STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FRANK KENNEBREW,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 05-1217
	)	
MIAMI-DADE COUNTY PUBLIC SCHOOLS,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on June 9, 2005, before Administrative Law Judge Michael M. Parrish of the Division of Administrative Hearings by means of video teleconference with sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: Frank Kennebrew, pro se
13570 Southwest 192 Street
Miami, Florida 33177

For Respondent: Ana I. Segura, Esquire
School Board of Miami-Dade County
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

STATEMENT OF THE ISSUES

Whether the School Board of Miami-Dade County (School Board) committed the unlawful employment practices alleged in the Petition for Relief filed by the Petitioner and, if so, what

relief should he be granted by the Florida Commission on Human Relations (FCHR).

PRELIMINARY STATEMENT

On or about March 2, 2004, the Petitioner filed a complaint with the Miami-Dade County Public Schools Civil Rights and Diversity Compliance (CRDC) office alleging a claim of race discrimination against the School Board. In his complaint the Petitioner asserted that he had been discriminated against because of his race (Black) when the School Board terminated his employment as a part-time adult education teacher. On or about May 24, 2004, the CRDC concluded that there was "insufficient evidence" to substantiate the complaint filed by the Petitioner, and rendered a decision in favor of the School Board. On June 22, 2004, the Petitioner filed an appeal, which resulted in the affirmation of the CRDC's prior determination.

On July 28, 2004, the Petitioner filed a Petition for Relief with the Florida Commission on Human Relations (FCHR). The Petition for Relief asserted that the Petitioner had been subjected to race discrimination. On March 31, 2005, the FCHR transmitted the Petition for Relief to the Division of Administrative Hearings to conduct an evidentiary hearing.

At the final hearing the School Board was asked to present its evidence first. The School Board presented the testimony of the following witnesses: Madeline Rodriguez, Manual Castaneda,

Gilda Santalla, and John Goonen. The School Board also offered into evidence Respondent's Exhibits A through Z, all of which were received in evidence with the exception of Exhibit Y, which was rejected.

The Petitioner testified on his own behalf and also presented the testimony of Joe Halasz. The Petitioner also offered into evidence Petitioner's Exhibits 1 through 6, all of which were received in evidence.

Both parties were also granted leave to take post-hearing depositions of two witnesses and to file the transcripts of the depositions as late-filed exhibits. On July 14, 2005, the transcript of the final hearing was filed with the Division of Administrative Hearings. On August 8, 2005, the transcripts of the depositions of Peter Hill and Claudia Hutchins were filed with the Division of Administrative Hearings. Shortly thereafter the parties were notified that the deadline for filing their respective proposed recommended orders would be August 22, 2005. Both parties filed timely proposed recommended orders containing proposed findings of fact and conclusions of law. The parties' proposals have been carefully considered during the preparation of this Recommended Order.[1]

FINDINGS OF FACT

1. The Petitioner is a Black male who, at all times material to this proceeding, was employed by the School Board

both as a full-time K-12 teacher and as a part-time evening adult education teacher. The Petitioner continues to be employed by the School Board in his full-time position. His complaint in this case does not arise from any matters concerning his full-time position. The issues in this case arise from matters that occurred with regard to the Petitioner's employment as a part-time evening adult teacher.

2. At all times material hereto, the School Board was a duly-constituted school board charged with the duty to operate, control, and supervise all free public schools within the School District of Miami-Dade County, Florida. The School Board adheres to a policy of nondiscrimination and provides complaint procedures to assure compliance with federal and state laws which prohibit discrimination. It is the policy of the School Board that no person will be denied employment on the basis of race or color.

3. In December of 1988, the Petitioner was first hired by the School Board as a part-time teacher. In August of 1998, the Petitioner became a full-time teacher in the K-12 school day program and was assigned to teach in a middle school. The Petitioner is still employed as a full-time teacher in the K-12 school day program and continues to teach in a middle school.

