UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

JAWANDA DOVE,

Plaintiff, **Case No.: 3:20-cv-547-J-34MCR**

v.

FLAGLER COUNTY SCHOOL BOARD,

Defendant.

_____/

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM OF LAW

COMES NOW, Defendant, FLAGLER COUNTY SCHOOL BOARD, by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 56, hereby submits this Motion for Summary Judgment and Supporting Memorandum of Law, and in support states as follows:

I. INTRODUCTION

The Court should grant summary judgment in favor of Defendant as a matter of law because no reasonable jury could conclude that Plaintiff has established a prima facie case of race and national origin discrimination predicated on Defendant's decision not to promote Plaintiff, neither that Defendant's legitimate, nondiscriminatory reasoning for not selecting Plaintiff for promotion was instead pretext for discrimination.

Plaintiff's operative Second Amended Complaint [Doc. 9] alleges that Defendant did not promote her because of her race and national origin in violation of Title VII of the Civil Rights Act of 1964, and the Florida Civil Rights Act of 1992 ("FCRA"), Fla. Stat. § 760.01 et al. Plaintiff, who is African American, alleges that candidates outside her protected class and who were less qualified were offered positions for which she applied.

Plaintiff can neither establish material facts which would raise a prima facie inference of discrimination, nor rebut Defendant's legitimate, nondiscriminatory reason for not promoting Plaintiff. Defendant uses an application selection process for hiring and promoting employees which involves an interview committee which includes employees from the same protected class as Plaintiff. In addition to hiring and promoting dozens of employees of varying races and ethnicities, Defendant has hired and promoted many employees from the same protected class as Plaintiff.

Even if Plaintiff could establish a prima facie case of discrimination, Plaintiff cannot establish that Defendant's legitimate nondiscriminatory reason for not selecting Plaintiff was pretextual. Plaintiff was not promoted because an unbiased hiring interview committee concluded that Plaintiff was not the most qualified candidate for the positions for which she applied. Plaintiff's subjective belief that she had superior qualifications for the positions does not provide sufficient grounds

for a reasonable factfinder to find Defendant's legitimate, nondiscriminatory reasons unworthy of credence.

In support of this Motion, refer to the Affidavit of Jewel Johnson, Defendant's Chief Human Resources Officer, attached hereto as Exhibit "A".

For these reasons, as set forth more fully herein, the Court should grant Defendant's Motion for Summary Judgment.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Background Information

Defendant is a non-profit public school district located in Flagler County with approximately 12,900 students, which employs approximately 1,700 full and part time employees. There are nine (9) schools in the Flagler County School District (2 high schools, 2 middle schools, and 5 elementary schools), and one (1) elementary charter school.

Defendant implements and abides by equal employment opportunity procedures for its personnel, including School Board Policy 606 titled Unlawful Discrimination Prohibited (a copy of which is attached hereto as Exhibit "B"), which states:

> No person shall, on the basis of race, color, religion, gender, age, marital status, sexual orientation, disability, political or religious beliefs, national or ethnic origin, or genetic information, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity, or in any employment conditions or practices.

The language of School Board Policy 606 is substantially similar to the language of § 1000.05(2)(a), Fla. Stat., which states:

> No person in this state shall, on the basis of race, ethnicity, national origin, gender, disability, religion, or marital status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any public K-20 education program or activity, or in any employment conditions or practices, conducted by a public educational institution that receives or benefits from federal or state financial assistance.

Plaintiff is currently employed by Defendant as an instructional teacher at Indian Trails Middle School. Plaintiff has continuously been employed by Defendant for approximately 16 years, since 2006.

The basis for this action is that Plaintiff has applied for employment positions that would constitute a promotion from her current position, but Defendant ultimately did not choose Plaintiff as the best qualified candidate for any of these positions.

B. Defendant's Application and Selection Process for Employment

Defendant fills its employment vacancies by a process that begins with posting and advertising an open position and receiving applications from all interested individuals, including both internal and external candidates. Defendant next interviews all qualified applicants through a hiring committee panel which is typically comprised of 3-7 employees ranging from teachers to principals to directors/officers. Some of the committee members are generally permanent (such

as Jewel Johnson), while others are rotated based upon their relevance to the particular position offered. Once the interviews are completed, the District Superintendent hires the candidate recommended by the committee as the best qualified to fill the position.

