STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

STEPHANIE TAYLOR,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 09-2385
	)	
LAKE CITY COMMUNITY COLLEGE,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

A formal hearing was conducted in this case on March 23 and 24, 2010, in Lake City, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stephanie Taylor, pro se
513 Northeast Kingston Lane
Lake City, Florida 32055

For Respondent: Jesse S. Hogg, Esquire
Hogg, Ryce & Spencer
7701 Erwin Road
Coral Gables, Florida 33143

STATEMENT OF THE ISSUE

The issue is whether Respondent committed unlawful employment practices contrary to Section 760.10, Florida Statutes (2007)[1/], by terminating Petitioner's employment in retaliation for her filing a formal grievance asserting that a

co-worker made a racially discriminatory comment to her at a staff meeting.

PRELIMINARY STATEMENT

On August 20, 2007, Petitioner Stephanie K. Taylor ("Petitioner"), filed with the Florida Commission on Human Relations ("FCHR") an Employment Complaint of Discrimination (the "Complaint") against Respondent Lake City Community College (the "College" or "LCCC"). Petitioner alleged as follows:

> I believe I have been discriminated against pursuant to Chapter 760 of the Florida Civil Rights Act, and/or Title VII of the Federal Civil Rights Act[2/] as applicable for the following reasons:
>
> I believe I was harassed because of my race (black) and in retaliation for filing a formal complaint I was terminated. I began working for the Respondent as a Teaching Assistant II in the School of Cosmetology on January 28, 2007. On May 17th I filed a formal grievance for racial slurs made by Vicki Glenn, Cosmetology Instructor. She never called me by my name. I was referred to [as] the black girl or the colored girl who answers the phone. Carol McClain [3/], Supervisor, was a witness to these harassing comments and laughed it off. In retaliation for filing the formal grievance I was terminated on June 28th.

The FCHR investigated Petitioner's Complaint. On March 12, 2009, the FCHR issued a determination that reasonable cause existed to believe that an unlawful employment practice occurred. The FCHR's report and/or investigative memorandum

were not submitted and therefore are not part of the record in this proceeding.

On April 2, 2009, Petitioner timely filed a Petition for Relief with the FCHR. On May 5, 2009, the FCHR referred the case to the Division of Administrative Hearings. The case was initially assigned to Administrative Law Judge Ella Jane P. Davis and scheduled for hearing on August 17 and 18, 2009. The case was continued twice and finally was held on March 23 and 24, 2010, before the undersigned.

At the hearing, Petitioner testified on her own behalf and presented the testimony of Tracilla Sharon Chisolm, a former student in the College's cosmetology department. Petitioner's Exhibit 1 was admitted into evidence. The College presented the testimony of Tracy Hickman, Dean of Occupational Programs; Nancy Carol McLean, instructor and coordinator of cosmetology at the College; Tony LaJoie, the College's supervisor of security; Vicki Glenn, instructor in cosmetology; Gary Boettcher, the College's director of human resources during the period relevant to this proceeding; College custodian Marcia Brinson; Janice Cairel, a human resources specialist with the College; and the College's dean of student services, Linda Crowley. The College's Exhibits 1, 2, 7, 10, 18A, 20, 23, 25, 29, 30A, 30B, 34, 45 were admitted into evidence.

Petitioner filed a post-hearing brief on April 2, 2010. The four-volume transcript was filed at the Division of Administrative Hearings on April 19, 2010. On April 23, 2010, the College filed a Motion to Extend Time to File Proposed Recommended Order, which was granted by order dated April 26, 2010. In accordance with the Order Granting Extension of Time, the College filed its Proposed Recommended Order on May 10, 2010. Both parties' post-hearing submissions have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The District Board of Trustees of LCCC is an employer as that term is defined in Subsection 760.02(7), Florida Statutes.

2. Petitioner, an African-American female, was hired by the College and began work on January 29, 2007. She worked in the cosmetology department as a Teaching Assistant II until the College terminated her employment on June 28, 2007.

3. In addition to Petitioner, the College's cosmetology department consisted of two instructors, Carol McLean and Vicki Glenn. Ms. McLean was also the department coordinator, meaning that she supervised Petitioner and Ms. Glenn.

4. The instructors performed classroom instruction and supervised students "on the floor" in the department's laboratory, where the students practiced their skills on clients

who made appointments with the department to have their hair styled. Petitioner's duties included answering the telephone, making client appointments, ordering and stocking cosmetology supplies, and recording the hours and services performed by the students.

5. Petitioner was a licensed cosmetologist and was expected to assist on the floor of the lab, but only when an instructor determined that her presence was necessary. Petitioner was not authorized to perform classroom instruction.

6. Petitioner was at all times employed on a probationary basis under LCCC Policy and Procedure 6Hx12:8-04, which provides that all newly hired career service employees must serve a probationary period of six calendar months. This Policy and Procedure also requires that conferences be held with the employee at the end of two and four months of employment. The conferences are to include written performance appraisals and should be directed at employee development, areas of weakness or strength, and any additional training required to improve performance.

7. Petitioner acknowledged that she attended orientation sessions for new employees during which this Policy and Procedure was discussed.[4/]

8. The evidence at hearing established that the orientation sessions covered, among other subjects, an

explanation of the probationary period, the College's discipline and grievance procedures, and how to find the College's Policies and Procedures on the internet. The employee orientation process also required Petitioner's immediate supervisor, Carol McLean, to explain 14 additional items, including Petitioner's job description and the College's parking policies. The evidence established that Ms. McLean covered these items with Petitioner.

