

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

CONNIE LEONESSA,

Petitioner,

vs.

Case No. 20-3059

HODGES UNIVERSITY,

Respondent.

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (Division), heard this case by Zoom conference on November 16 through 18, 2020, with post-hearing submissions of deposition excerpts filed November 25, 2020.

APPEARANCES

For Petitioner: Matthew Brown McReynolds, Esquire
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For Respondent: Thomas K. Rinaldi, Esquire
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STATEMENT OF THE ISSUE

Did Respondent, Hodges University (Hodges), commit an unlawful employment practice against Petitioner, Connie Leonessa, on account of her religion, as defined and prohibited by section 760.10(5), Florida Statutes (2018)?¹

PRELIMINARY STATEMENT

Ms. Leonessa was enrolled in a master's degree in counseling program at Hodges from 2015 until the fall of 2018. During that period, she also participated in an internship program with several providers of counseling services, including Healing Educational Alternatives for Deserving Students, LLC (HEADS). HEADS terminated Ms. Leonessa from its program. Afterwards, Hodges terminated her from its program.

Ms. Leonessa filed discrimination complaints against Hodges and HEADS with the Florida Commission on Human Relations (Commission). The Commission determined that there was no reasonable cause to conclude that Hodges or HEADS had discriminated against Ms. Leonessa because of her religion.

She filed Petitions for Relief disputing both no cause determinations and requesting formal administrative hearings. The Commission referred both matters to the Division to conduct the requested hearings. The undersigned consolidated the cases. On November 12, 2020, Ms. Leonessa filed a Notice of Voluntary Dismissal (of the claims against HEADS) with Prejudice stating that all disputes between HEADS and Ms. Leonessa had been resolved.

¹ All references to Florida Statutes are to the 2018 codification unless otherwise noted. During the time period for the facts involved in this dispute, 2015-2018, the relevant provisions of section 760.10 did not change.

At the final hearing, Ms. Leonessa presented testimony from herself. Leonessa Exhibits 1 through 51, 52 (for limited purposes), 53 (for limited purposes), and 54 were admitted.

Hodges presented testimony from Thomas Hoffman, Mary Nuosce, and John Myer. Hodges also presented deposition testimony from Julie Jakobi, Amber Pope, and Gerard Sprague (Hodges Exhibits 29 through 31 as supplemented by Ms. Leonessa after the hearing). Hodges Exhibits 1 through 4, 6, 7, 9 through 13, 17 through 22, and 24 through 31 were admitted into evidence.

The transcript of the hearing was filed December 23, 2020. The parties timely filed Proposed Recommended Orders. They have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Parties

1. Hodges is a university located in Ft. Myers, Florida. It offers a master's degree in counseling through the Clinical Mental Health Counseling (CMHC) program housed within Hodges' Nichols School of Professional Studies. Ms. Leonessa was a student in Hodges' CMHC master's program.

2. Ms. Leonessa is an experienced registered nurse who has primarily served pediatric patients over the years. She also volunteered regularly to work with children in inner cities of the Northeast. Those experiences, her compassion for children, and her personal trauma of molestation drove Ms. Leonessa to want to serve children better. In her words, "and I just felt that God wanted me to go back to school to get a master's so I can help these victims."

3. Ms. Leonessa was enrolled in Hodges from 2015 until the fall of 2018. Her goal was to prepare herself to provide counseling services to child victims of trauma.

4. There is no persuasive, competent evidence proving that providing counseling services to child victims of trauma is a profession, occupation, or trade that requires a master's degree in counseling. In fact, paid positions in the counseling field are available without a master's degree.

5. A master's degree, followed by two years of full-time, post-graduation, paid supervised work experience is required to obtain a mental health counselor license. So is passage of the NCMHCE Exam administered by the National Board for Certified Counselors. The persuasive, competent evidence of record does not prove that Ms. Leonessa intended to take the post-graduation steps required to obtain a mental health counselor license or to seek a mental health counselor license.

