STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SABRENNA CHAMBLISS,

Petitioner,

vs. Case No. 21-2532

DUVAL COUNTY PUBLIC SCHOOLS,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on October 15, 2021, via Zoom teleconference, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

APPEARANCES

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For Respondent: Ariel Cook, Esquire
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STATEMENT OF THE ISSUE

The issue is whether Respondent, Duval County Public Schools ("Respondent" or "School District"), subjected Petitioner to discrimination on the basis of her disability, in violation of section 760.10, Florida Statutes.[1]

PRELIMINARY STATEMENT

On October 28, 2020, Petitioner, Sabrenna Chambliss ("Ms. Chambliss" or "Petitioner"), filed with the Florida Commission on Human Relations (the "FCHR") an Employment Complaint of Discrimination against the School District. The Employment Complaint of Discrimination, drafted for Ms. Chambliss by her then-attorney, stated as follows, in relevant part:

> Please be advised that this law firm represents Ms. Sabrenna Chambliss. Ms. Chambliss experienced issues in reasonable accommodations, disability discrimination, and retaliation at [Duval County School Board]. DCSB previously employed Ms. Chambliss from January 2020 until August 18, 2020. Ms. Chambliss was at all times an exemplary employee. Ms. Chambliss retained our firm in response to constructive termination from [Duval County Public Schools]. Ms. Chambliss was a teacher at DCPS.
>
> On or about August 18, 2020, DCPS informed Ms. Chambliss that DCPS could not accommodate Ms. Chambliss' disability accommodation and therefore DCPS would terminate Ms. Chambliss and give away [her] position.
>
> On or about October 27, 2020, DCPS notified Ms. Chambliss that her Americans with Disabilities Act Amendments Act application was denied because Ms. Chambliss was already terminated…

[1] Citations shall be to Florida Statutes (2020) unless otherwise specified. Section 760.10 has been unchanged since 1992, save for a 2015 amendment adding pregnancy to the list of classifications protected from discriminatory employment practices. Ch. 2015-68, § 6, Laws of Fla.

> On or about November 3, 2020, Ms. Chambliss responded to DCPS that she was terminated because GRASP Academy could not accommodate her disability…
>
> DCSB has unlawfully denied Ms. Chambliss employment. DCSB denied Ms. Chambliss employment because of disability reasons and then fraudulently concealed this reason and defamed Ms. Chambliss's character in the process.
>
> DCSB has taken an astoundingly negative action towards Ms. Chambliss, in complete contradiction to federal and state law. Ms. Chambliss is entitled to equal protection under the law, whether or not Ms. Chambliss is disabled or requires a reasonable accommodation. Ms. Chambliss has suffered significant duress from this false treatment from DCSB.
>
> Ms. Chambliss was fully qualified for the position and could perform the position with or without a reasonable accommodation, but she was constructively terminated because of DCSB failure to provide a reasonable accommodation, discrimination, and retaliation thereof. The issue is that DCSB cannot legally discriminate against an employee based on the employee's disability.
>
> The above is a clear violation of the Florida Civil rights Act. DCPS engaged in a pattern or practice of failure to provide a reasonable accommodation, discrimination, and retaliation as defined by the laws of Florida, including Fla. Stat. § 760.10(1)(a) for constructively discharging Ms. Chambliss because of her disability and the medical needs thereof….

The FCHR conducted an investigation into Ms. Chambliss's allegations. On July 28, 2021, the FCHR issued a written determination that there was no reasonable cause to believe that unlawful discrimination occurred.

On August 19, 2021, Ms. Chambliss timely filed a Petition for Relief with the FCHR. Also, on August 19, 2021, the FCHR referred the case to DOAH for the assignment of an ALJ and the conduct of formal hearings.

The final hearing was scheduled for October 15, 2021, on which date it was convened and completed.

At the hearing, Ms. Chambliss testified on her own behalf. Ms. Chambliss offered no exhibits into evidence.

The School District presented the testimony of the following School District employees: Laura Bowes, current Executive Director for School Improvement; Sherry Jackson, Executive Director of the Office of Equity and Inclusion and Professional Standards; and Victoria Schultz, Assistant Superintendent for Human Resources. The School District's Exhibits 1 through 8 were admitted into evidence.