4. In addition to the Petitioner's full-time teacher position, in recent years the Petitioner has also worked as a

part-time teacher in the evenings at the South Dade Adult Education Center ("Adult Center").

5. At the Adult Center the school year is divided up into three terms which are commonly referred to as trimesters. The Adult Center employees part-time teachers on a term basis, one term at a time. During each school year, the first term starts in August and ends in December. The second term starts in January and ends in April. The third term starts in April and ends in August.

6. The Petitioner worked at the Adult Center for several terms, including the following trimesters: 2002-1 (first trimester of the 2002-03 school year), 2002-2 (second trimester of the 2002-03 school year, 2002-3 (third semester of the 2002-03 school year), and 2003-1 (first trimester of the 2003-04 school year).

7. During his employment at the Adult Center, the Petitioner taught English for Speakers of Other Languages ("ESOL"). ESOL courses are offered at several levels ranging from ESOL-PRE, which is the most basic course, through ESOL Levels 1 through 5, with Level 5 being the most advanced course. At the Adult Center student attendance is voluntary. The Adult Center receives funds from the State based on the number of students who complete the "Literacy Competency Points" ("LCPs"). At the Adult Center, the initial assignment of students to a

particular course is done by the registration clerk. However, once assigned to a particular course, students have the choice of requesting a transfer to another class or of withdrawing from the course altogether. The administrators at the Adult Center are inclined to grant student requests for transfers whenever possible in order to reduce the likelihood that the student might withdraw from the program.

8. During the first trimester of school year 2002-03 (term 2002-1), the Petitioner was assigned to teach an ESOL Level 4 class with an enrollment of thirty-one students. During the second semester of school year 2002-03 (term 2002-2), the Petitioner was assigned to teach two classes of ESOL Level 1; one class with 61 students and the other with 62 students. During the third trimester of school year 2002-03 (term 2002-3), the Petitioner was assigned to teach one class of ESOL Level 1 with an enrollment of 41 students.

9. For the first trimester of school year 2003-04 (term 2003-1) the Petitioner was assigned to teach two classes of ESOL-PRE with an enrollment of 5 students each. These were "targeted ESOL Classes" under the Skills for Academic, Vocational, and English Studies ("SAVES") program. The SAVES program requires smaller ESOL classes; usually between 8 and 15 students. SAVES students qualify for free textbooks, free tuition, free child care, and free bus transportation.

10. School Principals have the discretion to make SAVES classes even smaller. At the Adult Center, under School Principal Gilda Santalla's discretion, enrollment for SAVES classes had to be between 5 and 10 students in order for a SAVES class to remain open.

11. In order to meet the needs of the students and the needs of the program, the class assignments change each trimester for several teachers, not just for the Petitioner. The Petitioner was assigned to teach lower levels of ESOL because the student demand for the lower level of ESOL courses was higher than the demand for Level 4 and 5 ESOL courses. During the time period material to this case, demand for ESOL Levels 4 and 5 was "dwindling."

12. In the first semester of the 2003-04 school year (term 2003-1) the Petitioner was assigned and accepted to teach a course in the SAVES Program. The SAVES Program is funded by the U.S. Department of Health and Human Services through the Florida Department of Children and Family Services, Office of Refugee Services. It was created to address the training needs of the refugee population. Students participating in the SAVES Program must meet eligibility criteria imposed by the funding program in order to qualify for "refugee" status.

13. Ms. Santalla assigned the Petitioner to teach ESOL-PRE SAVES classes because she thought he was well-qualified for the

position. The Petitioner had a counseling certification and also in his full-time teaching job he had experience teaching children with special needs. Teaching children with special needs often requires a great deal of patience. Many members of the SAVES student population had special needs. The administrators at the Adult Center selected the Petitioner for the SAVES program because they believed he "had the skills to build this program and to teach those students."