9. Petitioner's first written evaluation covered the period from January 29, 2007 through March 29, 2007. The evaluation was completed by Ms. McLean on April 13, 2007, and approved by the Dean of Occupational Programs, Tracy Hickman, on April 30, 2007.

10. The College's "Support Staff Job Performance Evaluation" form provides numerical grades in the categories of work knowledge, work quality, work quantity and meeting deadlines, dependability, co-operation, judgment in carrying out assignments, public relations, and overall performance. A score of 1 or 2 in any category is deemed "unsatisfactory." A score of 3 or 4 is "below norm." A score of 5 or 6 is "expected norm." A score of 7 or 8 is "above norm." A score of 9 or 10 is rated "exceptional."

11. Petitioner's scores in each area were either 5 or 6, within the "expected norm." Ms. McLean graded Petitioner's overall performance as a 6.

12. The evaluation form also provides questions that allow the supervisor to evaluate the employee's performance in a narrative format. In response to a question regarding Petitioner's strengths, Ms. McLean wrote that Petitioner "has demonstrated she is very capable handling conflicts/situations concerning clients. She is also good working with the students when needed. Her computer skills/knowledge has been an asset."

13. In response to a question regarding Petitioner's weaknesses, Ms. McLean wrote, "Kay[5/] needs to be a little more organized. I feel confident with the move to the new building, she will be able to set her office up to be more efficient for herself."

14. Petitioner testified that she has excellent organizational skills and that she is, in fact, a "neat freak." Her problem was the utter disorganization of the cosmetology department at the time she started her job. She could not see her desk for the pile of papers and other materials on it. Boxes were piled in the middle of the floor. There were more than 100 unanswered messages in the recorded message queue. Petitioner testified that neither Ms. McLean nor Ms. Glenn could tell her how to proceed on any of these matters, and that she

was therefore required to obtain advice via telephone calls to either Wendy Saunders, the previous teaching assistant, or Jeanette West, secretary to the Dean of Occupational Programs.

15. Neither Ms. McLean nor Ms. Glenn recalled the complete departmental disorganization attested to by Petitioner at the outset of her employment. In fact, Ms. McLean recalled having to work 80-hour weeks to restore order to the department's workspace after Petitioner was discharged. No other witness testified as to disorganization prior to Petitioner's hiring. The evidence presented at the hearing established that Petitioner dramatically overstated the poor condition of the cosmetology department's offices at the time she started work, and also greatly overstated any contribution she made to improve its organization.

16. Petitioner's second and final evaluation covered the period from March 29, 2007, through May 29, 2007. The evaluation was completed by Ms. McLean on May 22, 2007, and approved by Dean Hickman on May 23, 2007.

17. Petitioner's numerical scores in each of the categories, including overall performance, was 4, meaning that

her performance was "below norm." In a typewritten attachment, Ms. McLean wrote:

> Employee Improvement:
>
> 1. Strengths:
> Kay is very good with the students and has strong desires to help them.
>
> 2. Weaknesses:
> a. A concern is Kay's words and actions have shown that she would rather teach than be in the office.
>
> b. There is still a lack of organization in the office. We have had a couple incidents where we have to search for invoices, etc.
>
> c. I am still receiving complaints about the phone not being answered.
>
> 3. Other comments:
> Too often Kay's actions have made it difficult for the department to operate effectively.
>
> Since Kay's arrival, it have discussed [sic] that each person must respect the protocol of communicating within the chain of command. On numerous occasions Kay ignored those instructions, In spite of my direct instructions to notify/discuss an incident report to Dean Hickman before doing anything else with it, Kay distributed it to others.[6/]

18. The College terminated Petitioner's employment on June 28, 2007, roughly five months after she began work and well within the six-month probationary period.

19. Petitioner's dismissal was due to inadequate job performance and to several episodes displaying poor judgment and disregard of the College's rules and regulations.

20. As to day-to-day job performance, the evidence established that Petitioner often had to be asked several times to do things that she conceded were within the scope of her duties.

21. One of Petitioner's duties was to track the department's inventory, order supplies as needed, check the supplies against the invoices as they arrived, and unpack the supplies and restock the department's shelves. If the supplies were not removed from their shipping containers and stocked on the shelves, it was difficult for the instructors and students to find items or know when the department was running low on a given supply. Student cosmetologists at the College were frequently required to use caustic chemicals, and it was critical that the supplies be correctly inventoried and shelved to avoid mistakes in application of these chemicals.

22. Ms. McLean had to tell Petitioner repeatedly to unpack the supplies. Petitioner would tell Ms. McLean that she would take care of it, but later Ms. McLean would notice that the supplies were still in their boxes.[7/]

23. Ms. McLean testified that there were multiple occasions when paperwork could not be located due to

Petitioner's lack of a filing system. Ms. McLean and Petitioner would have to rummage through stacks of paper to find the item they needed because Petitioner failed to file the department's paperwork in a coherent manner.

24. Another of Petitioner's duties was to set up "product knowledge" classes conducted by vendors of hair care products used in the cosmetology program. In February 2007, Ms. Glenn asked Petitioner to set up a class with Shirley Detrieville, the Redken representative for the College. Over the next month, Ms. Glenn repeatedly asked Petitioner about her progress in setting up the class, and Petitioner consistently responded that Ms. Detrieville had not returned her calls. Finally, in March, Ms. Glenn happened to see Ms. Detrieville on the campus. Ms. Detrieville informed Ms. Glenn that all the paperwork for the class had been completed long ago, and she was just waiting for Petitioner to call and let her know when to come. Ms. Glenn's class never received the Redken training.