Hodges' Master's Program

6. Earning a master's degree in social work from Hodges requires successful completion of academic coursework, a 200-hour practicum, and three 267-hour internships. The providers of the practicum and internships are not part of or controlled by Hodges. The student is responsible for identifying and making arrangements with the practicum and internship providers. Hodges assists when it can.

7. Hodges' program, like counseling itself, requires students to develop awareness of their preferences, prejudices, ethics, and philosophies and separate them from the support and guidance provided clients.

8. Upon entering the program, students agree to abide by the requirements of a Clinical Mental Health Counseling Professional Attitude and Behavior Agreement (Agreement). Ms. Leonessa signed the agreement on September 2, 2015.

9. The Agreement states the student's obligation to align her "personal ethics with the professional ethics as defined by the American Counseling Association (ACA) 2014 Code of Ethics [Code]." The Code was attached to the Agreement. The Agreement emphasizes the priority of avoiding harm to clients or future clients and taking care to not impose the counselor's personal beliefs, values, and behaviors on clients. The Agreement recognizes the ethical dilemmas the profession presents and articulates a student's obligation to consult others about the dilemmas and develop "an ever increasing ability to apply a professional ethic to difficult situations involving ethical dilemmas and associated law" As part of the Agreement, Ms. Leonessa agreed to have "an open and willing attitude toward feedback and suggestions given by faculty, peers and site supervisors to help the student reduce the possibility of harm." This tenet supports the value of requiring a counselor to put "a high priority on avoiding harm to clients or future clients."

10. The Agreement obliges the student to understand and abide by the Code.

11. The CMHC Student Handbook (Handbook) contains and emphasizes requirements similar to the Agreement's requirements. It encourages students to pursue personal therapy and growth, for their intrinsic benefits and to provide insight into what clients experience. The Handbook emphasizes that counselors are held to higher ethical standards and higher levels of personal growth and mental health than the average person. It states that evaluation of a student's progress in those areas is part of judging a student's suitability for the counseling profession.

12. Hodges' program includes regular evaluation of a student's progress in "interpersonal interactions with students, faculty, site supervisors, and others involved with his/her academic progress." The program requires progress in those areas and provides for a Student

Development Plan for remediation if the student does not improve his or her interpersonal interactions and skills. The Handbook directs students to review the Code.

13. The Handbook requires students to work professionally and respectfully with fellow students, faculty, site supervisors, and site employees. The Handbook also requires students to accept others without rejection based upon, among other things, age, culture, gender identity, sexual orientation, religion, or marital status. A student commits to be "respectful of differing opinions and professional practice" A student also commits to work "to continually improve her/his professional relationship skills and clarify professional boundaries."

14. The Handbook, signed by Ms. Leonessa, concludes with this affirmation:

I understand that the Hodges University Clinical Mental Health Counseling Program requires students to perform adequately in areas of academic assessment that include the ability to form and continue positive relationships with others; the ability to acquire and correctly use counseling knowledge and skills, and the ability to successfully complete all practicums and internships in the judgment of the faculty and site supervisors. These expectations are in addition to the didactic coursework expectations and assessment procedures. I understand that I will be expected to continually improve my ability to demonstrate counseling competencies as I progress in the program. I further understand that the American Counseling Association 2014 Code of Ethics forms the basis of professional standards to which I must adhere.

15. In sum, the nature of the counseling field that Ms. Leonessa sought to enter and the program at Hodges required students to develop an open and tolerant and patient way of communicating with people with whom they may disagree, even disagree vehemently.

Conflict in Hodges' Academic Program

16. Ms. Leonessa performed well in her academic work. But her interactions with three fellow students and a professor were marked with conflicts. She attributed the conflict to discrimination against her on account of her religion. The evidence does not support the attribution. Ms. Leonessa's sensitivity to the age differential between herself and other students and her aggressive personality caused conflict with fellow students. Ms. Leonessa acknowledged her aggressiveness, saying, "You know, I know I have a tone and I've been honest about that. I have a tone." (Tr. V. I, p. 206). Ms. Leonessa also had a pattern of attributing any disagreement or conflict to opposition to her Christian beliefs.