14. When planning for the first semester of the 2003-04 school year, the administrators at the Adult Center were confident that, because of the large demand for ESOL-PRE and ESOL 1 classes, they would have at least 8 to 10 people in each SAVES class. Initially, 27 SAVES eligible students were identified. The following term the number went up to 50 SAVES students, and more recently there were approximately 120 SAVES eligible students.

15. The standard employment contract for part-time adult education teachers, which is the type of contract signed by the Petitioner each time he taught at the Adult Center, clearly specifies that the employment is for a specific course for a specific time period delineated in the master schedule. The standard part-time adult teacher employment contract also includes the following language:

> Nothing herein shall be construed to grant the Part-Time Teacher an expectation of continued employment beyond the length of the course designated by this contract.
>
> * * *
>
> 4. The Part-Time Teacher shall not be dismissed during the term of this contract except for just cause as provided in [Section] 231.36(1)(a), Florida Statutes. Notwithstanding the dismissal for just cause provision of this contract, the Part-Time Teacher is responsible for maintaining the minimum required student enrollment for the course taught. Classes with fewer than the required number of students are subject to cancellation. Cancellation of a class will automatically terminate the School Board's obligations under this Contract.

16. The Adult Center's Teacher Handbook also states:

> PART-TIME TEACHING ASSIGNMENTS
>
> South Dade Education Center employs instructors in a part-time capacity. Part-time teachers are those who are paid on an hourly basis. Part-time teachers are hired as needed for a trimester. There is no guarantee that a class may continue the entire trimester if enrollment falls below the required number of students. Classes may be closed and employment may cease. A written contract, per trimester, is issued to all teachers.
>
> Before each term all part-time teachers are given a Teacher Agreement indicating their new assignment.

17. A teacher may be assigned to more than one class per semester. If so, and if only one class is cancelled due to low enrollment, the teacher can continue to teach the remaining

classes that were not cancelled. In this regard it is important to note that the "cancellation of a class" is not equivalent to "dismissal for good cause."

18. In September of 2003, during the first trimester of the 2003-04 school year (2003-1), the attendance reports for Petitioner's assigned classes indicated that his SAVES classes had 2 to 3 students attending each class. After 4 consecutive absences a student is officially withdrawn from a class. Accordingly, student M.G. was withdrawn from the courses with reference numbers OJL4 and OJL5, leaving only 1 student (student T.C.) in those courses. Courses with references numbers OJL8 and OJL9 had the same 3 students in both courses (students M.J., C.B., and F.N.). Enrollment in the Petitioner's classes was below the minimum number required to keep the classes open. Therefore, the Petitioner's classes were cancelled during September of 2003.

19. The Petitioner's classes were not the only classes cancelled during the first term of school year 2003-04. Part-time Hispanic instructor Carmen Roman also had her ESOL-PRE class cancelled. Ms. Roman's ESOL-PRE class, like Petitioner's, had an initial enrollment of 5 students.

20. In the third term of school year 2002-03 (2002-3), Fabian Mayta's ESOL-PRE class was cancelled. Mr. Mayta's class had an initial enrollment of 7 students. During that same term,

Tomasita Neal's ESOL-PRE class was cancelled. Ms. Neal's class had an initial enrollment of 6 students. During the second term of school year 2002-03 (2002-2), the ESOL-PRE class assigned to Fabian Mayta was cancelled. The student enrollment was 5. Part-time teachers Mayta, Neal, and Roman are not Black; they are all Hispanic.

21. Fabian Mayta taught two classes of ESOL-PRE during the first trimester of 2002-03 (term 2002-2). During the second and third trimesters of 2002-03 (terms 2002-2 and 2002-3), Mr. Mayta had an ESOL-PRE class closed each semester. During the first trimester of 2003-04 (term 2003-1), Mr. Mayta taught no ESOL-PRE classes at all. However, Mr. Mayta returned in the second semester of 2003-04 (term 2003-2) to teach ESOL-PRE. Mr. Mayta was also assigned to teach ESOL-1 during that same period of time, and he was assigned to teach ESOL-2 in the first trimester of 2003-04 (term 2003-1). However, this last-mentioned class was cancelled due to low enrollmant.

