STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RONNIE WILLIAMS,

Petitioner,

vs. Case No. 14-2093

MADISON COUNTY SCHOOL DISTRICT,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a hearing was held before the Honorable Diane Cleavinger, Administrative Law Judge, Division of Administrative Hearings on August 25, 2014, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Ronnie Williams, pro se
137 Monroe Creek Drive
Midway, Florida 32343

For Respondent: S. Denay Brown, Esquire
Messer Caparello, P.A.
2618 Centennial Place
Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

Whether the Respondent committed an unlawful employment practice against Petitioner in violation of the Florida Civil Rights Act.

PRELIMINARY STATEMENT

On October 9, 2013, Petitioner filed a Complaint of Employment Discrimination against Respondent, Madison County School District (Respondent or School Board), with the Florida Commission on Human Relations (FCHR). The Complaint alleged that Respondent discriminated against Petitioner on the basis of his sex and retaliated against him for filing a prior Complaint of Employment Discrimination with FCHR in August 2012. Specifically, Petitioner alleged that in July 2013, Respondent discriminated and retaliated against him by not granting him an interview for a position for which he had applied. Petitioner further alleged that Respondent retaliated against him by providing "false and defaming references" to prospective employers.

FCHR investigated the Complaint. On April 8, 2014, it issued a Notice of Determination finding no cause to believe that an unlawful employment practice had occurred. The Notice also advised Petitioner of his right to file a Petition for Relief. On May 8, 2014, Petitioner filed a Petition for Relief with FCHR. Thereafter, the Petition for Relief was forwarded to the Division of Administrative Hearings (DOAH) for formal hearing.

At the hearing, Petitioner offered the testimony of two witnesses but did not testify on his own behalf and did not

offer any exhibits that were admitted into evidence. Respondent presented the testimony of the same two witnesses and offered Respondent's Exhibits No. 1, 3 through 12, 14, 15, 17 and 18 which were admitted into evidence.

After the hearing, Respondent filed a Proposed Recommended Order on October 10, 2014. Petitioner filed a Proposed Recommended Order on October 20, 2014. Petitioner's Proposed Recommended Order contained several documents and alleged facts based on those documents that were not authenticated, introduced or admitted at hearing. As such, none of the documents or alleged facts based thereon were evidence that could be considered in this matter and were not utilized in the preparation of this Recommended Order.[1/]

FINDINGS OF FACT

1. Madison County School District is a school district which consists of eight schools, serving approximately 2600 students. It employs approximately 400 people. Since 2012, Doug Brown has been the Superintendent of Schools for Madison County.

2. Willie Williams is Respondent's Chief Operations Officer. As part of his duties in that position, he serves as the head of the Human Resources Department, and is involved in the screening of applicants for positions within the district. He also serves as the human resources equity officer with

responsibility for ensuring that the district's procedures are followed in employment interviews and that all interview questions are asked in the same order and manner for all employment candidates.

3. As an employer, Respondent established standard hiring procedures which included procedures for the advertising, screening, and interviewing for all open positions within the district. As part of such procedures, all applications for open positions with Respondent are screened by a screening committee prior to any interview by the Respondent. During screening, the committee reviews every application for completeness and for compliance with the requisite experience and certifications required for that position. Only those applicants who were determined by the screening committee to possess the requisite experience and certification and whose applications are determined to be complete are granted an interview with Respondent.

4. Respondent also had a policy which prohibited retaliation and discrimination on the basis of gender. The policy provided a procedure for a complaint to be made by any person who believed they were a victim of retaliation or discrimination.

5. Petitioner, who is male, is a former employee of Respondent.

6. During his prior employment with Respondent, Petitioner was employed in a variety of positions until June 2012, when his annual contract expired and was not renewed. Following his non-renewal, Petitioner filed a Complaint of Employment Discrimination with FCHR, wherein he claimed race discrimination and retaliation. FCHR investigated Petitioner's complaint and, on February 15, 2013, issued a Notice of Determination finding no cause to believe that an unlawful employment practice had occurred. Petitioner took no further action with regard to this complaint and FCHR's determination became final.