25. The evidence established that Petitioner consistently failed to return phone calls made to the department. There was a core group of women, mostly retirees that constituted an important segment of the regular patrons at the department's lab. Keeping track of their appointments was important because the students needed practical experience in order to meet the requirements for licensure. It was also important to keep track

of the training needs of each student, because a student working on hair coloring, for instance, needed to be matched with a customer requesting that service. Among Petitioner's duties was to make the appointments for the patrons, and to coordinate the appointments with the students.

26. Ms. McLean and Ms. Glenn testified that they consistently received complaints that Petitioner did not return phone calls from patrons attempting to make appointments. Ms. McLean recalled an elderly woman named Ms. Grammith, who was a weekly customer at the lab. Ms. Grammith phoned Ms. McLean at home because she was unable to get Petitioner to return her calls for an appointment.[8/]

27. Ms. Glenn recounted an occasion when she received a phone call from Ms. Grammith, complaining that Petitioner was not returning her calls. Ms. Glenn walked into Petitioner's office and asked her to return Ms. Grammith's call and make her appointment. Petitioner assured Ms. Glenn that she would. Ms. Glenn then went to teach a class. When she returned to her office, Ms. Glenn had another message from Ms. Grammith. Ms. Glenn asked Petitioner about the situation, and Petitioner admitted that she had not yet returned the call. Still later on the same afternoon, Ms. Glenn received a third call from Ms. Grammith. Again, Ms. Glenn inquired of Petitioner, who again admitted that she had not phoned Ms. Grammith.

28. The next morning was a Friday, and Ms. Glenn received another call from Ms. Grammith. Ms. Glenn walked into Petitioner's office and told her to call Ms. Grammith. Ms. Glenn knew Petitioner never made the call because Ms. Grammith called Ms. Glenn yet again on the following Monday.

29. Another elderly regular customer, Ms. Caldwell, stopped Ms. Glenn in the hallway one day to ask "what in the world was going on here." Ms. Caldwell complained that Petitioner never got her appointment right, and always told her that she had come in on the wrong day or at the wrong time. On this day, Ms. Caldwell was left sitting in the hallway outside the lab for three and one-half hours because Petitioner failed to schedule her appointment correctly.

30. On another occasion, Shirley Rehberg, an LCCC employee, emailed Ms. Glenn to inquire about making an appointment for a pedicure. Ms. Glenn responded that Petitioner handled appointments, and provided Ms. Rehberg with information as to Petitioner's office hours. On three different occasions, Ms. Rehberg informed Ms. Glenn that she had attempted to make appointments with Petitioner but had received no response.

31. Ms. Glenn also recalled going to the College registrar's office on unrelated business and being asked by Debbie Osborne, an employee in that office, whether the cosmetology department had stopped taking appointments.

Ms. Glenn told her that all she had to do was call Petitioner. Ms. Osborne replied that she had emailed Petitioner several times and never received a response.

32. Ms. McLean concluded that Petitioner was much more interested in the occasional teaching aspect of her position than she was in the quotidian matters of filing, ordering and answering the phone that constituted the bulk of her job. Ms. McLean believed that Petitioner's eagerness to teach, even when her presence on the floor was not requested or needed, sometimes caused Petitioner to neglect her other duties.

33. Petitioner admitted that she preferred teaching, but also testified that she was forced to teach students at least two days per week because Ms. McLean simply skipped work every Wednesday and Thursday. Petitioner stated that when she was on the floor of the lab, she could not hear the phone ringing back in the office. She believed that this might have accounted for some of the missed phone calls.

34. Ms. McLean credibly denied Petitioner's unsupported allegation that she skipped work twice per week. Ms. McLean was in the classroom and lab with her students four days per week, as required by her schedule. Ms. McLean reasonably observed that she would not remain long in the College's employ if she were to skip work every Wednesday and Thursday.

35. When classes were not in session, faculty members such as Ms. McLean and Ms. Glenn were not required to come into the office, whereas the teaching assistant was required to come in and work a full day from 8:00 a.m. to 5:00 p.m. On these faculty off-days, it was especially important for Petitioner to be on the job because she constituted the sole point of contact between students and the cosmetology department. New classes in cosmetology start twice a year, and prospective students may drop by the campus at any time. If no one is present during normal working hours to answer questions or assist the student in applying, the College could lose a prospective student as well as suffer a diminished public image.

36. The evidence established that Petitioner would take advantage of the lack of supervision on faculty off-days to go missing from her position, without submitting leave forms for approval by an administrator as required by College policy. May 4, 2007, was the College's graduation day. Ms. McLean and Ms. Glenn arrived at the cosmetology building at 3:00 p.m. to prepare for the cap and gown ceremony and noted that Petitioner was not there, though it was a regular work day for her. Petitioner was still absent at 4:30 p.m. when the two instructors left the building to go to the graduation ceremony.

37. On May 15, 2007, a faculty off-day, Ms. Glenn came in at 11:00 a.m. to prepare for her class the next day. Petitioner

asked Ms. Glenn to handle a student registration matter while Petitioner went out. Ms. Glenn agreed to do so. The students had yet to arrive by 2:00 p.m. when Ms. Glenn was ready to leave. Petitioner had still not returned to the office, forcing Ms. Glenn to ask Ms. West to register the students if they arrived. Ms. Glenn had no idea when or if Petitioner ever returned to work that day.