C. Plaintiff's Applications and Interviews

During the applicable time period at issue, Plaintiff has applied for three administrative positions (i.e., assistant principal positions) and five leadership positions between January 26, 2019 through November 22, 2019.[1] (A copy of Plaintiff's underlying charge filed with the Equal Opportunity Employment Commission ("EEOC") which sets forth the applicable time period at issue is attached hereto as Exhibit "C"). Defendant ultimately did not select Plaintiff as the best qualified candidate for any of these eight (8) applied-for positions, to wit:

1. Assistant Principal, 41 applicants, 05/31/19, ID: 190522002
2. Assistant Principal, 35 applicants, 05/31/19, ID: 190522001
3. Assistant Principal, 38 applicants, 07/09/19, ID: 190618001
4. Literacy Coach, 23 applicants, 06/24/19, ID: 190606001

[1] The Second Amended Complaint intentionally ignores the applicable 300-day time limit for filing a charge with the EEOC in an attempt to mislead the Court by stating that Plaintiff "…has applied for the position[s] … approximately eighteen times throughout her career…", in that the majority of those applications (10 of 18) occurred outside the proscribed EEOC time period and therefore cannot be considered by the Court. [Doc. 9, para. 17]. *See https://www.eeoc.gov/time-limits-filing-charge*.

5. MTSS Coordinator, 14 applicants, 07/18/19, ID: 190712004

6. Parent Specialist, 17 applicants, 07/26/19, ID: 190722004

7. Curriculum Specialist, 10 applicants, 09/12/19, ID: 190906001 [2]

8. Academic Interventionist, 21 applicants, 09/30/19, ID: 190813002

III. MEMORANDUM OF LAW

A. Legal Standard for Summary Judgment

Summary judgment is appropriate if it is evident through pleadings, depositions, admissions, and affidavits that there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986); *McCullum v. Orlando Regional Healthcare System, Inc.,* 768 F.3d 1135, 1141 (11th Cir. 2014); *Palermo v. Grunau Company, Inc.,* 220 F. Supp. 3d 1300, 1305 (M.D. Fla. 2016).

In *Palermo*, the Court outlined how grounds for summary judgment may be established:

> As to issues for which the movant would bear the burden of proof at trial, the movant must affirmatively show the absence of a genuine issue of material fact and support its motion with credible evidence demonstrating that no reasonable jury could find for the nonmoving party on all of the essential elements of its case.

[2] Plaintiff did not meet the minimum qualifications for the position of Curriculum Specialist ID: 190906001 at the time she applied, in that she formatted her electronic application submission such that certain required ESE credentials were unviewable to Defendant's hiring committee at the time the position was open. Had these ESE credentials been viewable to Defendant at that time, then Plaintiff would have been qualified for consideration for the position.

> As to issues for which the nonmovant would bear the burden of proof at trial, the movant has two options: (1) the movant may simply point out an absence of evidence to support the nonmoving party's case; or (2) the movant may provide affirmative evidence demonstrating that the nonmoving party will be unable to prove its case at trial. The burden then shifts to the nonmoving party, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact exists. A factual dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. The Court must view the evidence and all reasonable inferences drawn from the evidence in the light most favorable to the nonmovant. However, [a] court need not permit a case to go to a jury...when the inferences that are drawn from the evidence, and upon which the nonmovant relies, are 'implausible.'

Id. at 1305 (quotations and citations omitted).

B. Plaintiff Cannot Establish That She Was Not Promoted Because of Her Race and/or National Origin in Violation of Title VII or the FCRA.

1. Legal Framework of Plaintiff's Claims

The Second Amended Complaint alleges two counts of racial discrimination against Defendant: a count for violation of Title VII, and a count for violation of the FCRA.

Title VII provides that it is "an unlawful employment practice for an employer to… refuse to hire… any individual, or otherwise discriminate against any individual… because of such individual's race… or national origin." 42 U.S.C. § 2000e-2(a)(1). The FCRA is modeled after Title VII and also prohibits employers from refusing to hire any individual based on such individual's race or national

origin. Fla. Stat. § 760.10 (2018); *Harper v. Blockbuster Entertainment Corp.,* 139 F.3d 1385, 1387 (11th Cir. 1998). Title VII and the FCRA have the same elements and follow the same analytical framework. *Id.* at 1387; *Standard v. A.B.E.L. Servs.,* 161 F.3d 1318, 1330 (11th Cir. 1998).