7. In July of 2013, Respondent had a vacancy for a Dean of Students/Lead Teacher ESE position. Pursuant to its collective bargaining agreement, Respondent first advertised the position internally for three days to current district employees for whom the open position would be a lateral transfer. Respondent did not receive any internal applications. Accordingly, Respondent subsequently advertised the Dean of Students/Lead Teacher ESE position to the public. The required qualifications for the Dean of Students/Lead Teacher ESE position were:

1. Bachelors Degree or higher from an accredited educational institution.
2. Certified in an education field.
3. Minimum of three (3) years teaching experience.

4. Applicant must be certified in ESE.

8. Respondent required that applicants for the Dean of Students/Lead Teacher ESE position hold the general exceptional student education (ESE) certification that is currently offered by the Florida Department of Education. Respondent did not accept any grandfathered special education certifications other than the full ESE certification for this position. There was no evidence that this requirement was discriminatory or retaliatory toward Petitioner.[2/]

9. Around this same time, Respondent also had openings for other Dean of Students positions. Unlike the other Dean of Students positions available at the time, the Dean of Students/Lead Teacher ESE position was a hybrid position which would fulfill both the role of Dean of Students, as well as that of ESE teacher. As a result, the Dean of Students/Lead Teacher ESE position for which Petitioner applied required ESE certification while other Dean of Students positions did not.

10. Petitioner, along with 22 other individuals, applied for the Dean of Students/Lead Teacher ESE position. The applicants for the Dean of Students/Lead Teacher ESE position were approximately half male and half female.

11. On his application, Petitioner reflected that he held a varying exceptionalities certification in special education. He also held certification in the areas of driver's education,

law enforcement, mental retardation, and secondary school principal.

12. The applications for the Dean of Students/Lead Teacher ESE position were screened in compliance with Respondent's established procedures.

13. During the screening committee's review, the screening committee verified Petitioner's certification coverage with the Florida Department of Education. The Department of Education confirmed that Petitioner possessed certification in the areas of mental retardation and varying exceptionalities, but did not have the general ESE certification that Respondent required. Based upon Petitioner's application and the certification report obtained from the Florida Department of Education, the screening committee members agreed that Petitioner did not meet the required qualifications for the Dean of Students/Lead Teacher ESE position and screened him out of the interview process for such position. In fact, several applicants, both male and female, were screened out of the interview process for the Dean of Students/Lead Teacher ESE position due to not being qualified.

14. The only applicants who passed the screening process and were granted interviews for the Dean of Students/Lead Teacher ESE position were those applicants who possessed the full ESE certification. There was no evidence that Respondent's

or the screening committee's actions in processing these applications were discriminatory or retaliatory against Petitioner.

15. The applicant who was ultimately selected for the Dean of Students/Lead Teacher ESE position was a female who was a current school board employee at the time of her application and who possessed the full ESE certification that Respondent required for the position.

16. After learning that he had been screened out of the interview process for the Dean of Students/Lead Teacher ESE position, Petitioner met with Superintendent Brown and inquired as to why he was screened out of the interview process for such position. The Superintendent indicated to Petitioner that if he was qualified for the position he should have been interviewed and advised Petitioner he would look into the matter. Following such meeting, Superintendent Brown conferred with Willie Williams regarding the screening and interview process for the position at issue. The chief operating officer informed Superintendent Brown that Petitioner did not possess the required full ESE certification and that he was therefore not qualified for the position. After receiving this information, Superintendent Brown concurred that Petitioner was not qualified for the Dean of Students/Lead Teacher ESE position and took no further action in relation to the issue.

17. In July 2013, Petitioner applied for a Dean of Students position with Respondent. This position did not require ESE certification. Eighteen individuals applied for the position. The applications for this Dean of Students position were also screened in compliance with Respondent's established procedures. Petitioner was determined to be qualified for this position by the screening committee and received an interview. Petitioner, however, was not recommended for the position and the position was ultimately filled by an African American male.

