

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RUDYARD JULIUS,

Petitioner,

vs.

Case No. 20-2447

SCHOOL BOARD OF BROWARD COUNTY,

Respondent.

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RECOMMENDED ORDER

Administrative Law Judge (“ALJ”) Brittany O. Finkbeiner conducted the final hearing in this case for the Division of Administrative Hearings (“DOAH”) on August 6, 2020, by Zoom conference.

APPEARANCES

For Petitioner: Rudyard Julius, pro se  
19101 Northwest 11th Street  
Pembroke Pines, Florida 33029

For Respondent: Michael T. Burke, Esquire  
Johnson, Anselmo, Murdoch, Burke,  
Piper & Hochman, P.A.  
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Fort Lauderdale, Florida 33304

STATEMENT OF THE ISSUE

Whether Respondent committed the unlawful employment practice alleged in the Employment Complaint of Discrimination filed with the Florida Commission on Human Relations (“FCHR”), and, if so, what relief should be granted.

## PRELIMINARY STATEMENT

Petitioner, Rudyard Julius (“Petitioner”), filed an Employment Complaint of Discrimination (“Complaint”) with FCHR arising from the August 23, 2018, termination of Petitioner’s employment as a teacher with Respondent, School Board of Broward County (“School Board”). Petitioner’s Complaint alleged discrimination based on race, color, national origin, and sex. Following its investigation of the Complaint, FCHR notified the parties that there was “no reasonable cause to believe that an unlawful practice occurred.”

Petitioner elected to pursue administrative remedies, timely filing a Petition for Relief with FCHR on or about May 19, 2020. FCHR referred the matter to DOAH to assign an ALJ to conduct the final hearing. The final hearing was held on August 6, 2020.

At the final hearing, Petitioner testified on his own behalf and did not call any witnesses or offer exhibits into evidence. Respondent presented the testimony of four witnesses, all of whom were employed by Mirror Lake Elementary School (“Mirror Lake”), where Petitioner was teaching at the time of his termination. Respondent’s witnesses were: Principal Marlen Veliz (“Principal Veliz”); Former Assistant Principal Joan Rosa; Teacher Andrea Gresham; and Micro Technology Specialist Osvaldo Hernandez. Respondent’s Exhibits 1, 2, and 4 were received into evidence.

The two-volume hearing Transcript was filed with DOAH on September 14, 2020. The undersigned granted an extension for the parties to complete their proposed recommended orders, which were filed on October 1, 2020. The undersigned considered both proposed recommended orders in the preparation of this Recommended Order.

Unless stated otherwise, all statutory references shall be to the 2018 version of the Florida Statutes.

FINDINGS OF FACT

1. Petitioner is a Black West-Indian male.
2. Respondent is a political subdivision of the State of Florida responsible for operating the public schools in Broward County.
3. Petitioner obtained a temporary teaching certificate from the Florida Department of Education in 2017.
4. In October 2017, Petitioner was hired by Respondent as a teacher at Walker Elementary School.
5. As a new teacher, Petitioner was a contract employee subject to a probationary period of one school year. During the probationary period, Petitioner could be dismissed without cause or resign without breach of contract.
6. Petitioner worked at Walker Elementary School, where he did not have his own classroom, but worked with special-needs children in different classrooms, until the end of the 2017-2018 school year. There were no teaching positions available at that school for the 2018-2019 school year.
7. In August of 2018, Petitioner was transferred by Respondent to Mirror Lake, where he filled a first-grade teaching vacancy.
8. Andrea Gresham was the team leader for first-grade teachers at Mirror Lake. As a new teacher, Petitioner was assigned a mentor to assist him in acclimating to the duties of his position. In addition to being the team leader for all first-grade teachers at Mirror Lake, Ms. Gresham was also Petitioner's designated mentor.
9. Petitioner reported for work at Mirror Lake on August 7, 2018. At that time, Ms. Gresham took Petitioner on a tour of the campus. She also provided Petitioner with sample lesson plans and homework for the students. Throughout the week, Petitioner prepared for the first day of school for

students with Ms. Gresham's help. These preparations included Ms. Gresham reviewing procedures related to beginning-of-year testing, student homework, teacher planning, and student dismissal at the end of the school day.

10. It was Ms. Gresham's habit to keep dated notes relevant to her duties as a mentor and team leader. As a best practice, she regularly met with Principal Veliz to discuss the progress of new teachers. Ms. Gresham kept contemporaneous notes of her interactions with Petitioner and kept Principal Veliz advised of her observations.