38. Marcia Brinson was the custodian who cleaned the cosmetology building. During summer session at the College, Ms. Brinson worked from 2:00 p.m. to 11:00 p.m. She would often come into the cosmetology building and find that Petitioner was not there. This was the case on May 15, 2007, when Ms. Brinson entered the building at 2:00 p.m. At around 2:30, an administrator named Glenn Rice came to the cosmetology building with two students whom he was attempting to enroll.[9/] Ms. Brinson phoned Ms. McLean at home to inform her of the situation.

39. Ms. McLean phoned the cosmetology office. Petitioner did not answer. At about 2:50 p.m., Ms. McLean called Petitioner at her cell phone number. Petitioner answered and told Ms. McLean that she was at her mother's house, but was about to return to the College. Ms. McLean could not say whether Petitioner ever actually returned to the College that day.

40. At the hearing, Petitioner claimed that the only time she left the cosmetology department on May 15, 2007, was to go to the library at 2:15 p.m. and obtain materials for a class she was going to teach on May 17. This testimony cannot be credited, given that it conflicts with the credible testimony of Ms. McLean, Ms. Glenn and Ms. Brinson.

41. Further belying Petitioner's claim is the fact that she later submitted a leave form claiming "personal leave" for two hours on May 15, 2007. She claimed the hours from 3:30 p.m. to 5:30 p.m. Aside from its inconsistency with Petitioner's testimony, this claim was inaccurate on two other counts. First, the evidence established that Petitioner was away from the office from at least 11:00 a.m. until some time after 3:00 p.m. Second, Petitioner's regular work day ended at 5:00 p.m., thus giving her no cause to claim leave for the half-hour between 5:00 and 5:30 p.m.

42. The College has a "wellness" program in which employees are allowed to take 30 minutes of leave, three days per week, in order to engage in some form of exercise. Petitioner considered wellness time to be the equivalent of personal leave, and would leave her job at the College early in order to keep an appointment at a hair-styling salon at which she worked part-time.

43. Finally, Petitioner was unwilling or unable to comply with the College's parking decal system. At the time she was hired, Petitioner was issued a staff parking pass that entitled her to park her car in any unreserved space on he campus.

44. As noted above, many of the cosmetology customers were elderly women. For their convenience, the College had five spaces reserved for customers directly in front of the cosmetology building. Customers were issued a 5 x 8 "Cosmetology Customer" card that they would leave on their dashboards. If all five of the reserved spaces were taken, the card allowed the customer to park in any space on the campus.

45. On May 30, 2007, the College's supervisor of safety and security, Tony LaJoie, was patrolling the campus on his golf cart. Petitioner flagged him down, asking for help with a dead battery in her car. Mr. LaJoie stopped to help her, but also noticed that Petitioner's car was parked in a space reserved for customers and that Petitioner had a "Cosmetology Customer" card on her dashboard. When he asked her about it, Petitioner told Mr. LaJoie that she had lost her staff parking pass and therefore needed to use the customer pass.

46. Mr. LaJoie told Petitioner that she could go to the maintenance building and get a new staff pass, or get a visitor's pass to use until she found the first pass. Petitioner told Mr. LaJoie that she could not afford the $10

replacement fee for the pass. Mr. LaJoie told her that the $10 replacement fee was cheaper than the $25 to $50 fines she would have to pay for illegally parking on campus. Petitioner promised Mr. LaJoie that she would go to maintenance and take care of the situation.

47. On June 5, 2007, Mr. LaJoie found Petitioner's car again parked in a customer reserved space and with a customer card on the dashboard. Mr. LaJoie wrote Petitioner a parking ticket.

48. Petitioner was well aware that the customer spaces were reserved at least in part because many of the department's customers were elderly and unable to walk more than a short distance. Petitioner nonetheless ignored College policy and parked her car in the reserved spaces. Petitioner never obtained a replacement parking pass.[10/]

49. Dean Hickman was the administrator who made the decision to recommend Petitioner's termination to the College's Vice-President, Charles Carroll, who in turn presented the recommended decision to LCCC President Charles W. Hall, who made the final decision on termination. She based her recommendation on the facts as set forth in Findings of Fact 19 through 48, supra.

50. Petitioner's termination was due to her performance deficiencies. Dean Hickman considered Petitioner's pattern of

conduct, including her repeated violation of parking policies and her practice of leaving her post without permission, to constitute insubordination.

51. Ms. McLean, who provided input to Dean Hickman as to Petitioner's performance issues, testified that Petitioner's slack performance worked to the great detriment of a department with only two instructors attempting to deal with 20 or more students at different stages of their training. Petitioner's position was not filled for a year after her dismissal. Ms. McLean and Ms. Glenn worked extra hours and were able to perform Petitioner's duties, with the help of a student to answer the phones. The fact that the instructors were able to perform their own jobs and cover Petitioner's duties negates Petitioner's excuse that she was required to do more than one full-time employee could handle. Furthermore, Ms. McLean testified that, despite the added work load, Petitioner's departure improved the working atmosphere by eliminating the tension caused by Petitioner.

52. Because Petitioner was still a probationary employee, the College was not required to show cause or provide specific reasons for her dismissal. Nevertheless, the evidence established that there were entirely adequate, performance-based reasons that fully justified the College's decision to terminate Petitioner's employment. The evidence further established that

Petitioner's dismissal was not related to the formal grievance Petitioner filed on June 5, 2007. However, because Petitioner has alleged that her termination was retaliatory, the facts surrounding her grievance are explored below.