22. Ms. Claudia Hutchins expected the Petitioner would return to teach the following semester. These expectations were evidenced in part by the fact that the computer print-out for the Master Schedule of classes dated November 7, 2003 (which was two months after the closure of Petitioner's classes), shows the Petitioner listed as an instructor of the Adult Center.

23. The Petitioner made no attempt to contact the Adult Center after his classes were cancelled in the first trimester of the 2003-04 school year. The Petitioner did not indicate any interest in teaching at the Adult Center after the cancellation of his classes.

24. The course assignments of part-time teachers may vary from term to term. The Petitioner was not the only part-time teacher whose class assignments changed from term-to-term. The Petitioner was expressly notified by the language of the standard employment contract and by the guidelines described above that low enrollment could cause classes to be closed.

25. The cancellation of classes due to insufficient student enrollment is a separate and distinct event from the termination of employment or dismissal of an employee for "good cause." The Petitioner's classes were cancelled, but no employment dismissal proceedings were taken against him by the School Board.

26. A memorandum summarizing the terms and conditions of employment is issued to part-time teachers at the Adult Center at the beginning of each term. The memorandum includes the following statement: "There is no seniority with regard to part-time employment."

27. The Petitioner compares himself to teacher Raymond Rivera. In this regard the Petitioner alleges that he was

replaced in his assignment to teach ESOL-4 during the second semester of the 2002-03 school year (term 2002-2) by teacher Raymond Rivera, who was a Hispanic full-time teacher. Mr. Rivera is certified by the State of Florida Department of Education to teach English and to teach ESOL. Unlike Mr. Rivera, the Petitioner has a Miami-Dade County Public Schools Educator's Certificate for Physical Education and a Professional Educator's Certificate for Guidance and Counseling (Pre-Kindergarten to Grade 12). The subject assignment of Mr. Rivera was determined by his full-time status, his professional educator's certificate in ESOL (including all levels K through 12), and his area of expertise (English: Grades 6-12). In addition, full-time teachers have priority over part-time teachers. Further, teachers are assigned to meet the needs of the students, the community, and the program.

28. Ms. Santalla had no discriminatory intent when she assigned Mr. Rivera to teach ESOL Level 4. The Petitioner has presented no evidence that Ms. Santalla's decision to assign Mr. Rivera to ESOL Level 4 was made with any intent to discriminate against the Petitioner on the basis of his race. Based on his professional certifications in English and in ESOL, Mr. Rivera was better qualified to teach ESOL Level 4 than was the Petitioner.

29. The Petitioner also compares himself to Tomasita Neal, who is a Hispanic part-time teacher. Ms. Neal's ESOL-PRE classes had an enrollment of 78 and 69 students during the first trimester of the 2003-04 school year (term 2003-1). The Petitioner asserts that Ms. Neal was less qualified to teach ESOL than he was because Ms. Neal did not have a bachelor's degree. Notwithstanding her lack of a bachelor's degree, Ms. Neal was well qualified to teach ESOL by reason of her many years of teaching ESOL and her completion of the School Board's certification process, both of which made her eligible to be "grandfathered" as an ESOL teacher when the eligibility requirements were changed.

30. Race was not a factor in closing the Petitioner's classes. The determinative factor in closing those classes was the low student enrollment in the classes.

31. The Adult Center offered the position of substitute teacher to the part-time teachers whose classes were cancelled during the term. Ms. Santalla offered the Petitioner a substitute teaching position after his classes were cancelled. The Petitioner declined the opportunity to work as a substitute teacher at the Adult Center.

32. The Petitioner made no attempt to contact the Adult Center after his classes were cancelled. The Petitioner did not

demonstrate any interest in continuing to teach at the Adult Center.