11. Ms. Gresham observed that Petitioner was not engaged within the team of first-grade teachers and had a difficult time grasping school procedures despite her attempts to guide him.

12. The typical first-grade student is six years old at the beginning of the school year. Given how young these students are, the protocol at Mirror Lake requires teachers to take extra care to ensure that the students are directed to the correct mode of transportation during dismissal. Ms. Gresham explained the dismissal procedures and emphasized their importance to Petitioner on more than one occasion leading up to the students' first day of school.

13. Each first-grade student is given a lanyard that is color-coded to correspond to that student's teacher. Teachers are responsible for writing each child's mode of transportation, as provided to the teacher by the child's parents, on his or her lanyard every day. At the end of the school day, the children are sorted by their mode of transportation and escorted by a designated teacher or paraprofessional. The students are categorized as: car riders, bus riders, walkers, or attendees of the on-site after-school program.

14. August 15, 2018, was the first day of the school year for students at Mirror Lake. At the end of the school day, Petitioner, along with all of the other first-grade teachers, was responsible for assisting his students in reporting to the appropriate location for their respective modes of transportation.

15. On August 15, 2018, Petitioner and Ms. Gresham were both assigned to the car-rider group.

16. While Petitioner and Ms. Gresham were in the car-rider pickup area, Ms. Gresham became aware that a student was missing when a visibly upset parent exited his vehicle having learned that his child was not present for pick-up. Ms. Gresham sought help from the school resource officer and other teachers in an effort to locate the missing student. Principal Veliz testified credibly that this was the first and last time a student was unaccounted for at dismissal at Mirror Lake.

17. Ms. Gresham asked to see the transportation log that Petitioner had compiled for his students to determine how the child was supposed to go home and where the mistake may have occurred. In reviewing Petitioner's transportation log, Ms. Gresham noticed that the log had some children's names listed under two different modes of transportation for the same day. As a result, Petitioner's transportation log did not add any clarity to the situation. Meanwhile, teachers continued to search the campus for the missing student and the school resource officer escorted the father of the missing student to the office to speak with Principal Veliz.

18. Once the student dismissal process was complete for the day, Principal Veliz convened a faculty meeting. During the meeting, the faculty learned that a second student from Petitioner's class was missing. Principal Veliz adjourned the faculty meeting and assembled the team leaders in the office to assist in locating the two missing students. Petitioner returned to his classroom and did not join the effort to locate the missing students.

19. The team leaders proceeded to call private daycares to ask if the missing students may have been transported to such a facility by mistake. Through these phone calls, both of the missing students were located at the same daycare. Thereafter, the children were reunited with their parents.

20. Principal Veliz met with the parents of the children who had been mistakenly sent to the wrong location on August 15, 2018. Principal Veliz

personally paid for the daycare center's charges with respect to one of the students who had been inadvertently sent there. Principal Veliz testified that the parents were upset that their children had been misplaced and that the parents of one of the children requested a transfer to another first-grade teacher.

21. Ms. Gresham had the opportunity to examine the lanyard belonging to one of the students who had gone missing during dismissal. She observed that Petitioner had written on the lanyard that the student was to ride the bus that day, although the parents had previously informed Petitioner that the student was to be picked up by car.

22. In conducting a routine observational visit to Petitioner's classroom during the first week of school, Principal Veliz observed conditions that she considered of urgent concern with respect to Petitioner's academic practices and overall classroom management. She observed a lack of structure, including students in Petitioner's class wandering around the room and playing with pencils as though they were swords without any redirection. Principal Veliz also observed that Petitioner was using obsolete and ineffective teaching methods.

23. Principal Veliz contacted the school district's employee relations and talent acquisition office to discuss Petitioner's employment status. Principal Veliz was notified that Petitioner was still within his one-year probationary term, and that his employment could be terminated without a formal hearing or progressive disciplinary measures. Principal Veliz made the decision to terminate Petitioner's employment prior to the end of his probationary status based on his unsatisfactory performance.

24. Principal Veliz obtained a form letter from the school district's human resources department, which she modified to fit Petitioner's circumstances. The letter was dated August 23, 2018. The letter stated that Petitioner's name would be submitted to the next School Board meeting for termination

of employment during a probationary period and that Petitioner could choose to resign in lieu of termination. Petitioner chose not to sign the document.