18. Subsequently, Petitioner applied for an open driver's education position with Respondent for the summer of 2014. This position did not require ESE certification. Likewise, the applications for the driver's education position were screened in compliance with Respondent's established procedures. Petitioner was deemed qualified for this position by the screening committee and received an interview. The interview committee recommended Petitioner to Superintendent Brown for this position and Superintendent Brown subsequently presented that recommendation to the School Board. The School Board approved the Superintendent's recommendation and Petitioner was hired for the position.

19. Petitioner also applied for an Assistant Principal position with Respondent in July 2014. This position did not require ESE certification. The applications for the Assistant

Principal position were screened in compliance with Respondent's established procedures. Petitioner was determined to be qualified for this position by the screening committee and was offered an interview. Petitioner, however, did not respond to Respondent's attempts to schedule that interview and thus was not interviewed for the position.

20. Ultimately, Petitioner failed to present any evidence to show that he was, in fact, qualified for the Dean of Students/Lead Teacher ESE position or that he was screened out of the interviews for such position for any reason other than his failure to meet the required qualifications. Based on this lack of evidence, the Petition for Relief should be dismissed.

21. Finally, in his Employment Complaint of Discrimination and Petition for Relief, Petitioner alleged that Respondent provided "false and defaming references as further acts of retaliation" and "a negative derogatory reference letter." However, Petitioner presented no evidence in support of these allegations. To the contrary, the evidence showed that at some point in time, Petitioner requested that Superintendent Brown write a reference letter for Petitioner. Following that request, Superintendent Brown wrote a letter for Petitioner to provide to potential employers which recommended Petitioner for employment and stated that Petitioner had not had any disciplinary issues with Respondent. Given Petitioner's failure

to present any evidence to support his allegations of retaliation, the Petition for Relief should be dismissed

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 & 120.57(1), Fla. Stat. (2014).

23. Section 760.10, Florida Statutes, states in pertinent part 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.
>
> * * *
>
> (7) It is an unlawful employment practice for an employer . . . 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.

24. The Florida Civil Rights Act was patterned after Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq. As such, FCHR and Florida courts have determined federal case law interpreting Title VII is applicable to cases arising under

FCRA. See Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17 (Fla. 3d DCA 2009); Green v. Burger King Corp., 728 So. 2d 369, 370-371 (Fla. 3d DCA 1999); Fla. State Univ. v. Sondel, 685 So. 2d 923 (Fla. 1st DCA 1996); Brand v. Fla. Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994). Fla. Dept. of Cmty. Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991). Additionally, because the retaliation provision in FCRA is almost identical to its federal counterpart, 42 U.S.C. § 2000e-3(a), Florida courts follow federal case law when examining FCRA retaliation claims. Carter v. Health Mgmt. Assocs., 989 So. 2d 1258, 1262 (Fla. 2d DCA 2008).

25. In this action, Petitioner alleged that he was discriminated against on the basis of his sex and that he was retaliated against by Respondent in violation of the Florida Civil Rights Act, chapter 760.01, et. seq. (FCRA). In particular, Petitioner claims that he was discriminated and retaliated against when Respondent failed to hire him for the Dean of Students/Lead Teacher ESE position in July 2013, and that he was further retaliated against when Respondent sent an allegedly "negative derogatory reference letter" to a prospective employer of Petitioner.

26. Under FCRA, Petitioner has the burden to establish by a preponderance of the evidence that he was the subject of retaliation or discrimination by Respondent. In order to carry