The one-volume Transcript of the final hearing was filed with DOAH on October 25, 2021. Respondent timely filed its Proposed Recommended Order on November 4, 2021. Petitioner did not file a proposed recommended order.

FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. The School District is an employer as that term is defined in section 760.02(7). It is the governing body responsible for the administration of public schools in Duval County.

2. Ms. Chambliss is an African American female who suffers from Type 2 diabetes, hypertension, and asthma.

3. Ms. Chambliss was hired by the School District on November 4, 2019, as a part-time employee through "Project Jumpstart," a School District training program for prospective teachers.

4. From the date of her hiring, Ms. Chambliss was considered a "probationary" employee. A "probationary contract" is an employment contract awarded to instructional personnel upon initial employment in a school district. The probationary period is one school year, or 196 working days. §§ 1012.01(4) and 1012.335(1)(c), Fla. Stat.

5. Section 1012.335(1)(c), Florida Statutes, provides that a probationary contract employee "may be dismissed without cause or may resign without breach of contract."

6. After she completed the six-week Project Jumpstart program, Ms. Chambliss was assigned to Highlands Middle School.

7. At the close of the 2019-2020 school year, Highlands Middle School received a grade of "D" from the Florida Department of Education. Among the state's requirements for improving "D" and "F" rated schools is that only teachers rated "effective" or "highly effective" may remain at those schools.

8. Ms. Chambliss's year-end evaluation was not "effective" or "highly effective." Therefore, the School District was required to move her to a school with no history of poor evaluations.

9. On July 1, 2020, Ms. Chambliss was reassigned to GRASP Academy, a K-8 school designed to address the needs of students with learning disabilities, chiefly dyslexia, dysgraphia, and dyscalculia.

10. On August 3, 2020, the School District's Office of Equity and Inclusion/Professional Standards ("OEIPS") received Ms. Chambliss's request for a reasonable accommodation under the Americans with Disabilities Act ("ADA"). Due to her comorbidities and the danger posed by Covid-19, Ms. Chambliss requested that she be allowed to work from home.

11. On August 11, 2020, OEIPS sent an email to Annessia Powell, the principal of GRASP Academy, informing her that an employee, later

identified as Ms. Chambliss, had applied for an accommodation. OEIPS requested that Ms. Powell provide dates and times of her availability to attend a Skype meeting to discuss the working environment, Ms. Chambliss's job responsibilities, and reasonable accommodation options. Sherry Jackson, the Executive Director of OEIPS, testified that such meetings are standard practice when an employee requests an ADA accommodation.

12. Later on August 11, 2020, Ms. Powell replied to OEIPS that Ms. Chambliss was no longer a teacher at GRASP Academy. She stated that the School District had moved Ms. Chambliss out of GRASP Academy the previous week.

13. There was disagreement as to the reason for Ms. Chambliss's departure from GRASP Academy. Laura Bowes, who at the time was the School District's Executive Director for Human Resources ("HR"), testified to receiving a report from Ms. Powell that Ms. Chambliss had only been at GRASP Academy for a few hours when she told Ms. Powell that she did not believe the school was the best setting for her. Ms. Chambliss allegedly told Ms. Powell that a different type of teacher would be better suited for the needs of GRASP Academy's students.

14. Ms. Chambliss testified that she had substituted at GRASP Academy on several occasions. She liked the program at the school and believed it was a good fit for her interests and skills.

15. Ms. Chambliss testified that she had undergone surgery during the summer. She reported to work at GRASP Academy but during her first day of work she began to experience great pain and asked to go home. Ms. Chambliss testified that her conversation with the principal was about her request to work from home, not the suitability of the school.

16. Regardless of the reason for her departure from GRASP Academy, Ms. Chambliss was reassigned to Landmark Middle School. She was directed to report for work on August 14, 2020.

17. Ms. Bowes testified that the principal of Landmark Middle School, Dr. Cicely Tyson-White, reported that Ms. Chambliss was not coming in to work on a consistent basis. She was failing to notify the school of her absences. She would also come into work several hours late and say that she had been to a doctor's appointment, again without notice. After listening to Dr. Tyson-White express her frustration, Ms. Bowes told Dr. Tyson-White that Ms. Chambliss was still a probationary employee and as such could be released from employment without cause.

