STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LESTER L. HALL, Petitioner, vs. GREENVILLE HILLS ACADEMY/DISC VILLAGE, Respondent.	)	Case No. 06-1052

RECOMMENDED ORDER

A formal hearing was conducted in this case on May 18, 2006, in Tallahassee, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Lester Levon Hall, pro se
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Tallahassee, Florida 32303

For Respondent: Amy R. Harrison, Esquire
Lindsay A. Connor, Esquire
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STATEMENT OF THE ISSUE

The issue is whether Respondent committed an unlawful employment action by discriminating against Petitioner based on his race, contrary to Section 760.10, Florida Statutes (2005).

PRELIMINARY STATEMENT

On August 15, 2005, Petitioner Lester Hall (Petitioner) filed an Employment Charge of Discrimination with the Florida Commission on Human Relations (FCHR). The charge alleged that Respondent Greenville Hills Academy/Disc Village (Respondent) had discriminated against Petitioner based on his race and disability.

On February 2, 2006, FCHR issued a Determination: No Cause. On March 20, 2006, Petitioner filed a Petition for Relief involving his claim of racial discrimination. On March 24, 2006, FCHR referred the petition to the Division of Administrative Hearings.

A Notice of Hearing dated April 3, 2006, scheduled the hearing for May 18-19, 2006.

During the hearing, Petitioner did not testify on his own behalf, but presented the testimony of six witnesses. Petitioner offered four exhibits that were accepted as evidence.

Respondent presented the testimony of three witnesses. Respondent did not offer any exhibits as evidence.

The court reporter filed the Transcript on June 9, 2006. On June 15, 2006, Petitioner filed a Proposed Recommended Order. On June 19, 2006, Respondent filed a Proposed Recommended Order.

All citations hereinafter shall refer to Florida Statutes (2005) unless otherwise indicated.

FINDINGS OF FACT

1. Respondent is an employer as defined in Section 760.027, Florida Statutes (2005). Prior to July 1, 2005, Respondent operated the following rehabilitation programs: (a) Tallahassee-Leon County Human Services (TLC) serving outpatient adults in downtown Tallahassee, Florida; (b) a residential program for women and their children known as Sisters in Sobriety (SIS), which is located on Respondent's campus in Woodville, Florida; (c) a foster care program for teenage girls that Respondent houses in the St. Mark's Cottage, which is located on Respondent's campus in Woodville, Florida; (d) a foster care program for teenage boys that Respondent houses in the St. Mark's Lodge, which is located on Respondent's campus in Woodville, Florida; and (e) residential rehabilitation programs, which were located on Respondent's campus in Greenville, Florida. Sometime in July 2005, Respondent sold its Greenville Campus to another corporation.

2. Petitioner is an African-American male. At all times relevant here, Petitioner worked full-time as the Director of Operations at Respondent's Woodville Campus.

3. On August 19, 2002, Petitioner acknowledged receipt of Respondent's Equal Employment Opportunity/Anti-harassment Policy Statement, which states as follows in relevant part:

> Any employee who believes that she/her has been harassed or discriminated against in violation of this policy should report the problem immediately to the Director of Human Resources.

4. Respondent's Human Resources Policies and Procedures manual states as follows in relevant part:

> E. Statement of Affirmative Action
>
> It is the policy of DISC Village, Inc., to provide equal opportunity for employment, training, promotion, compensation and all conditions of employment for individuals without regard to race, color, religion, sex, national origin, age except as provided by law, prior history of emotional, mental, drug or alcohol disability or physical disability. DISC Village will maintain a specific program to maintain and promote non-discrimination in accordance with the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990. Any perceived act of discrimination should be reported to the site director and the Human Resources Director . . . immediately.
>
> F. Anti-Harassment Policy
>
> DISC Village, Inc. is committed to maintaining a work environment that is free of unlawful harassment and will not tolerate any form of harassment or unlawful discrimination against our employees by anyone. Employees must report any form of harassment, especially sexual, to their direct supervisor and the Human Resources Director . . . as soon as possible. Upon hire, all new employees will receive a copy of the agency Anti-Harassment Policy & Procedure with signoff.