53. The grievance stemmed from an incident that occurred between Petitioner and Ms. Glenn on May 16, 2007, the first day of the summer term. A student named Russia Sebree approached Ms. Glenn with a problem. Ms. Sebree was not on Ms. Glenn's summer class roster because she had not completed the Tests of Adult Basic Education ("TABE"), a test of basic reading, math and language skills. Students were required to pass the TABE in their first semester before they would be allowed to register for their second semester. Ms. Glenn told Ms. Sebree that, because the initial registration period had passed, they would have to walk over to the Dean's office and have Dean Hickman register Ms. Sebree for the class. Ms. Glenn phoned Dean Hickman's secretary, Ms. West, to make an appointment. Ms. West told Ms. Glenn that Dean Hickman was out of the office, and that she would make a return call to Ms. Glenn as soon as the dean returned.

54. While waiting for Ms. West's call, Ms. Sebree apparently drifted into Petitioner's office. She mentioned to Petitioner that she hadn't passed the TABE test, and Petitioner

told her she could take care of the matter by making an appointment for Ms. Sebree to take the test.

55. Ms. Glenn overheard the conversation and walked in to stop Petitioner from making the call. She told Petitioner that she had a call in to Dean Hickman, and that she and Ms. Sebree would have to meet with the dean to determine whether Ms. Sebree could register for Ms. Glenn's summer class or whether she would be required to complete the TABE and wait until the next semester.

56. Ms. Glenn was angered by Petitioner's interference in this matter. Petitioner's actions were beyond the scope of a teaching assistant's duties, unless requested by an instructor.[11/] She jumped into the situation without inquiring whether Ms. Sebree had talked to her instructor about her problem and without understanding the steps that Ms. Glenn had already taken on Ms. Sebree's behalf.

57. Eventually, Ms. West returned the call and Ms. Glenn and Ms. Sebree met with Dean Hickman. After the meeting, Ms. Glenn requested a private meeting with Dean Hickman. She told the dean that she was very upset that Petitioner had taken it upon herself to take over the situation with Ms. Sebree, when Ms. Glenn was taking care of the matter and Petitioner had no reason to step in.

58. Dean Hickman told Ms. Glenn that she would not tolerate a staff person going over an instructor's head in a matter involving a student. Dean Hickman asked Ms. Glenn to send Petitioner over to her office.

59. Dean Hickman testified that she met with Petitioner for about 30 minutes, and that Petitioner left her office requesting a meeting with Ms. Glenn. Dean Hickman did not testify as to the details of her meeting with Petitioner. The dean knew that Petitioner was angry and cautioned her to conduct herself in a professional manner when speaking with Ms. Glenn.

60. Petitioner testified that Dean Hickman "yelled" at her, "I will not have you undermine my instructor's authority." Petitioner professed not to know what Dean Hickman was talking about. The dean repeated what Ms. Glenn had said to her about the incident with Ms. Sebree. According to Petitioner, Ms. Glenn had told the dean "some lie," an "outlandish" tale in which "I went in telling Russia that she didn't have to do what Vicki said, or something like that."

61. Petitioner told Dean Hickman her version of the incident, which was essentially that nothing happened. She was showing Ms. Sebree "some basic algebraic equations and stuff and there was no conflict or anything in the office." Petitioner asked for a meeting "so I can see what's going on."

62. Petitioner returned to the cosmetology department. She was visibly upset. She asked for a departmental meeting with Ms. McLean and Ms. Glenn that afternoon. Ms. McLean agreed to move up the weekly departmental meeting in order to take care of this matter.

63. The meeting convened with Ms. McLean going over the usual day-to-day matters involving the program. Once the regular business was completed, Ms. McLean stated that she wanted Petitioner and Ms. Glenn to air out their problems.

64. Petitioner asked Ms. Glenn why she wanted to tell lies about her. Ms. Glenn said, "What?" and Petitioner stated, "You're a liar." Ms. Glenn denied the accusation. Petitioner repeated, "You're nothing but a liar." In anger and frustration, Ms. Glenn stated, "Look here, sister, I am not a liar." Petitioner responded, "First, you're not my sister and, secondly, my name is Stephanie K. Taylor, address me with that, please."[12/] Ms. McLean testified that both women were "pretty heated" and "pretty frustrated" with each other. She concluded the meeting shortly after this exchange.

65. After the meeting, Petitioner and Ms. McLean spoke about Ms. Glenn's use of the word "sister," which Petitioner believed had racial connotations. Ms. McLean told Petitioner that she did not believe anything racial was intended.[13/] Ms. Glenn had never been called a liar, and in her frustration

she blurted out "sister" in the same way another angry person might say, "Look here, lady." Petitioner seemed satisfied and the matter was dropped for the remainder of the day.

66. Dean Hickman testified that Petitioner brought some paperwork to her office that afternoon after the departmental meeting. Petitioner told her that she felt better about the situation, that they had aired their differences and everything now seemed fine. The dean considered the matter resolved.