17. Dr. Thomas Hoffman taught many of Ms. Leonessa's classes. Like Ms. Leonessa, Dr. Hoffman is a Christian. In email communications each referred to scripture. For instance, Dr. Hoffman, in counseling Ms. Leonessa about alleviating her repeated personal conflicts, advised her to be "wise as a serpent, but gentle as a dove." Ms. Leonessa, in defense of her combative approach said, "Jesus Christ spoke truth and was hated for it."

18. Neither Dr. Hoffman nor any other Hodges representative ever prohibited Ms. Leonessa from referring to her Christian beliefs in communications with them. In addition, Dr. Hoffman never asked Ms. Leonessa not to share her religious views, such as her anti-abortion beliefs, in class.

19. As the years passed, Ms. Leonessa's communications to Dr. Hoffman grew increasingly querulous and combative. Her tone was frustrated and loud. She challenged Dr. Hoffman's competence, honesty, and integrity in a disrespectful manner.

20. Ms. Leonessa clashed, in class and outside class, with three fellow students. She felt the students did not treat her with the respect that was her due because of her age. Ms. Leonessa had a dispute with one student about abortion. She had conflicts with another about the use of the "F" word in

class. Ms. Leonessa had a conflict with a third student who said that Ms. Leonessa was trying to impose her values in class.

21. During these conflicts, Ms. Leonessa raised her voice and spoke hostilely. Sometimes she pointed her finger. In an encounter outside of the school, one of the students told Ms. Leonessa that Ms. Leonessa's beliefs were "f...ed up" and that Ms. Leonessa should attend a Christian school. Once Ms. Leonessa jerked on another student's purse strap to make a point. Those three students did not have conflicts with other students or faculty. Also, as will be addressed below, Ms. Leonessa had significant problems in her internships, problems the other students did not have. The three students were not similarly situated to Ms. Leonessa.

22. Due to these conflicts and ways of interacting with Dr. Hoffman, Hodges faculty met with Ms. Leonessa in February 2016 in an informal coaching session. The purpose was to address Ms. Leonessa's inability to control her emotions and express herself in an appropriate manner. These are all issues whose importance to counseling the Agreement, the Handbook, and the Code all emphasize. Ms. Leonessa's religious beliefs were not the reason for convening the coaching session or the communications during it.

23. The faculty also conducted informal coaching sessions with the other three students.

24. Despite the coaching sessions, Ms. Leonessa's conflicts with the students and Dr. Hoffman continued.

25. Hodges' Handbook provides for establishing a formal Student Development Plan (SDP) to assist students who are not performing in a manner that is consistent with the Code. An SDP's purpose is to formalize concerns not resolved by the informal coaching and provide a plan for addressing them. It is a remedial measure. Hodges established SDPs infrequently. Since 2011 it has implemented seven.

26. The faculty created an SDP for Ms. Leonessa and placed her on it in October 2016. Ms. Leonessa's religious beliefs played no part in the decision to create the plan or setting the plan's requirements.

27. The behaviors which the SDP addressed included the changes in Ms. Leonessa's tone and raised volume when she disagreed with others, her practice of interrupting others with whom she disagreed, and her belaboring of class topics well after the instructor was trying to move the class to a resolution and on to the next subject.

28. The plan provided supports and measurable goals for Ms. Leonessa. They were: (1) pairing her with a third-year student as a mentor, (2) completing a case study assignment, (3) completing role-playing exercises, and (4) documenting her changes of tone and volume in class. Ms. Leonessa disagreed with the SDP but agreed to follow it and signed it some two months after the faculty presented it to her.