To establish a prima facie case of race or national origin discrimination, the plaintiff must present either direct or circumstantial evidence. *EEOC v. Joe's Stone Crab, Inc.,* 220 F.3d 1263, 1286 (11th Cir. 2000).

If there is no direct evidence of discrimination, the plaintiff must prove her case using circumstantial evidence under the *McDonnell Douglas* burden-shifting framework. *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802-4 (1973); *Springer v. Convergys Customer Mgmt.,* 509 F.3d 1344, 1347 (11th Cir. 2007).

If the plaintiff establishes a prima facie case, the defendant's articulation of a legitimate, nondiscriminatory reason is sufficient to rebut the presumption of discrimination raised by the plaintiff's prima facie case. *Id.* The burden of production then shifts back to the plaintiff to prove that the employer's alleged reason was pretext for unlawful discrimination. *Id.*

2. No Direct Evidence of Discrimination

Here, Plaintiff has not even attempted to allege any direct evidence of discrimination. "Direct evidence of discrimination would be evidence which, if believed, would prove the existence of a fact in issue without inference or

presumption. *Earley v. Champion Intern. Corp.,* 907 F.2d 1077, 1081 (11th Cir. 1990) (quoting *Carter v. City of Miami,* 870 F.2d 578, 581-82 (11th Cir. 1989). "Only the most blatant remarks, whose intent could be nothing other than to discriminate on the basis of a [protected characteristic] constitute direct evidence of discrimination." *Id*. In *Earley*, the Eleventh Circuit observed that direct evidence of discrimination would be a memorandum saying, "Fire Earley, he is too old," while evidence that "suggests discrimination, leaving the trier of fact to infer discrimination based on the evidence" is circumstantial. *Id*. at 1081-82.

Here, Plaintiff has not presented any evidence of discrimination whatsoever - she makes the conclusory statement that Defendant filled the subject positions with people outside Plaintiff's protected class. She presents no evidence so blatant that its intent could be nothing other than to discriminate. There is no direct evidence of discrimination in the record.

3. Plaintiff Cannot Establish a Prima Facie Case of Discrimination

Plaintiff must therefore rely on circumstantial evidence to establish the following elements of her prima facie case of discrimination based on failure to hire: (1) she is a member of a protected class; (2) she applied for and was qualified for an available position; (3) she was rejected; and (4) Defendant filled the position with a person outside Plaintiff's protected class. *Childress v. Caterpillar Logistics Services, Inc.,* 369 Fed. Appx. 95, 96 (11th Cir. 2010). Defendant is entitled to summary

judgment as a matter of law because no reasonable jury could find for the Plaintiff on the fourth element of her prima facie case.

Here, Defendant concedes that the first and third elements have been satisfied; Plaintiff is a member of a protected class, and she was not selected to fill any of the applied-for positions.

Plaintiff has satisfied the second element only as to seven of the eight subject positions, with the remaining eighth position (Curriculum Specialist, 10 applicants, 09/12/19, ID: 190906001) excluded due to Plaintiff's formatting mistake of her electronic application submission. (See fn.2 herein).

However, Plaintiff cannot establish the fourth element because although she was not offered to fill the subject positions, Defendant has hired and promoted many other applicants of the same protected class to fill similar and also more prestigious positions. The following current administrative/leadership employees of Defendant are all of the same protected class as Plaintiff:

1. Lashakia Moore, Director of Teaching and Learning
2. Dontarrious Rowls, Director of Transportation
3. Marquez Johnson, Director of Student Services
4. Jewel Johnson, Chief Human Resources Officer
5. Travis Lee, Principal, Rymfire Elementary School
6. Toussaint Roberson, Assistant Principal, Buddy Taylor Middle School

7. Fred Terry, Assistant Principal, Wadsworth Elementary School

8. Priscilla Campbell, Dean, Belle Terre Elementary School

Flagler County School District employs approximately 1,700 individuals and conducts hiring on an ongoing basis. The Court should view Defendant's hiring decisions collectively. Where an employer hires multiple individuals for the same position, "summary judgment is warranted when at least some of the candidates hired were in plaintiff's same protected class or classes." *Kennebrew v. Cobb County School District,* Case No. 1:15-cv-02495-RWS-CMS, 2017 WL 4334244 (N.D. Ga. May 22, 2017. In *Kennebrew*, the plaintiff, who was an African-American female, applied for a special needs education position. There were five vacancies – two were filled by Caucasian females, and three were filled by African-American females. The defendant argued that the court should view its hiring decisions collectively, citing to cases from several district courts which granted summary judgment in failure to hire cases where some of the candidates hired were in plaintiff's same protected class.[3] The *Kennebrew* court found the caselaw cited by the defendant persuasive