67. By the next morning, May 17, 2007, Petitioner had changed her mind about the comment. She sent an email to each member of the College's board of trustees, President Hall, Dean Hickman, and various other College employees that stated as follows:

> Hello. I am Stephanie K. Taylor, Teaching Assistant for Cosmetology. I am writing because of an incident that took place on yesterday, May 16, 2007. Nancy Carol McLean (Coordinator/Instructor), Vicki Glenn (Instructor) and I met for a meeting to discuss concerns in our department approximately 11:35 am. During our discussion, Vicki Glenn made a racial comment to me. I disagreed with her concerning a statement she made. Her reply to me was: "No, 'Sister', I did not!" I was very offended by her remark and I replied, "My name is Stephanie Kay Taylor." Following the meeting, I spoke with Ms. McLean and I decided to write this incident statement. If I allow an instructor to call me something other than my name, these incidents will continue.

68. Ms. McLean had repeatedly cautioned Petitioner to respect the College's chain of command. As Petitioner's immediate supervisor, Ms. McLean was supposed to be Petitioner's first resort insofar as work-related complaints. Petitioner was in the habit of going straight to Dean Hickman with complaints before discussing them with Ms. McLean. However, in this instance, Petitioner did show Ms. McLean the text of her statement before she distributed it. Ms. McLean advised Petitioner to take the matter straight to Dean Hickman and discuss it with her before distributing the statement.

69. Petitioner did not take Ms. McLean's advice. Though Petitioner emailed the statement to Dean Hickman, the dean did not actually see the statement until it had been distributed to several other people.

70. No evidence was presented that Petitioner suffered any adverse consequences from distributing her written statement outside the College's chain of command. To the contrary, Petitioner testified that Ms. McLean advised her that if she felt strongly about the matter, she should file a formal grievance pursuant to the LCCC Policy and Procedure 6Hx12:6-10.[14/] Ms. McLean provided Petitioner with the forms she needed to file a written grievance. Petitioner also sought and received the advice of a human relations specialist at the College as to how to file a formal grievance.

71. Both Ms. McLean and Ms. Glenn convincingly testified that they had no ill feeling toward Petitioner for filing a grievance. Ms. McLean stated that the grievance had no impact on her at all. Ms. Glenn was not disturbed by the grievance because she had done nothing wrong and believed the process would vindicate her.

72. Petitioner filed her formal written grievance on June 5, 2007. Vice president Marilyn Hamm began the investigation in the absence of Human Resources Director Gary Boettcher, who picked up the investigation upon his return to the campus. Dean Hickman also participated in the investigation of Petitioner's grievance. They interviewed the witnesses to the incident. They also interviewed 11 cosmetology students and asked them whether they had ever heard Ms. Glenn make any "derogatory or racial slurs or comments" relative to Petitioner.

73. None of the students had heard Ms. Glenn make any remarks fitting the description in the query.[15/] One student told the investigators that he had heard Petitioner speak disparagingly of Ms. Glenn, but not vice versa.

74. On June 19, 2007, Mr. Boettcher issued a memorandum to Petitioner that stated as follows:

> You filed a grievance alleging that Ms. Vickie Glenn made a racial comment to you by calling you "sister." You further stated that you want the same respect that you have

given to others and that you be referred to by your name, Stephanie K. Taylor.

I was not available when you filed the grievance therefore it was referred to Vice President Hamm who began the investigation and upon my return it was referred to me.

Ms. Hamm interviewed yourself, and Carol McLean. Ms. Hamm and I then interviewed Ms. Glenn. Subsequently, Ms. Hickman, the Dean of your department, and I interviewed a random sampling of students in the cosmetology program.

The incident you described, when you were referred to as "sister" was discussed with both Ms. McLean and Ms. Glenn, who were in the meeting when the comment was made. They both acknowledged that you were in fact referred to as sister. Neither of them viewed it as a racial comment but a term that was used in the heat of the discussion in which you and Ms. Glenn were very much at odds on a subject.

The students were interviewed and asked if you had discussed or made mention of an evaluation that you received and also whether that had ever heard Ms. Glenn talk derogatorily or made any racial comments relative to you.

Some of the students heard of talk of your evaluation but none of them heard it first hand from you. None of the students ever heard Ms. Glenn refer to you in any racial or disparaging way.

In view of the investigation it is concluded that you were called "sister" but not in a negative or racial inference and that Ms. Glenn has not referred to you in a derogatory or racial manner.

This has been discussed with Ms. McLean and Ms. Glenn in that they were asked to refer

> to you strictly by your name and in a professional manner.
>
> I trust this will be satisfactory to you and if you have any questions please feel free to contact me.

75. Petitioner's employment with the College was terminated on June 28, 2007, nine days after Mr. Boettcher's memorandum. No evidence was presented to establish a causal connection between these two events, aside from their temporal proximity. As noted extensively above, the College had more than ample justification to terminate Petitioner's employment before the conclusion of her six-month probationary period.

76. The greater weight of the evidence establishes that Petitioner was terminated from her position with the College due to poor job performance and conduct amounting to insubordination.

77. The greater weight of the evidence establishes that the College did not retaliate against Petitioner for the filing of a grievance alleging that Ms. Glenn had made a racially discriminatory remark towards Petitioner. Rather, the greater weight of the evidence established that College personnel assisted Petitioner in filing her grievance and that the College conscientiously investigated the grievance.

78. The greater weight of the evidence establishes that the College has not discriminated against Petitioner based on her race.

CONCLUSIONS OF LAW

79. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2009).

80. The Florida Civil Rights Act of 1992 (the Florida Civil Rights Act or the Act), Chapter 760, Florida Statutes, prohibits discrimination in the workplace. Subsection 760.11(1), Florida Statutes, provides that any person aggrieved by a violation of the Act must file a complaint within 365 days of the alleged violation.