25. Petitioner's employment was terminated at the next meeting of the School Board.

#### CONCLUSIONS OF LAW

26. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

27. The Florida Civil Rights Act of 1992 ("FCRA"), chapter 760, Florida Statutes, prohibits discrimination in the workplace. Among other things, the FCRA makes it unlawful for an employer:

To discharge or to fail or refuse to hire any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

§ 760.10(1)(a), Fla. Stat.

28. The FCRA, as amended, is patterned after Title VII of the Civil Rights Act of 1964 and 1991 ("Title VII"). Thus, federal decisional authority interpreting Title VII is applicable to cases arising under the FCRA. *Johnson v. Great Expressions Dental Ctrs. of Fla., P.A.*, 132 So. 3d 1174, 1176 (Fla. 3d DCA 2014).

29. A plaintiff can establish a prima facie case for discrimination either by direct or circumstantial evidence. Direct evidence requires actual proof that the employer acted with a discriminatory motive when making the employment decision in question. *Scholz v. RDV Sports, Inc.*, 710 So. 2d 618, 624 (Fla. 5th DCA 1998). Circumstantial evidence, on the other hand, requires a petitioner to satisfy the four-prong test established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Here, Petitioner's claim is based entirely on circumstantial evidence.

30. Based on the United States Supreme Court's analysis in *McDonnell Douglas*, in order to establish a prima facie case based on circumstantial evidence, Petitioner must show that he:

- 1) belongs to a protected class;
- 2) was qualified to do the job;
- 3) was subjected to an adverse employment action; and
- 4) the employer treated similarly situated employees outside the class more favorably.

*Id.* at 802-03.

31. If Petitioner were to satisfy all four prongs of the *McDonnell Douglas* framework, then the burden would shift to Respondent to produce evidence of a legitimate, non-discriminatory reason for his termination. *Id.*

32. Petitioner satisfied the first prong by establishing that he is part of a protected class within the meaning of the FCRA, which prohibits discrimination, in pertinent part, based on "sex," "race," and "national origin." Petitioner established that he is a Black West-Indian male.

33. The parties do not dispute that Petitioner meets the criterion for the second prong in that he was qualified to do the job of a first-grade teacher, for which he was hired by Respondent.

34. Petitioner also satisfied the third prong, as his termination from employment by Respondent is clearly an adverse employment action, which constitutes "a significant change in employment status, such as discharge..." *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 744 (1998).

35. Petitioner's claim fails as to the fourth prong, which requires a showing that Respondent treated similarly situated employees outside the class more favorably. With respect to the fourth element, "[e]mployees are similarly situated when they are 'involved in or accused of the same of similar conduct'" *Fla. Dep't of Child. & Fam. v. Shapiro*, 68 So. 3d 298, 305 (Fla. 4th DCA 2011)(quoting *Moore v. City of Charlotte*, 754 F.2d 1100, 1105



(4th Cir. 1985). “The quantity and quality of the comparator’s misconduct [must] be nearly identical.” *Maniccia v. Brown*, 171 F. 3d 1364, 1368 (11th Cir. 1999). Respondent presented credible evidence showing that no other teacher at Mirror Lake had ever misplaced a student in the manner Petitioner did. Petitioner did not present any evidence to the contrary on this point. In fact, he did not present evidence of any kind that similarly-situated employees outside of his class were treated more favorably than he was.

36. Failure to establish a prima facie case of discrimination ends the inquiry. *Kidd v. Mando Am. Corp.*, 731 F. 3d 1196, 1202 (11th Cir. 2013). Petitioner did not present any evidence that raises an inference of discrimination. Even if Petitioner had met his initial burden sufficient to establish a prima facie case of discrimination, and the burden had shifted to Respondent to articulate a legitimate, nondiscriminatory reason for termination, Respondent would have successfully met that burden. The persuasive and credible evidence adduced at hearing showed that Petitioner was terminated because he failed to properly follow after-school transportation protocols resulting in the misplacement of two first-grade students. Additionally, Petitioner did not demonstrate even an aptitude for proper academic practices and overall classroom management. The reasons that were articulated by Respondent for the termination of Petitioner’s employment were legitimate and non-discriminatory. No evidence was introduced to show that the performance-based reasons were pretextual or that other persons with similar performance issues were treated more favorably.

#### 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 16th day of October, 2020, in Tallahassee, Leon County, Florida.



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BRITTANY O. FINKBEINER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.