his burden of proof, Petitioner can establish a case of discrimination or retaliation through direct or circumstantial evidence. See Holifield v. Reno, 115 F.3d 1555, 1561-1562 (11th Cir. 1997); Schoenfeld v. Babbitt, 168 F.3d 1257, 1266 (11th Cir. 1999). Direct evidence of discrimination is evidence that, if believed, establishes the existence of discriminatory intent behind an employment decision without inference or presumption. Maynard v. Bd. of Regents, 342 F.3d 1281, 1289 (11th Cir. 2003). Direct 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. Evidence that only suggests discrimination, or that is subject to more than one interpretation, is not direct evidence. See Schoenfield, supra and Carter v. Three Springs Residential Treatment, 132 F.3d 635, 462 (11th Cir. 1998). Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resort to inference or presumption and must in some way relate to the adverse actions of the employer. Denney v. City of Albany, 247 F.3d 1172, 1182 (11th Cir. 2001); see Jones v. BE&K Eng'g, Inc., 146 Fed. Appx. 356, 358-359 (11th Cir. 2005) ("In order to constitute direct evidence, the evidence must directly relate in time and subject to the adverse employment action at issue."); see also Standard v. A.B.E.L. Servs., Inc., 161 F.3d 1318 (11th Cir. 2002) (concluding that the statement

"we'll burn his black a**" was not direct evidence where it was made two-and-a-half years prior to the employee's termination).

27. Herein, Petitioner presented no direct evidence of discriminatory or retaliatory intent on the part of the Respondent. Therefore, Petitioner must establish his case through inferential and circumstantial proof. Shealy v. City of Albany, Ga., 89 F.3d 804, 806 (11th Cir. 1996); Kline v. Tenn. Valley Auth., 128 F.3d 337, 348 (6th Cir. 1997); Walker v. Prudential Prop. & Cas. Ins. Co., 286 F.3d 1270, 1274 (11th Cir. 2002).

28. Where a complainant attempts to prove intentional discrimination using circumstantial evidence, the shifting burden analysis established by the United States Supreme Court in McDonnell Douglas v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), is applied. Under this well-established model of proof, the complainant bears the initial burden of establishing a prima facie case of discrimination. When the charging party, i.e., Petitioner, is able to make out a prima facie case, the burden to go forward with the evidence shifts to the employer to articulate a legitimate, non-discriminatory explanation for the employment action. See Dep't of Corr. v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991). Importantly, the employer has the burden of production, not persuasion, and need only present the

finder of fact with evidence that the decision was non-discriminatory. Id. See also Alexander v. Fulton Cnty., Ga., 207 F.3d 1303 (11th Cir. 2000). The employee must then come forward with specific evidence demonstrating that the reasons given by the employer are pretexts for discrimination. Schoenfeld v. Babbitt, supra at 1267. The employee must satisfy this burden by showing that a discriminatory reason more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision is not worthy of belief. Dep't of Corr. v. Chandler, supra at 1186; Alexander v. Fulton Cnty., Ga., supra.

29. Notably, "although the intermediate burdens of production shift back and forth, the ultimate burden of persuading the trier of fact that the employer intentionally discriminated against the [Petitioner] remains at all times with the [Petitioner]." EEOC v. Joe's Stone Crabs, Inc., 296 F.3d 1265, 1273 (11th Cir. 2002); see also Byrd v. RT Foods, Inc., 948 So. 2d 921, 927 (Fla. 4th DCA 2007) ("The ultimate burden of proving intentional discrimination against the plaintiff remains with the plaintiff at all times."). Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 148 (2000).

30. On the other hand, this proceeding was not halted based on a summary judgment, but was fully tried before the Division of Administrative Hearings. Where the administrative

law judge does not halt the proceedings for "lack of a prima facie case and the action has been fully tried, it is no longer relevant whether the [Petitioner] actually established a prima facie case. At that point, the only relevant inquiry is the ultimate, factual issue of intentional discrimination . . . . [W]hether or not [the Petitioner] actually established a prima facie case is relevant only in the sense that a prima facie case constitutes some circumstantial evidence of intentional discrimination." Green v. Sch. Bd. of Hillsborough Cnty., 25 F.3d 974, 978 (11th Cir. 1994); Beaver v. Rayonier, Inc., 200 F.3d 723, 727 (11th Cir. 1999). See also U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-715 ("Because this case was fully tried on the merits, it is surprising to find the parties and the Court of Appeals still addressing the question of whether Aikens made out a prima facie case. We think that by framing the issue in these terms, they have unnecessarily evaded the ultimate question of discrimination vel non . . . . [W]hen the defendant fails to persuade the district court to dismiss the action for lack of a prima facie case, and responds to the plaintiff's proof by offering evidence of the reason for the plaintiff's rejection, the fact-finder must then decide whether the rejection was discriminatory within the meaning of Title VII. At this stage, the McDonnell-Burdine presumption 'drops

from the case,' and 'the factual inquiry proceeds to a new level of specificity.'").