33. At the Adult Center the ESOL class enrollment fluctuates due to the transient and seasonal nature of the ESOL student population. Therefore, when classes are cancelled, the teachers in the cancelled classes are encouraged to continue to teach in subsequent terms. Ms. Hutchins was expecting and hoping that the Petitioner would return to the Adult Center to teach during the second semester of the 2003-04 school year (term 2003-2). The Petitioner's name remained as a part-time teacher on the roster of the Adult Center's second trimester of school year 2003-04 (term 2003-2), which was the term following the trimester in which the Petitioner's classes were cancelled.

34. Teacher Fabian Mayta's ESOL-PRE class was cancelled twice; first in the second trimester of the 2002-03 school year, and again in the third trimester of the 2002-03 school year. Mr. Mayta returned to teach in the first trimester of school year 2003-04, which class was also cancelled, but he again returned to teach in the second trimester of school year 2003-04.

35. Before the Petitioner's classes were cancelled, the Petitioner was enrolled in teacher training to develop effective strategies in language arts ("CRISS" training). After his

classes were cancelled, the Petitioner requested permission to complete the CRISS training, and he was allowed to do so.

CONCLUSIONS OF LAW

36. The Florida Civil Rights Act of 1992 (Act) is codified in Sections 760.01 through 760.11, Florida Statutes.[2] "Because th[e] [A]ct is patterned after Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2, federal case law dealing with Title VII is applicable." Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991).

37. Among other things, the Act makes certain acts "unlawful employment practices" and gives the FCHR the authority, if it finds, following an administrative hearing conducted pursuant to Sections 120.569 and 120.57, Florida Statutes, that such an "unlawful employment practice" has occurred, to issue an order "prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay." §§ 760.10 and 760.11(6), Fla. Stat.

38. To obtain such relief from the FCHR, a person who claims to have been the victim of an "unlawful employment practice" must, "within 365 days of the alleged violation," file a complaint ("contain[ing] a short and plain statement of the facts describing the violation and the relief sought") with the FCHR, the EEOC, or "any unit of government of the state which is a fair-employment-practice agency under 29 C.F.R. ss. 1601.70-

1601.80." § 760.11(1), Fla. Stat. "[O]nly those claims that are fairly encompassed within a [timely-filed complaint] can be the subject of [an administrative hearing conducted pursuant to Sections 120.569 and 120.57, Florida Statutes]" and any subsequent FCHR award of relief to the complainant. Chambers v. American Trans Air, Inc., 17 F.3d 998, 1003 (7th Cir. 1994).

39. The "unlawful employment practices" prohibited by the Act include those described in Section 760.10(1)(a), Florida Statutes, which provides as follows:

> (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.

40. A complainant, like Petitioner, alleging that he was the victim of intentional employment discrimination in violation of the Act, has the burden of proving, at the administrative hearing held on his allegations, that such discrimination occurred. See Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932, 934 (Fla. 1996)("'The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue.'"); Florida Department of

Health and Rehabilitative Services v. Career Service Commission, 289 So. 2d 412, 414 (Fla. 4th DCA 1974)("[T]he burden of proof is 'on the party asserting the affirmative of an issue before an administrative tribunal.'"); and Hong v. Children's Memorial Hospital, 993 F.2d 1257, 1261 (7th Cir. 1993)("To ultimately prevail on a disparate treatment claim under Title VII, the plaintiff must prove that she was a victim of intentional discrimination.").

41. "Discriminatory intent may be established through direct or indirect circumstantial evidence." Johnson v. Hamrick, 155 F. Supp. 2d 1355, 1377 (N.D. Ga. 2001). "Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resort to inference or presumption." King v. La Playa-De Varadero Restaurant, No. 02-2502, 2003 WL 435084 *3 n.9 (Fla. DOAH 2003)(Recommended Order). "[D]irect evidence is composed of 'only the most blatant remarks, whose intent could be nothing other than to discriminate' on the basis of some impermissible factor. . . . If an alleged statement at best merely suggests a discriminatory motive, then it is by definition only circumstantial evidence." Schoenfeld v. Babbitt, 168 F.3d 1257, 1266 (11th Cir. 1999). Likewise, a statement "that is subject to more than one interpretation . . . does not constitute direct evidence."