81. Subsection 760.10(7), Florida Statutes, states the following:

> It is an unlawful employment practice for an employer, an employment agency, a joint labor-management committee, or a labor organization to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

82. The College is an "employer" as defined in Subsection 760.02(7), Florida Statutes, which provides the following:

> "Employer" means any person[16/] employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

83. Florida courts have determined that federal case law applies to claims arising under the Florida's Civil Rights Act, and as such, the United States Supreme Court's model for employment discrimination cases set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), applies to claims arising under Section 760.10, Florida Statutes. See Paraohao v. Bankers Club, Inc., 225 F. Supp. 2d 1353, 1361 (S.D. Fla. 2002); Florida State University v. Sondel, 685 So. 2d 923, 925 n.1 (Fla. 1st DCA 1996); Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

84. Under the McDonnell analysis, in employment discrimination cases, Petitioner has the burden of establishing by a preponderance of evidence a prima facie case of unlawful discrimination. If the prima facie case is established, the burden shifts to the College, as the employer, to rebut this preliminary showing by producing evidence that the adverse action was taken for some legitimate, non-discriminatory reason. If the employer rebuts the prima facie case, the burden shifts back to Petitioner to show by a preponderance of evidence that the College's offered reasons for its adverse employment decision were pretextual. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981).

85. In order to prove a prima facie case of retaliation under Chapter 760, Florida Statutes, Petitioner must establish that: (1) she engaged in statutorily protected activity; (2) an adverse employment action occurred; and (3) the adverse action was causally related to Petitioner's protected activity. See Gupta v. Florida Board of Regents, 212 F.3d 571, 587 (11th Cir. 2000); Raney v. Vinson Guard Service, Inc., 120 F.3d 1192, 1196 (11th Cir. 1997); Russell v. KSL Hotel Corporation, 887 So. 2d 372, 379 (Fla. 3d DCA 2004).

86. Petitioner has failed to prove a prima facie case of retaliation.

87. Petitioner established that she is a member of a protected group, in that she is an African-American female. Petitioner engaged in statutorily protected activity, in that she filed a grievance against a fellow employee alleging racially discriminatory comments, pursuant to the College's Policy and Procedure 6Hx12:6-10, which was adopted under the authority of Sections 1001.64 and 1001.65, Florida Statutes (setting forth the powers and duties of community college boards of trustees and community college presidents, respectively) and Florida Administrative Code Rule 6A-14.0261 (general powers of community college presidents). Petitioner was subject to an adverse employment action insofar as she was terminated.

88. Petitioner did not establish a causal relationship between the adverse employment action and her protected activity. The Eleventh Circuit Court of Appeals construes the "causal link" requirement broadly: "a plaintiff merely has to prove that the protected activity and the negative employment action are not completely unrelated." Equal Employment Opportunity Commission v. Reichhold Chemicals, Inc., 988 F.2d 1564, 1571-1572 (11th Cir. 1993). See also Pennington v. City of Huntsville, 261 F.3d 1262, 1266 (11th Cir. 2001); Olmsted v. Taco Bell Corporation, 141 F.3d 1457, 1460 (11th Cir. 1998).

89. However, even under this generous standard, Petitioner failed to establish a causal relationship between the termination of her employment and her action in filing a grievance. Personnel employed by the College actively assisted Petitioner in filing the grievance. The grievance was conscientiously investigated by three College administrators. Though the grievance was ultimately held to be unproven as to the racial animus alleged by Petitioner, Mr. Boettcher took the extra step of counseling Ms. McLean and Ms. Glenn as to the proper mode of addressing Petitioner. No competent evidence linked the grievance to Petitioner's dismissal.

90. There was a tenuous temporal link of nine days between the grievance and Petitioner's dismissal. In considering this link, it must be recalled that Petitioner's entire employment at

the College lasted from January 29, 2007 through June 28, 2007, a period of five months. Had Petitioner worked at the College for several years, a nine day gap between the conclusion of the grievance process and her termination might raise suspicion. In the context of a mere five months' employment, a gap of nine days is a significant amount of time that, standing alone, does not establish a causal link between the grievance and Petitioner's dismissal.

91. Even if it were concluded that Petitioner established a prima facie case of retaliation, the College produced overwhelming evidence that the adverse employment action was taken for a legitimate, non-discriminatory reason. The evidence established that Petitioner had to be asked several times to perform tasks that she conceded were within the scope of her employment, and that even then she often did not perform the tasks. Petitioner did not properly inventory and shelve supplies. Petitioner had no coherent filing system. Petitioner failed to schedule product knowledge classes. Petitioner habitually failed to return phone calls for appointments. Petitioner falsely alleged that her direct supervisor skipped work two days a week, and that Petitioner therefore had to neglect her own duties in order to teach the missing supervisor's classes. Petitioner herself skipped work when her supervisor was not present. Petitioner purposely failed to

comply with the College's parking decal system. Petitioner recruited students to become involved in her disputes with other College employees. These performance deficiencies were more than enough to cause the College to terminate Petitioner's employment while she was still in her probationary period.

92. Petitioner wholly failed to prove that the College's reasons for dismissing her were pre-textual.

RECOMMENDATION

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

RECOMMENDED that the Florida Commission on Human Relations issue a final order finding that Lake City Community College did not commit any unlawful employment practices and dismissing the Petition for Relief.

DONE AND ENTERED this 30th day of June, 2010, in Tallahassee, Leon County, Florida.

LAWRENCE P. STEVENSON
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 30th day of June, 2010.