29. The role-playing exercises assigned to Ms. Leonessa involved same-sex attraction and abortion. The faculty selected these two topics because they recur frequently in counseling. Ms. Leonessa's religious beliefs were not the reason for selecting the topics. Ms. Leonessa successfully completed the SDP.

30. The three students with whom Ms. Leonessa clashed were not placed on SDPs. Their issues did not match Ms. Leonessa's in frequency or intensity.

Practicum

31. Ms. Leonessa sought to establish a practicum placement at Cape Christian, also known as Samaritan Health and Wellness Center (Cape Christian). There was some uncertainty whether the supervision available at Cape Christian met Hodges' requirements. Ms. Leonessa's contact at Cape Christian, Ms. Trout, was not satisfactorily responsive to Ms. Leonessa's efforts to sort the issue out. This resulted in combative telephone calls and emails from Ms. Leonessa to Ms. Trout.

32. An excerpt from one email illustrates Ms. Leonessa's pattern of hostility and injection of religion into disputes.

33. In a December 5, 2016, email to Ms. Trout from Ms. Leonessa describing her displeasure with the responsiveness of Cape Christian and a conversation with one of Ms. Trout's co-workers, Ms. Leonessa wrote:

You stated I chewed her out but you were not on the phone. I did not disparage her character in any way, I said as believers we are to keep our word and that now I would have to find another place at the last minute. That is all I said. The Bible says be angry and sin not. According to what I have heard, you do not believe people should be angry and I would bet there are times in your life when you have had an unprofessional tone. Also I have had to wait weeks before hearing back from you, it amazed me how quickly you called about this situation-seconds!

34. Ms. Trout replied:

If you were my student and you'd have behaved in the manner as this [sic], you would be put in a professional development status, complete with remediation, to determine your appropriateness to move forward in the field of counseling. The fact that you sent this email in its current form further highlights the display of lack of professionalism and emotional maturity now exhibited in two separate phone calls as well. I would encourage that you seek some assistance in processing your emotions, and the manner in which you communicate those. I wish you the best.

35. Ms. Leonessa replied to Ms. Trout, "Please do not contact me further."

36. Ms. Trout forwarded the email exchange to Sue Hook and Dr. Mary Nuosce of Hodges. Dr. Nuosce answered, "Amy, I apologize for her total lack of professionalism. We are working on this. Thank you for your patience."

37. This incident triggered an update to the SDP. The update was because of Ms. Leonessa's conduct and unrelated to her religious beliefs.

38. Ultimately, Ms. Leonessa obtained and successfully completed a practicum with FRS/Omega Center. Tina Friedman was her supervisor. Ms. Friedman twice noted in the July 7, 2017, evaluation form that Ms. Leonessa

required ongoing attention in the area of values management. The values criterion relates to many of the requirements and principles of the Agreement, the Code, and the Handbook. The evaluation form describes it thus: "**Value Management:** How did the student cope with values? Were attempts made to impose the student's values during the interview?"

39. Ms. Friedman's Session Evaluation Form noted, "Connie does repeatedly offer her own values during client/student interaction." Ms. Friedman wrote a note to Ms. Leonessa on the form stating that Ms. Leonessa's development was at an expected level save for in values management. The note went on to specify: "Please work more diligently in this area as that may [prove] to be a problem in the future."

40. The August 17, 2017, final evaluation emphasized the problem stating,

HER BURNING DESIRE TO INITIATE CHANGE, MAY PROVE TO BE HER MOST DIFFICULT PERSONAL CHALLENGE AS A CLINICIAN. IT IS HOPE THAT IN TIME AND WITH FURTHER EXPOSURE TO THE TENETS OF EFFECTIVE COUNSELING, CONNI CAN LEARN TO ACCEPT AND MEET THE CLIENT WHERE THEY ARE AT IN THE PROCESS. CONNI HAS STRONG, DEEP ROOTED BELIEFS AND VALUES, WHICH MAY BE DIFFERENT THAN THOSE OF THE CLIENTS AS WELL AS HER PEERS, THAT SHE ENCOUNTERS. I HAVE SHARED THIS OBSERVATION WITH CONNI AND HAVE ENCOURAGED HER TO CONSIDER THE IMPORTANCE OF BEING OPEN AND ACCEPTING TO THE DIVERSITY OF THE POPULATION SHE WILL SERVE.