5. At all times relevant here, Qua' Keita Anderson, an African-American female, was a counselor at Respondent's Woodville Campus. Ms. Qua' Keita Anderson worked in the SIS program. Ms. Qua' Keita Anderson's direct supervisor was Joni Morris-Anderson, Respondent's Director of Women's Residential Services on the Woodville Campus.

6. At all times relevant here, Lisa Bergeron worked for Respondent as Program Supervisor of DISC Adolescent Treatment Center on the Woodville Campus.

7. Prior to July 1, 2005, Harry Rohr, a white male, was the Director of Residential Services at Respondent's Greenville Campus and Woodville Campus. Mr. Rohr was Petitioner's direct supervisor, even though Mr. Rohr spent most of his time at the Greenville Campus prior to July 2005. Petitioner was in charge of the Woodville Campus when Mr. Rohr was not available.

8. After July 1, 2005, Mr. Rohr spent most of his time at Respondent's Woodville Campus. Mr. Rohr made this change because Respondent no longer operated programs on the Greenville Campus. The sale of the Greenville Campus did not cause a change in title or job responsibilities for Petitioner or Mr. Rohr.

9. At all times relevant here, Tom Olk, a white male, was Respondent's Chief Executive Officer. Mr. Olk's office is located in Respondent's administrative facility in Tallahassee,

Florida. However, Mr. Olk frequently makes on-site visits to Respondent's Woodville Campus.

10. At all times material here, Lou Logan was Respondent's Deputy Director and head of Respondent's Human Resource Department. Mr. Logan is a white male. Mr. Logan's office is located in Respondent's administrative facility in Tallahassee, Florida.

11. In March 2004, Respondent was in the process of opening the foster care program on the Woodville Campus. Several staff members, including Petitioner, participated in refurbishing an old home as a residence for the foster children.

12. Respondent's staff was hanging curtains when Mr. Logan paid an impromptu visit to the old home. The curtains were printed with African animals, including monkeys. When Mr. Logan stated how nice the curtains looked, a staff member made some comment about the monkeys in the curtains. Another staff member commented about Petitioner having a big role in the decorating project. Mr. Logan then stated, "Oh, Lester is always monkeying around." Mr. Logan made the statement in the spirit of the moment to show how happy he was that the staff was doing such a good job.

13. Petitioner complained to Mr. Olk that Mr. Logan had called him a monkey. Mr. Olk discussed the incident with Mr. Logan and Petitioner, concluding that Mr. Logan had not

called Petitioner a monkey. Mr. Olk properly determined that Mr. Logan never intended to make a racially derogatory comment about Petitioner and that Petitioner had taken Mr. Logan's statement out of context.

14. In early June 2005, Petitioner called Ms. Qua' Keita Anderson at home on her day off to discuss some performance issues she was having at work. The conversation took an inappropriate turn when Petitioner asked Ms. Qua' Keita Anderson if she had a "sexual stress reliever."

15. On August 3, 2005, Petitioner picked up a female teenage resident of St. Mark's Cottage from Respondent's offices in Tallahassee, Florida. Petitioner transported the female youth, alone and unsupervised, in his personal vehicle to look for a job. In so doing, Petitioner violated Respondent's policy relative to the transportation of residents and/or patients of the opposite gender.

16. On August 3, 2005, Harry Rohr and Lisa Bergeron observed the same young female client leaning over Petitioner's shoulder at his computer desk in very close proximity to Petitioner's body. Petitioner did not maintain appropriate physical boundaries with the young girl.

17. On August 3, 2005, Mr. Rohr spoke to Petitioner about his violation of the transportation rules and his failure to maintain appropriate physical boundaries with the female client.