Merritt v. Dillard Paper Co., 120 F.3d 1181, 1189 (11th Cir. 1997).

42. "[D]irect evidence of intent is often unavailable." Shealy v. City of Albany, Ga., 89 F.3d 804, 806 (11th Cir. 1996). For this reason, those who claim to be victims of discrimination "are permitted to establish their cases through inferential and circumstantial proof." Kline v. Tennessee Valley Authority, 128 F.3d 337, 348 (6th Cir. 1997).

43. Where a complainant attempts to prove intentional discrimination using circumstantial evidence, the "shifting burden framework established by the [United States] Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) and Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981)" is applied. "Under this framework, the [complainant] has the initial burden of establishing a prima facie case of discrimination. If [the complainant] meets that burden, then an inference arises that the challenged action was motivated by a discriminatory intent. The burden then shifts to the [employer] to 'articulate' a legitimate, non-discriminatory reason for its action.[3] If the [employer] successfully articulates such a reason, then the burden shifts back to the [complainant] to show that the proffered reason is really

pretext for unlawful discrimination." Schoenfeld v. Babbitt, 168 F.3d at 1267 (citations omitted).

44. Under no circumstances is proof that, in essence, amounts to no more than mere speculation and self-serving belief on the part of the complainant concerning the motives of the employer sufficient, standing alone, to establish a prima facie case of intentional discrimination. See Lizardo v. Denny's, Inc., 270 F.3d 94, 104 (2d Cir. 2001)("The record is barren of any direct evidence of racial animus. Of course, direct evidence of discrimination is not necessary. . . . However, a jury cannot infer discrimination from thin air. Plaintiffs have done little more than cite to their mistreatment and ask the court to conclude that it must have been related to their race. This is not sufficient.")(citations omitted.); Reyes v. Pacific Bell, 21 F.3d 1115 (Table), 1994 WL 107994 **4 n.1 (9th Cir. 1994)("The only such evidence [of discrimination] in the record is Reyes's own testimony that it is his belief that he was fired for discriminatory reasons. This subjective belief is insufficient to establish a prima facie case."); Little v. Republic Refining Co., Ltd., 924 F.2d 93, 96 (5th Cir. 1991)("Little points to his own subjective belief that age motivated Boyd. An age discrimination plaintiff's own good faith belief that his age motivated his employer's action is of little value."); Elliott v. Group Medical & Surgical Service,

714 F.2d 556, 567 (5th Cir. 1983)("We are not prepared to hold that a subjective belief of discrimination, however genuine, can be the basis of judicial relief."); Rouillard v. Potter, 2003 WL 21026814*9 (D. Minn. 2003)("A plaintiff's subjective belief or speculation that statements are discriminatory does not establish a claim of hostile work environment."); Coleman v. Exxon Chemical Corp., 162 F. Supp. 2d 593, 622 (S.D. Tex. 2001)("Plaintiff's conclusory, subjective belief that he has suffered discrimination by Cardinal is not probative of unlawful racial animus."); Cleveland-Goins v. City of New York, 1999 WL 673343 *2 (S.D. N.Y. 1999)("Plaintiff has failed to proffer any relevant evidence that her race was a factor in defendants' decision to terminate her. Plaintiff alleges nothing more than that she 'was the only African-American man [sic] to hold the position of administrative assistant/secretary at Manhattan Construction.' (Compl.¶ 9.) The Court finds that this single allegation, accompanied by unsupported and speculative statements as to defendants' discriminatory animus, is entirely insufficient to make out a prima facie case or to state a claim under Title VII."); Umansky v. Masterpiece International Ltd., 1998 WL 433779 *4 (S.D. N.Y. 1998)("Plaintiff proffers no support for her allegations of race and gender discrimination other than her own speculations and assumptions. The Court finds that plaintiff cannot demonstrate that she was discharged

in circumstances giving rise to an inference of discrimination, and therefore has failed to make out a prima facie case of race or gender discrimination."); and Lo v. F.D.I.C., 846 F. Supp. 557, 563 (S.D. Tex. 1994)("Lo's subjective belief of race and national origin discrimination is legally insufficient to support his claims under Title VII.").

