Florida. All expenses were paid by the Academy. Upon completion, Ms. Allen was to receive a raise in salary to \$18,000.00, the same salary as Ms. Davis. By April 2003, both employees would have been paid equally and received the same fringe benefits. Ms. Allen,

however, did not receive the increased salary because her employment ended on April 2, 2003.

16. Around the end of March 2003, Ms. Allen's stepfather died. Ms Allen was given several days off by Judith Bergantino to attend the funeral and be with other family members. While Ms. Allen was gone, an all-day in-service training was scheduled for the staff on March 31. In preparation for the training Judith Bergantino surveyed Ms. Allen's classroom. Organization in the classroom, with everything in its place, was required of all classroom personnel. Judith Bergantino was dismayed to see toys and puzzle pieces scattered around the room, which appeared to be unplanned and in disarray. In the course of the training, the instructor made recommendations for a better room arrangement for Ms. Allen's classroom and reorganized the room according to her recommendations.

17. Ms. Allen returned to work on April 1, 2003. Ms. Allen stood in the doorway of her classroom, noted the changes, threw her hands up and said, "Oh, no! I can't take this, what happened to this room?" She left with her things and did not return to work that day or call her supervisor. The school was left short-staffed and Ms. Sanders had to fill in for Ms. Allen. Understandably, Ms. Bergantino was very irritated at Ms. Allen's behavior and did not wish Ms. Allen to return to work.

18. The following day, Ms. Allen did not return to work. By that time, Judith Bergantino had drafted a letter to Ms. Allen noting that Sylvia Sanders had reported to her that Ms. Allen had quit her position at the Academy. The letter requested Ms. Allen return the benefits check she had received for the month of April 2003.

19. Later in the day, Ms. Allen called Judith Bergantino. Ms. Allen was clearly distraught over her step-father's death and the reconfiguration of her classroom. Ms. Bergantino felt that Ms. Allen was too emotional to be working with small children, and advised her to take some time off from employment to get professional help and heal. When Ms. Allen realized Ms. Bergantino was not going to rehire her, she became very upset and said, "You mean I'm fired? This ain't over yet!" None of these facts demonstrate that Ms. Allen was terminated based on her race.

20. The Academy also employed Latarsha Seymore as a paraprofessional. Ms. Seymore is black, and who, at the time of her employment had completed nursing school, but had not taken her licensure examination in nursing. She needed to earn income during the summer and made it clear that her employment was temporary until she could pursue her desired career as a nurse. Ms. Seymore's employment circumstances were not similar to Petitioner's employment circumstances; because she was

temporary, her salary was \$15,000.00. Again, the difference in salary was reasonable because she was temporary. The salary, also complied with the Academy's salary policy.

21. Although Ms. Allen complained that blacks were segregated at the Quincy location and not permitted to work at the Chattahoochee location, the evidence did not demonstrate that either site's employment decisions were based on race. Indeed, Ms. Allen's complaint ignores the fact that the Quincy location had a racially-mixed staff. As evidence for her assertion Ms. Allen testified about Andrea McNeil, a black co-worker in Quincy who wanted to transfer to Chattahoochee, but was initially denied. Ms. McNeil's transfer was initially denied because of difficulties she had had working with Missy Bergantino, the supervisor of the Chattahoochee site. After Ms. McNeil also had a confrontation with Sylvia Sanders, her supervisor in Quincy, Judith Bergantino talked to her daughter-in-law about the situation. Ms. McNeil was transferred to Chattahoochee. Additionally, Ms. McNeil had also been a client of the Academy and throughout her time there had received financial aid from the Academy, completed her high school education with Academy help and also received transportation help from the Academy. Ms. McNeil did not complain about initially not being transferred as she desired. She did not feel such action was racially motivated. Petitioner never

requested and did not desire to transfer to the Chattahoochee location. Eventually, by January 2004, two black employees had been hired at the Chattahoochee location.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties and subject matter under Sections 120.57 and 120.60, Florida Statutes (2004), and Section 760.11, Florida Statutes (2004).

23. Respondent is an employer within the meaning of the Florida Civil Rights Act of 1992, as amended, and Title VII of the Civil Rights Act of 1964, as amended.

24. Pursuant to the formula established in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L. ED. 2d 207 (1981), Petitioner has the initial burden of establishing a prima facie case of intentional discrimination, which once established raises a presumption that the employer discriminated against the employee.

25. If the presumption arises, the burden shifts to the employer to present sufficient evidence to raise a genuine issue of fact as to whether the employer discriminated against the employee. The employer may do this by stating a legitimate, non-discriminatory reason for the employment decision. If the employer satisfies its burden, the employee must then persuade the fact-finder that the proffered reason was a pretext for

intentional discrimination. Said another way, the employee must show directly that a discriminatory reason, more likely than not, motivated the employment decision, or indirectly by showing that the proffered reason is not worthy of belief.

26. In this case, Ms. Allen's evidence failed to establish a prima facie case that she was terminated by Respondent because of Ms. Allen's race. Instead, the evidence demonstrated that Ms. Allen walked off her job leaving the facility short-staffed and violated the terms of her employment.

27. Although Ms. Allen also argued that the Academy discriminated against her when it hired Karen Davis, a white female who did not possess a CDA credential, for \$3,000.00 more than Ms. Allen, a comparison of the two employees reflects that Ms. Davis had earned substantially more college credits than Ms. Allen and had an impressive breadth of experience in working with children as well as adults. Moreover, by the time Ms. Allen walked off the job, both employees would have earned the same annual salary and benefits.

28. Ms. Allen also failed to provide substantial evidence that she was discriminated against with regard to her location of employment. Ms. Allen admitted that, after she was hired by Respondent at the Quincy location, she never applied for a transfer to the Chattahoochee location. While there were primarily black employees at the Quincy location when Ms. Allen

worked there, the staff was still racially diverse. Indeed, the racial mix at Chattahoochee has since changed to include black employees.

29. Ms. Allen also failed to make a prima facie case that remarks by Judith Bergantino created an intimidating, hostile or offensive work environment. The policies of Diamond Academy forbid corporal punishment of children or disciplining them by screaming at them or snatching them around. While Judith Bergantino may have commented to a group of employees that included Ms. Allen about her observations of the local black matriarchal mentality, she did not include Ms. Allen in that stereotype. Moreover, one out of context, equivocal statement does not demonstrate racial bias.

30. Finally, even assuming that Ms. Allen established a prima facie case of discrimination, all of the actions taken by Respondent had a reasonable, non-discriminatory basis. None of the Respondent's reasons were shown to be a pretext for racially motivated activity. Therefore, the Petition for Relief should be dismissed.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Petition for Relief be dismissed.

DONE AND ENTERED this 3rd day of October, 2005, in
Tallahassee, Leon County, Florida.

Diane Cleavinger

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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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.