ENDNOTES

[1/] Citations shall be to Florida Statutes (2007) unless otherwise specified. Petitioner was discharged from her position with Lake City Community College on June 28, 2007, and filed her Employment Complaint of Discrimination with the Florida Commission on Human Relations on August 20, 2007. Section 760.10, Florida Statutes, has been unchanged since 1992.

[2/] The Employment Complaint of Discrimination also made reference to the Age Discrimination in Employment Act and the Americans with Disabilities Act. At the hearing, Petitioner offered no evidence that the College discriminated against her because of her age or because of some asserted disability. Indeed, Petitioner made no reference to such claims at the hearing. Therefore, the undersigned concludes that Petitioner has abandoned any contention that her age or a disability played any role in the termination of her employment.

[3/] The correct spelling is "McLean."

[4/] The timing of the employee appraisals, and Petitioner's awareness of the Policy and Procedure establishing the timing, are significant only because Petitioner claimed that College personnel hurriedly completed her second, negative evaluation out of the proper sequence in reaction to the events of May 16 and 17, 2007, discussed at Findings of Fact 53-69, infra. The second evaluation was completed just prior to the end of Petitioner's fourth month of employment, which is the time prescribed by Policy and Procedure 6Hx12:8-04. Petitioner's bare assertion is not supported by any competent evidence and her claim is not credited.

[5/] Petitioner called herself and was commonly referred to by others as "Kay."

[6/] Petitioner claimed that this typewritten attachment was not given to her at the time she received the written evaluation. Ms. McLean's testimony to the contrary is credited. See Finding of Fact 67, infra, for details of the referenced incident report.

[7/] Ms. McLean observed that "there was always a reason," meaning that Petitioner would always come up with excuses for her repeated failures to perform her duties.

[8/] Petitioner suggested that Ms. Grammith was mentally incapacitated, and was simply unable to recall having spoken to Petitioner. Ms. McLean credibly testified that Ms. Grammith had some physical problems, but never appeared to have mental difficulties or to be confused. Ms. Glenn testified that she had known Ms. Gammith for 18 years and that she had no mental problems.

[9/] These were apparently the students whom Petitioner referenced in her conversation with Ms. Glenn. According to Ms. Brinson, Mr. Rice had conversed with Petitioner, who told him there was no room in the program for these students. Mr. Rice then came down to the cosmetology building with the students in search of either Ms. McLean or Ms. Glenn to straighten out the matter.

[10/] By way of explanation, Petitioner testified that she owned two cars, one of which her daughter drove, and that on at least one of the occasions described above it was her daughter who had illegally parked the second car. This explanation is not credible. Mr. LaJoie was certain that both the May 30 and June 5, 2007, incidents involved the same car. Further, Petitioner's "explanation" does not explain away the key facts: Petitioner was found standing next to her illegally parked car, admitted that she illegally parked the car, and never bothered to take the simple step of replacing her parking pass.

[11/] Ms. Glenn was especially sensitive to the separation of authority between an instructor and a teaching assistant because she had spent over ten years as a teaching assistant before her promotion to instructor about ten years ago.

[12/] The last quote from Petitioner is derived from the testimony of Ms. McLean, but does not differ in substance from Petitioner's version of what she said in the meeting. Petitioner denied using the word "lie" or "liar" in addressing Ms. Glenn, but agreed that she made the substantive point that Ms. Glenn had been untruthful in her meeting with Dean Hickman. Both Ms. McLean and Ms. Glenn testified that Petitioner called Ms. Glenn a "liar." Their testimony has been credited.

[13/] At the hearing, Ms. Glenn testified that she has used the word "sister" on other occasions when she was angry, and that she never intended it as a reference to Petitioner's race. Ms. Glenn appeared surprised that Petitioner took it as a racial comment.

[14/] The Policy and Procedure provides that a "grievance" is a "complaint by an employee... that a Federal Statute, Florida Statutes, a State Board of Education Rule, or a Lake City Community College policy has been violated, misapplied, or inequitably applied." The procedure calls for the employee to first attempt an informal resolution with her department director, then to file a formal written grievance with the program director. Failing at the departmental level, the grievance then moves up to the appropriate College vice president, who meets with and provides a written disposition to the employee. If the employee is not satisfied with the vice president's decision, she may submit the grievance to the College president, who may arrange for an investigation and/or a hearing, then must render a final decision.

[15/] The students were also asked whether Petitioner had shared her employee evaluation with them. This had to do with the fact that a cosmetology student named Jennifer Finley had come forward to complain that Petitioner had called her into Petitioner's office to show her both the May 17, 2007, incident report and the second written evaluation. At a meeting with Ms. McLean, dean of student services Linda Crowley, and vice president Marilyn Hamm, Ms. Finley stated that Petitioner sought to enlist her support in the controversy. Ms. Finley believed that Petitioner's behavior was unprofessional. The situation upset Ms. Finley, who only wished to attend class and graduate on time. During the investigation, none of the responding students unambiguously stated that Petitioner had spoken directly to them about her evaluation. Three students had heard other students discuss the evaluation and Petitioner's anger about it.

[16/] "Person" includes "any governmental entity or agency." § 760.02(6), Fla. Stat.

COPIES FURNISHED:

Jesse S. Hogg, Esquire
Hogg, Ryce & Spencer
7701 Erwin Road
Coral Gables, Florida 33143

Stephanie Taylor
165 Northeast Rifle Court
Lake City, Florida 32055

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

Larry Kranert, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Derik Daniel, Executive Director
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.