31. In order to establish a prima facie case of discrimination in the context of a failure to hire claim, Petitioner must demonstrate that (1) he belongs to a protected class; (2) he was qualified for and applied for a position that the employer was seeking to fill; (3) despite his qualifications, he was rejected; and (4) the position was filled with an individual outside the protected class. See McDonnell, supra; Gillis v. Ga. Dep't of Corr., 400 F.3d 883 (11th Cir. 2005); Rice-Lamar v. City of Ft. Lauderdale, 232 F.3d 842-843 (11th Cir. 2000). Beal v. CSX Corp., 308 Fed. Appx. 324, 326 (11th Cir. 2009).

32. In this case, Petitioner is a member of a protected class. However, he failed to present any evidence to demonstrate that he was qualified for the Dean of Students/Lead Teacher ESE position for which he applied. Rather, all evidence introduced established that Petitioner was not, in fact, qualified for the Dean of Students/Lead Teacher ESE position since he did not possess the ESE certification required by Respondent. Thus, Petitioner was not qualified for the position at issue and the second prong of his prima facie case of discrimination fails. Further, the evidence was clear that males have been hired for other Dean of Students positions and

that Petitioner, himself, has been provided at least one opportunity to interview for such a position. Both of these facts demonstrate that Petitioner was not discriminated against based on his sex and the Petition for Relief should be dismissed.

33. Further, in order to establish a prima facie case of retaliation, Petitioner must show: (1) he engaged in statutorily-protected activity, (2) he suffered an adverse employment action, and (3) the adverse employment action was caused by his statutorily-protected activity. St. Louis v. Fla. Int'l Univ., 60 So. 3d 455 (Fla. 3d DCA 2011); Beal, 308 Fed. Appx. at 326.

34. In this case, assuming that the 2012 FCHR Complaint referenced in the Petition for Relief was the "statutorily-protected activity" on which Petitioner intended to rely, there was no evidence to establish that Petitioner suffered an adverse employment action based on his not being selected to interview for the Dean of Students/Lead Teacher ESE position or that such non-selection was caused by his 2012 FCHR Complaint.

35. As to Petitioner's remaining retaliation claim based on negative references, Petitioner failed to present any evidence establishing that a "negative derogatory reference letter" ever existed or that it was transmitted to a prospective employer of Petitioner. In fact, the evidence demonstrated that

Respondent provided a positive letter of reference to Petitioner to provide to prospective employers. Based on the evidence, Petitioner failed to establish his claim of retaliation 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 Florida Commission on Human Rights enter a Final Order finding that Respondent did not discriminate or retaliate against Petitioner and dismissing the Petition for Relief.

DONE AND ENTERED this 18th day of November, 2014, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of November, 2014.

ENDNOTES

[1/] Petitioner was afforded ample time to prepare for the hearing in this matter and failed to conduct timely discovery during the course of this proceeding. On the other hand, during

Respondent's discovery, Petitioner was generally evasive during his deposition, leaving the impression that he had documents in the form of "notes" which memorialized the facts of his case. Even though properly requested, such "notes" were not timely produced during discovery and remain a mystery. Further, Petitioner failed to comply with requests for production and interrogatories properly made by Respondent to Petitioner.

[2/] Petitioner alleged that the requirement for a full ESE certification was not authorized by or somehow against the Department of Education (DOE) rules. However, there was no evidence that such a requirement violates DOE rules. Further, there was no evidence that Respondent or any other school district could not formulate employment requirements more stringent than DOE's recognized certifications. Finally, assuming arguendo that the full ESE requirement was a misinterpretation of DOE rules, there was no evidence that such a misinterpretation was discriminatory or retaliatory towards Petitioner.

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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.