Internships

41. Ms. Leonessa obtained an intern position with True Core Behavioral Solutions (True Core). True Core provided services to the Ft. Myers Youth Academy, a juvenile detention center. True Core terminated Ms. Leonessa's internship after two days. The problems leading to her termination were those of value imposition and boundary crossing presaged by her practicum.

42. Ms. Leonessa participated in two counseling sessions for the juveniles. Her improper conduct included sharing personal information about her abandonment by her husband and her celibacy since then. In the counseling profession this boundary crossing behavior is often damaging to the therapeutic process. Ms. Leonessa also criticized a young man who supported his girlfriend obtaining an abortion, telling him abortion was murder and talked about holding premature babies in her hands. She criticized some of the youth for engaging in premarital sex telling them it violated God's law. She told one young man his troubles stemmed from abandonment by his father. This conduct demonstrated emotionalism and an inability to respect client perspectives that the SDP was intended to ameliorate. For this reason, Hodges updated the SDP.

43. Ms. Leonessa acknowledges that it would be professionally wrong for a counselor to advocate her personal religious beliefs and values to clients. She denies that she did so. But the preponderance of the competent, substantial evidence proves that she did. True Core reported Ms. Leonessa's termination and the causes for it to Hodges.

44. After Ms. Leonessa's termination from True Core, Dr. Mary Nuosce, Dean of the Nichols Schools of Professional Studies and a faculty member, tried to assist her in finding another internship placement. Dr. Nuosce was the supervisor for Ms. Leonessa's internships. She approached Janean Byrne from Serenity Counseling about accepting Ms. Leonessa as an intern. Dr. Nuosce thought Serenity might suit Ms. Leonessa more because it was a faith-based counseling provider. She gave Ms. Leonessa Ms. Byrne's contact information and asked her to follow up on establishing an internship. Ms. Leonessa did not seek the internship. She refused to contact Ms. Byrne for non-specified reasons. She told Dr. Nuosce, "I just emailed her [Ms. Byrne] and turned down the position. What occurred today has taught me that I need to find a place where my values are shared and respected so I will continue to look for a sight [sic]."

45. When Dr. Nuosce asked how she could be so judgmental about someone she had never met, Ms. Leonessa responded, "I never said anything against her [Ms. Byrne], however, I am looking for a place that shares my biblical values especially after what occurred today that is all. I do have the right to choose where I want to intern at!"

46. Hodges' faculty continued efforts to help Ms. Leonessa locate an intern position. Ms. Leonessa obtained an internship at HEADS. Within a few weeks, HEADS dismissed her. Ms. Leonessa worked with therapist Julie Jakobi attending sessions with clients. Jerry Sprague, HEADS's clinical supervisor for Ft. Myers, selected Ms. Jakobi to work with Ms. Leonessa because he was aware of Ms. Leonessa's ardent Christian beliefs and Ms. Jakobi held similarly strong Christian beliefs.

47. The first client Ms. Jakobi and Ms. Leonessa saw was a 13-year old female with a long history of running away and conflict with her mother. They saw her at school in a room in the office. The student was very concerned about telling her mother that she was gay. After the student left the room, Ms. Leonessa turned and loudly and aggressively confronted Ms. Jakobi telling her she was wrong in her counseling of the student. Ms. Leonessa insisted Ms. Jakobi should have told the student that she would catch sexually transmitted diseases, she would become depressed, and she would commit suicide.

48. The room's door was open, and a secretary sat right outside the door. The lack of privacy and danger to client confidentiality concerned Ms. Jakobi.