Mr. Rohr then wrote a memorandum to memorialize the conversation. In the memorandum, Mr. Rohr advised Petitioner to refrain from being alone with any of the teenagers and to concentrate his efforts on the boys of St. Mark's Lodge.

18. Shortly thereafter, Respondent approved Ms. Qua' Keita Anderson's request for a transfer from the Woodville Campus to the TLC Campus. Ms. Qua' Keita Anderson wanted to work in downtown Tallahassee, Florida, because she was beginning graduate school and needed a smaller, less stressful caseload.

19. On one occasion, Petitioner and Ms. Qua' Keita Anderson had lunch together at a picnic table on the Woodville Campus. On another occasion, Petitioner ordered take-out meals for Ms. Qua' Keita Anderson and himself. Ms. Qua' Keita Anderson paid Petitioner for her meal when she picked it up in Petitioner's office. There is no persuasive evidence that Petitioner ever paid for Ms. Qua' Keita Anderson's lunch, on or off the Woodville Campus.

20. Upon realizing that Ms. Qua' Keita Anderson's last day at the Woodville Campus was approaching, Petitioner telephoned her at home. During the conversation, Petitioner told Ms. Qua' Keita Anderson that she "owed him something" before she transferred.

21. Ms. Qua' Keita Anderson replied that she did not owe Petitioner anything. Petitioner then asked Ms. Qua' Keita

Anderson to have lunch with him before her last day at work on the Woodville Campus. Ms. Qua' Keita Anderson did not agree to have lunch with Petitioner.

22. Petitioner telephoned Ms. Qua' Keita Anderson one additional time at work. During the call, Petitioner again asked when Ms. Qua' Keita Anderson was going to have lunch with him. Ms. Qua' Keita Anderson advised Petitioner that she was uncomfortable having a personal lunch outside of the office. Once again she refused Petitioner's invitation.

23. On August 8, 2005, Ms. Qua' Keita Anderson complained to her supervisor, Ms. Joni Morris-Anderson. Ms. Qua' Keita Anderson and Ms. Joni Morris-Anderson are unrelated.

24. Ms. Qua' Keita Anderson complained about Petitioner's inappropriate sexual remark, his telephone calls to her home, his insinuation that she "owed him something" before she transferred, and his insistence that she have lunch with him. Ms. Qua' Keita Anderson repeated her complaint in the presence of Ms. Bergeron, who advised Ms Morris-Anderson to report the incidents to Mr. Rohr.

25. Ms. Qua' Keita Anderson prepared a written statement and submitted it to Mr. Rohr. The statement reflected her "concern" about Petitioner's behavior, which made her feel uncomfortable and harassed.

26. On August 8, 2005, Mr. Olk visited the Woodville Campus. During that visit, Mr. Olk and Mr. Rohr met with Petitioner to discuss Ms. Qua' Keita Anderson's sexual harassment complaint. The meeting also included a discussion involving Petitioner's unsupervised transportation of a female resident and his failure to maintain appropriate physical boundaries with the same female resident.

27. Mr. Olk explained to Petitioner that Ms. Qua' Keita Anderson's complaint raised serious issues, which required an investigation. Mr. Olk advised Petitioner that if he did not participate in the investigation, he could resign or be terminated.

28. In regard to Ms. Qua' Keita Anderson's allegations, Petitioner stated that "it didn't happen that way." He did not make any other statement except to say that “he needed time to think."

29. Mr. Olk had another scheduled meeting on the Woodville Campus. Mr. Olk asked Petitioner to read Ms. Qua' Keita Anderson's complaint and to discuss it with Mr. Olk upon his return from the other meeting.

30. Petitioner then asked Mr. Rohr if he could have the rest of the day off. Mr. Rohr denied this request because Mr. Olk wanted to continue his discussion with Petitioner and

because Mr. Rohr wanted Petitioner to begin the cross-training of Jonetta Chukes.