18. Ms. Chambliss testified that she was having problems using the School District's automated leave request system but that she never failed to let the school know when she needed to be absent from work.

19. Ms. Chambliss next reported for work on August 18, 2020. At that time, Dr. Tyson-White informed Ms. Chambliss that her probationary employment was being terminated and that another teacher would be filling her position at Landmark Middle School.

20. The School District refers all requests for reasonable accommodations under the ADA to OEIPS for review and action. For reasons of employee confidentiality, the School District's HR Department is not given immediate access to ADA accommodation requests.

21. Ms. Bowes, the head of HR, testified that she was unaware Ms. Chambliss had requested a reasonable accommodation under the ADA at the time she advised Dr. Tyson-White of her option to terminate Ms. Chambliss's employment without cause.

22. Ms. Chambliss is eligible to reapply for a teaching position with the School District at any time. Both Ms. Bowes and Victoria Schultz, the current Assistant Superintendent for HR, testified that Ms. Chambliss's probationary termination would not harm her chances of obtaining a position at another school, given that such terminations are not uncommon and that there is a high need for teachers in the School District. Individual school principals have the discretion to interview and hire teachers who have gone through

probationary release. The School District would place no obstacle before Ms. Chambliss should she pursue re-employment.

23. In a November 29, 2020, letter to Sherry Jackson, Executive Director of OEIPS, Ms. Chambliss stated, "My goal is to return to Teacher status in the future, but due to some complications from surgery and Covid-19, further investigations on high risk medical conditions are presently being set up for testing and diagnosis which will prolong my return."

24. As of the date of the hearing, Ms. Chambliss had not applied for a position with the School District since her termination.

25. In summary, Ms. Chambliss offered insufficient evidence that she was discriminated against based on her disability. The principal who terminated her employment was not even aware that Ms. Chambliss had requested an accommodation. The School District's process for establishing reasonable accommodations might be faulted for slowness but there was no evidence that it was used for discriminatory reasons.

26. It is noted that the School District placed great emphasis on its discretion to terminate a probationary employee's contract "without cause" under section 1012.335(1)(c). The undersigned doubts this statute would shield a school district that engaged in blatant discrimination, but such was not the case in the instant proceeding. Ms. Chambliss offered nothing more than her suspicions to tie her disability to the School District's decision to terminate her employment.

27. There was no evidence that Ms. Chambliss was subjected to unlawful retaliation.

28. Ms. Chambliss offered insufficient credible evidence disputing the non-discriminatory reason given by the School District for its termination of her probationary employment.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569, 120.57(1), and 760.11(7), Fla. Stat.

30. The Florida Civil Rights Act of 1992 (the "Florida Civil Rights Act" or the "FCRA"), chapter 760, prohibits discrimination in the workplace. The FCRA is modeled after Title VII of the Civil Rights Acts of 1964 and 1991, 42 U.S.C. § 2000, *et seq*. (Title VII), so that federal case law regarding Title VII is applicable to construe the FCRA. *See Castleberry v. Edward M. Chadbourne, Inc.*, 810 So. 2d 1028, 1030 (Fla. 1st DCA 2002).

31. Section 760.10 states the following, in relevant part:

> (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, 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.

32. The School District is an "employer" as defined in section 760.02(7), which provides the following:

> (7) "Employer" means any person 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.

33. Florida courts have determined that federal case law applies to claims arising under the Florida 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, absent direct evidence of discrimination. *See Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385, 1387 (11th Cir. 1998); *Paraohao v. Bankers Club, Inc.*, 225 F. Supp. 2d 1353, 1361 (S.D. Fla. 2002); *Fla. State Univ. v. Sondel*, 685 So. 2d 923, 925 n.1 (Fla. 1st DCA 1996); *Fla. Dep't of Cmty. Aff. v. Bryant*, 586 So. 2d 1205 (Fla. 1st DCA 1991).