45. In the instant case, the Petitioner failed to meet his burden of proving, at the administrative hearing, that the School Board committed the "unlawful employment practices" alleged in the Petition for Relief in this case. See Walker v. Florida Department of Business and Professional Regulation, 705 So. 2d 652, 655 (Fla. 5th DCA 1998)(Dauksch, J., specially concurring)("[T]he trier of fact is never bound to believe any witness, even a witness who is uncontradicted."); Maurer v. State, 668 So. 2d 1077, 1079 (Fla. 5th DCA 1996)("A judge acting as fact-finder is not required to believe the testimony of police officers in a suppression hearing, even when that is the only evidence presented; just as a jury may disbelieve evidence presented by the state even if it is uncontradicted, so too the judge may disbelieve the only evidence offered in a suppression hearing.").

46. The record in this case is bereft of any credible evidence that the Petitioner was subjected to any adverse employment action by anyone at the School Board that was based

on any Section 760.10-protected status he enjoyed at the time. While the Petitioner may sincerely and genuinely believe that he was so victimized, such a good faith belief, unaccompanied by any persuasive supporting proof, is simply insufficient to establish that such intentional discrimination occurred.[4]

47. In view of the foregoing, no "unlawful employment practice" should be found to have occurred, and the Petition for Relief should be dismissed.

RECOMMENDATION

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

RECOMMENDED that the FCHR issue a final order in this case finding that the School Board of Miami-Dade County is not guilty of any of the "unlawful employment practices" alleged by the Petitioner and dismissing the Petition for Relief in its entirety.

DONE AND ENTERED this 20th day of February, 2006, in Tallahassee, Leon County, Florida.

MICHAEL M. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of February, 2006.

ENDNOTES

1/ The School Board's Proposed Recommended Order is to a large extent consistent with the findings and conclusions reached by the administrative law judge. Substantial portions of the proposal submitted by the School Board have been incorporated into the Findings of Fact and Conclusions of Law in this Recommended Order.

2/ All citations to the Florida Statutes are to the current version of the statutes. At the time of the events from which this case arises, all material portions of Chapter 760, Florida Statutes, were the same as the current version of the statutes.

3/ "To 'articulate' does not mean 'to express in argument.'" Rodriguez v. General Motors Corporation, 904 F.2d 531, 533 (9th Cir. 1990). "It means to produce evidence." Id.

4/ Even if the Petitioner had presented a prima facie case of discrimination, the Respondent has articulated legitimate, non-discriminatory reasons for the decisions at issue. Specifically, the Petitioner was assigned to teach lower levels

of ESOL because the demand for those classes was usually higher, and the Petitioner was assigned to teach ESOL-PRE under the SAVES program because he was well qualified to do so. During the trimester at issue here, the Petitioner's part-time employment ceased because the classes he was assigned to teach were closed due to low enrollment in those specific classes. Those classes were not closed because of unlawful and intentional race discrimination. Further, the Petitioner was not disqualified from future employment as a part-time evening ESOL teacher. He could have returned to teach part-time ESOL classes the very next trimester, had he chosen to do so. The Petitioner presented no evidence that the Respondent's proffered reasons for the cancellation of his classes was pretextual. Rather, the evidence clearly demonstrates that the Petitioner's classes were cancelled due to low enrollment. The record contains no evidence that would support a finding that the Respondent's decision to cancel the subject classes was made with intent to discriminate on the basis of race.

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.