31. Ms. Chukes is a white female. Prior to July 1, 2005, Ms. Chukes worked in Respondent's office in Tallahassee, Florida, as a Medicaid specialist. Until the Greenville Campus was sold, Ms. Chukes also provided some paperwork services for the programs on the Greenville Campus.

32. Sometime in July 2005, Respondent decided to let Ms. Chukes work part-time in the administrative office in Tallahassee, Florida, and part-time too as a secretary on the Woodville Campus. Additionally, Respondent wanted Ms. Chukes to cross-train in the following areas: (a) the client intake process, formerly exclusively performed by Petitioner; (b) the billing process, formerly exclusively performed by another secretary on the Woodville Campus; and (c) the workforce application process. Cross-training is important to Respondent to ensure that its programs function smoothly when any particular person is not at work.

33. Ms. Chukes did not immediately begin working part-time on the Woodville Campus after Respondent made the decision about her new responsibilities. Ms. Chukes happened to begin that transition on August 8, 2005.

34. When Mr. Olk and Mr. Rohr returned from the other meeting, they intended to finish their conversation with

Petitioner. However, they could not locate Petitioner. They soon learned that Petitioner had turned in his keys and employer-provided cell phone, submitted a written letter of resignation, and left the campus. Petitioner never informed anyone that he believed Mr. Rohr was discriminating against him.

35. Mr. Olk was very disappointed that Petitioner did not stay on the premises to complete their discussion. Mr. Olk believed Petitioner was a valuable employee with potential for career advancement. Mr. Olk encouraged Petitioner to pursue his undergraduate degree, which is a requirement for upper management.

36. Respondent reimbursed Petitioner for his tuition at Tallahassee Community College. Respondent does not normally pay for its employees to attend college. In this respect, Petitioner was treated more favorably than his Caucasian counterparts.

CONCLUSIONS OF LAW

37. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to Section 760.11(4)(b), Florida Statutes.

38. Section 760.10(1)(a), Florida Statutes (2005), prohibits discrimination against any individual with respect to compensation, terms, conditions, or privileges of employment because of an individual's race.

39. The Florida Civil Rights Act of 1992 (FCRA), Sections 760.01 through 760.11, Florida Statutes (2005), is patterned after Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. Florida courts have held that decisions construing Title VII are applicable when considering claims under FCRA. See Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991).

40. The employee has the ultimate burden to prove discrimination by direct or indirect evidence. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). There is no direct evidence of discrimination in this case.

41. The only statement that could possibly be considered direct evidence of race discrimination is the allegation that Mr. Logan called Petitioner a "monkey" during a visit to the foster care home. The most persuasive evidence indicates that Mr. Logan's comment related to Petitioner "monkeying around." Mr. Logan's remark about Petitioner's jovial character and outlook on life does not rise to the level of race discrimination.

42. Even if Mr. Logan's statement had been racially motivated, the "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee does not affect the condition of employment to a sufficiently significant

degree so as to violate Title VII." See Paris v. ARC/Davidson County, Inc., 307 F. Supp. 2d 743 (M.D. N.C. 2004).

43. Moreover, Mr. Logan was not involved in the August 8, 2005, meeting regarding the complaint of sexual harassment against Petitioner. Mr. Logan was not a decision-maker as to any issue in this case. See Holifield v. Reno, 115 F.3d 1555, 1563-1564 (11th Cir. 1996)("[A] plaintiff cannot rely on remarks as direct evidence of discrimination unless they were uttered by the decision-maker in the challenged action, or at the very least, by someone involved or having an influence on the decisional process.")

44. In order to prove a claim of indirect discrimination, an employee must establish a prima facie case by creating an inference of discrimination through circumstantial evidence. See Early v. Champion International Corporation 907 F.2d 1077, 1081 (11th Cir. 1990).