34. "Direct evidence is 'evidence, which if believed, proves existence of fact in issue without inference or presumption.'" *Rollins v. TechSouth, Inc.*, 833 F.2d 1525, 1528 n.6 (11th Cir. 1987)(quoting *Black's Law Dictionary* 413 (5th ed. 1979)). In *Carter v. City of Miami*, 870 F.2d 578, 582 (11th Cir. 1989), the court stated:

> This Court has held that not every comment concerning a person's age presents direct evidence of discrimination. [*Young v. Gen. Foods Corp.*, 840 F.2d 825, 829 (11th Cir. 1988)]. The *Young* Court made clear that remarks merely referring to characteristics associated with increasing age, or facially neutral comments from which a plaintiff has inferred discriminatory intent, are not directly probative of discrimination. *Id*. Rather, courts have found only the most blatant remarks, whose intent could be nothing other than to discriminate on the basis of age, to constitute direct evidence of discrimination.

35. Petitioner offered no evidence that would satisfy the stringent standard of direct evidence of discrimination.

36. Under the *McDonnell* analysis, in employment discrimination cases, Petitioner has the burden of establishing, by a preponderance of the evidence, a prima facie case of unlawful discrimination. If the prima facie case is established, the burden shifts to 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 the evidence that the employer's offered reasons for its adverse employment decision were pretextual. *See Texas Dep't of Cmty. Aff. v. Burdine*, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981).

37. In order to prove a prima facie case of unlawful employment discrimination under chapter 760, Petitioner must establish that: (1) she is a member of the protected group; (2) she was subject to adverse employment action; (3) the School District treated similarly situated employees outside of her protected classifications more favorably; and (4) Petitioner was qualified to do the job and/or was performing her job at a level that met the employer's legitimate expectations. *See*, e.g., *Jiles v.United Parcel Serv., Inc.*, 360 Fed. Appx. 61, 64 (11th Cir. 2010); *Burke-Fowler v. Orange Cnty*, 447 F.3d 1319, 1323 (11th Cir. 2006); *Knight v. Baptist Hosp. of Miami, Inc.*, 330 F.3d 1313, 1316 (11th Cir. 2003); *Williams v. Vitro Servs. Corp.*, 144 F.3d 1438, 1441 (11th Cir. 1998); *McKenzie v. EAP Mgmt. Corp.*, 40 F. Supp. 2d 1369, 1374-75 (S.D. Fla. 1999).

38. Petitioner has failed to prove a prima facie case of unlawful employment discrimination.

39. Petitioner is an African American female who suffers from Type 2 diabetes, hypertension, and asthma, conditions that constitute "handicaps" and therefore make her a member of a protected group.

40. Petitioner was terminated from her position as a teacher with the School District and was therefore subject to an adverse employment action.

41. Petitioner was not evaluated as "effective" or "highly effective," but there was no evidence that she was in danger of dismissal for reasons related to her classroom performance. The principal who dismissed her did so by invoking the "without cause" provision of section 1012.335(1)(c). Therefore, based on all the evidence, Petitioner was performing her job at a level that met the employer's legitimate expectations.

42. As to the question of disparate treatment, the applicable standard was recently revised in *Lewis v. City of Union City, Georgia.*, 918 F.3d 1213, 1218 (11th Cir. 2019): "[A] plaintiff asserting an intentional-discrimination claim under *McDonnell-Douglas* must demonstrate that she and her proffered comparators were 'similarly situated in all material aspects.'"

43. State courts in Florida have found that a person suffers "disparate treatment" in his or her employment, in violation of Title VII—and, by extension, the FCRA—when he or she is singled out and treated less favorably, on the basis of his or her status as a member of a protected class than other employees who are otherwise similarly situated in all relevant respects. *Johnson v. Great Expressions Dental Ctrs. of Fla.*, *P.A.,* 132 So. 3d 1174, 1176 (Fla. 3d DCA 2014); *Valenzuela v. Globeground N. Am., LLC*, 18 So. 3d 17, 23 (Fla. 3d DCA 2009).