49. They also visited a client, a man concerned about becoming an opioid addict and the effect on him of growing up in a rough neighborhood. He and his wife were separated and had completed the documents necessary to finalize their divorce. Ms. Jakobi had informed Ms. Leonessa of the pending divorce before they arrived at the home. Ms. Jakobi and Ms. Leonessa met with the client at his wife's home. Ms. Leonessa began talking to the man about how he could work through his problems and learn to love his wife

better. This "froze" the client and sabotaged efforts to provide the addiction counseling he sought.

50. On the drive back to the office, Ms. Leonessa was very rude and hostile to Ms. Jakobi. Ms. Leonessa was physically tense. Her tone was sharp.

51. Ms. Leonessa brought up homosexuality again and renewed advocacy of "conversion therapy." At the time, this was not permitted.

52. As soon as she left Ms. Leonessa at her car, Ms. Jakobi called Mr. Sprague to report the day's incidents. He concluded that quick action was required and asked Ms. Leonessa to apologize to Ms. Jakobi. It is worth noting that Mr. Sprague's email signature quotes from the Bible, Psalm 82:3.

53. Ms. Leonessa's apology read as follows: "I realize not everyone see's [sic] things eye to eye. However when differences occur truth needs to be spoken in a way that is gentle. I realize my 'tone' is not always gentle and I am working on this." This is no apology and was not received as one.

54. Mr. Sprague spoke further to Ms. Jakobi and another counselor who worked with Ms. Leonessa about their experiences with her. He concluded that he was "not convinced that she will not cause harm." He decided that terminating Ms. Leonessa promptly was best. Mr. Sprague's September 27, 2018, email to Dr. Nuosce explaining his decision is persuasive and was reasonably accepted by the Hodges faculty.

55. He began by reporting that Ms. Leonessa was very difficult to communicate with. He reported that Ms. Leonessa "failed at a very basic level to demonstrate the ability to maintain appropriate boundaries and to demonstrated basic empathy skills."

56. His email went on to state:

I would be surprised if you didn't already know this as her strong personality, strong beliefs and aggressive tendencies are hard for her to manage.

She had told me she has had conflicts with professors so I imagine this is why.

57. He concluded that Ms. Leonessa was "stuck on a superficial (immature) level of reasoning and so she is failing to both read others well and to maintain appropriate social boundaries" Mr. Sprague strongly suggested Ms. Leonessa consider a different career than counseling.

58. This report, supported by the evidence in this case, caused Dr. Nuosce to conclude that Ms. Leonessa was not complying with her revised SDP. Also Ms. Leonessa had failed to complete two internship programs and one practicum. Failure to complete the practicum revealed significant problems which persisted. Three internships are required to obtain a counseling degree from Hodges. Ms. Leonessa completed none. For these reasons, Hodges administratively withdrew Ms. Leonessa.

59. Ms. Leonessa appealed within the Hodges system. Her appeal papers did not acknowledge what she had done wrong or how she proposed to improve. Instead they discussed her background and accused Hodges of repeatedly violating its policies and procedures.

60. Hodges' Provost reviewed the many documents generated during Ms. Leonessa's tumultuous enrollment. He noted the similarity of reports of unacceptable behavior from different and unrelated sources, within and without the University. He denied the appeal.

Summary

61. The record of Ms. Leonessa's three years in Hodges' counseling program, including her time in practicum and internships, is a record of consistent, disputatious conduct. When the subject of religion, specifically Christianity arose, it was because Ms. Leonessa initiated criticisms of others' behavior as unchristian, because Ms. Leonessa sought to advocate her Christian views to counseling clients, and because she explicitly judged clients' actions, decisions, and options by her standards. The evidence does not prove that Hodges took any actions against Ms. Leonessa, including

imposition of the SDP and termination from the program because of her religion. Hodges' terminated her because she violated the fundamental counseling requirement to accept clients as they are and not seek to impose her values on them.