45. Generally, a prima facie case of discrimination based on circumstantial evidence requires an employee to show the following: (a) the employee is a member of a protected group; (b) the employee was subjected to an adverse employment action; and (c) the employee was treated differently that employees who are not members of the protected class with respect to the adverse action. See MaDonnell Douglas Corp. v. Green, 411 U.S.

792 (1973); Weaver v. Tech. Data Corp., 66 F. Supp. 1258, 1259 (M.D. Fla. 1999).

46. If an employee proves a prima facie case, the employer must then articulate a legitimate, nondiscriminatory reason for the challenged employment decision. See Burdine, 450 U.S. at 254. The employer is required only to "produce admissible evidence, which would allow the trier of fact rationally to conclude that the employment decision had not been motivated by discriminatory animus." See Burdine, 450 U.S. at 257.

47. If the employer produces evidence of a non-discriminatory reason for the adverse employment action, the burden shifts back to the employee to prove that the employer's reason was a pretext for discrimination. See St. Mary's Honor Center v. Hicks, 509 U.S. 502, 503 (1993).

48. In his attempt to establish race discrimination, Petitioner points to the August 8, 2005, meeting between himself, Mr. Olk, and Mr. Rohr. Petitioner claims the meeting was an instance of race discrimination because he was asked to participate in an internal investigation of Ms. Qua' Keita Anderson's complaint. Applying the McDonnell analysis to this case indicates that Petitioner did not establish a prima facie case of disparate treatment.

49. Regarding the August 8, 2005, meeting, there is no authority to support the proposition that requiring an employee

to participate in an investigation of employee misconduct constitutes an adverse employment action. An adverse employment action equates to a "significant change in employment status, such a hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a signification change in circumstances." See Burlington Indus. Inc. v. Ellerth, 524 U.S. 742, 761 (1981). Participating in Respondent's investigation of Ms. Anderson's complaint caused no change to Petitioner's employment status. Moreover, other provisions of Title VII imposed on Respondent an affirmative duty to investigate complaints such as Ms. Qua' Keita Anderson's in order to take immediate remedial action in response to the complaint. See Faragher v. City of Boac Raton, 524 U.S. 775, 807 (1998). Furthermore, courts have explicitly concluded that requiring an employee to participate in the investigation of a sexual harassment complaint against that employee does not constitute an adverse employment action. See Mitchell v. Carrier Corp., 954 F. Supp. 1568, 1576 (M.D. Ga. 1995).

50. Even if the August 8, 2005, meeting could somehow be construed as an adverse employment action, Petitioner has not demonstrated that he was treated less favorably than his Caucasian counterparts. He did not present evidence that a Caucasian employee had been accused of sexual harassment, but had not been required to participate in an investigation of the

complaint. See Abel v. Dubberly, 210 F.3d 1334 (11th Cir. 2000)("[A]bsent some other similarly situated but differently [treated] worker, there can be no disparate treatment.")

51. In this case, Petitioner did not stick around long enough to even complete the exploratory conversation on August 8, 2005. Therefore, it is impossible to determined whether Mr. Olk treated Mr. Logan more favorably in March 2004 than he treated Petitioner in August 2005.

52. Finally, Petitioner cannot prove that he was subjected to the adverse employment action of constructive discharge. Petitioner failed to prove that the circumstances surrounding the investigation of the sexual harassment complaint and the violations of policies related to clients of the opposite gender made his working conditions so intolerable that a reasonable person would have felt compelled to resign from his employment. See Martin v. Citibank, N.A. 762 F.2d 212, 221 (2nd Cir. 1985); McLaughlin v. State of Florida, 526 So. 2d 934, 937-938 (Fla. 1st DCA 1988).

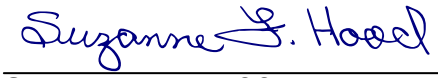
RECOMMENDATION

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

RECOMMENDED:

That FCHR enter a final order dismissing the Petition for Relief.

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



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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.