44. Petitioner offered no evidence as to disparate treatment of similarly situated employees outside of her protected classification. Discriminatory intent may be proved by inference but a trier of fact "cannot infer discrimination from thin air." *Lizardo v. Denny's, Inc.*, 270 F.3d 94, 104 (2d Cir. 2001)(citing *Norton v. Sam's Club*, 145 F.3d 114, 119 (2d Cir.1998)). Mere speculation or self-serving belief on the part of a complainant concerning motives of a respondent is insufficient, standing alone, to establish a prima facie case of intentional discrimination. *See Lizardo*, 270 F.3d at 104 ("Plaintiffs have done little more than cite to their mistreatment and ask the court to conclude that it must have been related to their race. This is not sufficient."). *See also Norton*, 145 F.3d at 120 (anti-discrimination

law "does not make employers liable for doing stupid or even wicked things; it makes them liable for *discriminating*….").

45. Having failed to establish the disparate treatment element, Petitioner has not established a prima facie case of employment discrimination. "Failure to establish a prima facie case of . . . discrimination ends the inquiry." *Ratliff v. State*, 666 So. 2d, 1008, 1013 n.6 (Fla. 1st DCA 1996)(citations omitted).

46. Even if Petitioner were deemed to have submitted sufficient evidence to show a prima face case of unlawful discrimination, credible and unrebutted testimony by the School District's witnesses showed that Petitioner's dismissal was unrelated to her request for an ADA accommodation. Because of the School District's confidentiality practices, neither the HR Department nor the principal of Landmark Middle School was aware of Petitioner's accommodation request at the time her employment was terminated. The School District had the discretion to dismiss Petitioner without cause. The only reason established on the record for the principal's dissatisfaction had to do with Petitioner's absences from work, not her disability or her accommodation request. Petitioner disagreed with the allegation that she was not providing notice of her absences but did not dispute the absences themselves. The evidence was insufficient to show that the School District's reason was a mere pretext for discrimination.

47. In a proceeding under the FCRA, the court is "not in the business of adjudging whether employment decisions are prudent or fair. Instead, [the court's] sole concern is whether unlawful discriminatory animus motivates a challenged employment decision." *Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1361 (11th Cir. 1999). Not everything that makes an employee unhappy is an actionable adverse action for purposes of the FCRA. *Davis v. Town of Lake Park*, 245 F.3d 1232, 1238 (11th Cir. 2001).

48. As to Petitioner's retaliation claim, the court in *Blizzard v. Appliance Direct, Inc.*, 16 So. 3d 922, 926 (Fla. 5th DCA 2009), described the elements of such a claim as follows:

> To establish a prima facie case of retaliation under section 760.10(7), a plaintiff must demonstrate: (1) that he or she engaged in statutorily protected activity; (2) that he or she suffered adverse employment action and (3) that the adverse employment action was causally related to the protected activity. See *Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385, 1388 (11th Cir.), cert. denied 525 U.S. 1000, 119 S. Ct. 509, 142 L.Ed.2d 422 (1998). Once the plaintiff makes a prima facie showing, the burden shifts and the defendant must articulate a legitimate, nondiscriminatory reason for the adverse employment action. *Wells v. Colorado Dep't of Transp.*, 325 F.3d 1205, 1212 (10th Cir. 2003). The plaintiff must then respond by demonstrating that defendant's asserted reasons for the adverse action are pretextual. *Id.*

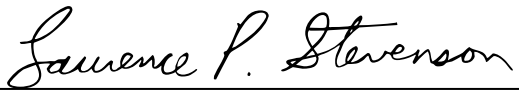
49. Petitioner made no evidentiary showing that any employment action by the School District was causally related to any statutorily protected activity she took while an employee. The School District's OEIPS began processing her ADA accommodation request upon receipt but was unable to schedule an accommodation meeting before she changed schools and then was dismissed from employment. Petitioner's assertion of retaliation was unsupported by credible evidence.

50. In conclusion, Ms. Chambliss failed to present a prima facie case of discrimination based on disability, and failed to show that her termination from employment was in retaliation for her exercise of protected activity.

RECOMMENDATION

Based upon 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 Duval County Public Schools did not commit an unlawful employment practice, and dismissing the Petition for Relief filed in this case.

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



LAWRENCE P. STEVENSON
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of November, 2021.

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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.