62. The record does not prove that any of the practicum and internship providers took any actions against Ms. Leonessa on account of her religious beliefs. Furthermore, the practicum and internship providers were independent of Hodges. They were not subject to its control or direction or acting in its stead.

CONCLUSIONS OF LAW

63. The Division has jurisdiction over the parties and subject matter of this dispute. §§ 120.569, 120.57(1) and 760.11(7), Fla. Stat. (2020).

64. Ms. Leonessa seeks relief under section 760.10(5). It reads:

Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license, certification, or other credential, become a member or an associate of any club, association, or other organization, or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential, seeking to become a member or associate of such club, association, or other organization, or seeking to take or pass such examination, because of such other person's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

65. The statute does not describe an employment practice in any traditional sense. But, for purposes of chapter 760, the Legislature has defined what an unlawful employment practice is. The definition must be applied. *Metro. Dade Cty. v. Milton*, 707 So. 2d 913 (Fla. 3d DCA 1998).

66. To determine if Ms. Leonessa has proven a right to relief, at the outset one must determine if the master's degree she seeks is required "in order to engage in a profession, occupation, or trade." Her claim fails at the outset.

67. Ms. Leonessa seeks to provide counseling services to young people. Nothing in the record and no cited authority establishes that a master's degree is required to provide counseling services to young people.

68. If a master's degree were required, Ms. Leonessa would have to prove that Hodges terminated her enrollment because of her religion. She may prove the alleged discrimination by direct or circumstantial evidence. *Valenzuela v. Globe Ground N. Am., LLC*, 18 So. 3d 17 (Fla. 3d DCA 2009).

69. Direct evidence proves the complained of discrimination without need for interpretation, presumption, or inference. If the evidence suggests but does not prove discriminatory intent, it is circumstantial not direct. *Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079 (11th Cir. 2004).² There is no direct evidence of discrimination against Ms. Leonessa in the record.

70. The case presents two possible theories of proof by circumstantial evidence. The first is a "disparate treatment" theory, which requires proof that Ms. Leonessa belongs to a protected class, that she was qualified to remain in the program, and despite her qualifications she was terminated while similarly qualified students were not. *See Fla. Dept. of Cmty. Aff. v. Bryant*, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991)(applying the reasoning of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973), in interpreting chapter 760).

71. Ms. Leonessa belongs to a protected class and she was terminated from Hodges. But she did not prove that she was qualified to remain in the program. She failed to establish qualification to continue in the program in two ways. She repeatedly failed to complete internship programs. Successful completion of three was required to obtain a degree. The record does not

² Federal case law dealing with Title VII applies when interpreting chapter 760. *School Bd. of Leon Cty. v. Hargis*, 400 So. 2d 103, 108 n. 2 (Fla. 1st DCA 1981).

identify any students with similar qualifications and failings who were retained.

72. The second circumstantial evidence theory relies upon inferring religious discrimination from the fact that the terminations from internships involved words related to religious belief. But the evidence does not support the inference. Ms. Leonessa injected the religious references in a way that improperly sought to impose her values on clients. The evidence persuasively establishes that Ms. Leonessa's comments violated the "values" requirements of the counseling.

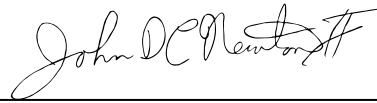
73. The evidence proved that Ms. Leonessa was unable or unwilling to honor the requirements of the program, the Agreement, the Handbook, and the Code to refrain from imposing the counselor's values and beliefs upon the client. She compounded this with hostile and combative reactions when corrected for that or other improper conduct. This violated the Agreement's requirement to maintain an open, willing attitude to feedback.

74. In short, Ms. Leonessa failed to prove the unlawful discrimination she alleged. Beyond that, Hodges proved it had legitimate, reasonable cause to terminate Ms. Leonessa's enrollment.

RECOMMENDATION

It is Recommended that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief of Connie Leonessa.

DONE AND ENTERED this 22nd day of January, 2021, in Tallahassee, Leon County, Florida.



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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.