[3] *Jenkins v. Foot Locker, Inc.,* No. 12-13175, 2014 WL 1977040, at *3 (E.D. Mich. May 15, 2014) (granting summary judgment to employer where twenty-seven of the twenty-eight hires were in the same protected class as the plaintiff, and declining to conduct a separate analysis for each of the twenty-eight positions); *Lochard v. Provena Saint Joseph Med. Ctr.,* 367 F. Supp. 2d 1214, 1223 (N.D. Ill. 2005) (holding that the plaintiff, who was African American, could not establish a prima facie case in a failure-to-hire case when one of the three vacancies was filled by an African American applicant); *McCloud v. Potter,* 506 F. Supp. 2d 1031, 1047 (S.D. Ala. 2007) (concluding that African American female employee had failed to establish that she was similarly situated to all comparator employees because the employee's list of persons that she

and concluded that the plaintiff failed to establish the fourth element on her prima facie case.

This court should follow suit because no reasonable jury could find that Defendant would continuously employ Plaintiff since 2006, employ the aforementioned individuals of the same protected class in the same or more prestigious positions than Plaintiff applied for, but then reject Plaintiff's applications for those positions because of that same protected class status.

Plaintiff cannot simply rely on the fact that Defendant hired individuals of different races to establish a prima facie case, because Defendant was and is always hiring. Defendant has interviewed hundreds of candidates and hired dozens in the subject time period. Some of those hired were bound to be white, African American, and Hispanic, and the fact that individuals of these races were hired has no probative value with respect to the fourth element of Plaintiff's prima facie case. Thus, Plaintiff is unable to establish a prima facie case of racial discrimination.

4. Defendant's Legitimate Non-Discriminatory Reason

Defendant's burden to produce a legitimate, nondiscriminatory reason for its decision not to hire Plaintiff is "exceedingly light." *Holifield v. Reno,* 115 F.3d 1555,

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contended were more favorably treated included persons in her same protected classes); *Bilal v. BP America Inc.,* No. 03-CV-9253, 2006 WL 83445, at *6 (N.D. Ill. Jan. 10, 2006) (concluding that the plaintiff could not establish a prima facie case of race discrimination in the termination context because the plaintiff, who was African American, was terminated along with two white employees by the same decision-maker as part of the same decision-making process)).

1564 (11th Cir. 1997). "Courts are not in the business of adjudging whether employment decisions are prudent or fair [but] [i]nstead our sole concern is whether unlawful discriminatory animus motivates a challenged employment decision". *Lee v. GTE Florida, Inc.,* 226 F.3d 1249, 1253 (11th Cir. 2000). Defendant therefore "need not persuade the court that it was actually motivated by the proffered reasons… [it] need only produce admissible evidence which would allow the trier of fact rationally to conclude that the employment decision had not been motivated by discriminatory animus." *Combs v. Plantation Patterns,* 106 F.3d 1519, 1528 (11th Cir. 1997) (*quoting Texas Department of Community Affairs v. Burdine,* 450 U.S. 248, 254-57 (1981)).

Plaintiff was not selected for any of the applied for positions because she was determined to not be the best qualified individual amongst the candidates. Although Defendant has continuously employed Plaintiff since 2006 as an instructional teacher of students, the administrative and leadership positions Plaintiff applied for naturally require a different set of communication skills, interpersonal skills, responsibilities, and efficacy than those needed to adequately educate children. Whether Plaintiff sufficiently possesses these skills needed to adequately perform a given position is not a static minimal threshold which would warrant her selection for the position; the relevant determination instead is whether, after the application and interview process for every qualified candidate has finished, Defendant's hiring

committee has concluded that Plaintiff possesses these skills and all other relevant criteria to a greater total degree than all other candidates such that she is best qualified for the position. For each of the applied-for positions at issue, Defendant duly determined that Plaintiff was not the best qualified.

Subjective evaluations play an important and legitimate part in an employer's evaluation of potential employees. *See Mira v. Monroe County School Bd.,* 687 F.Supp. 1538, 1550-51 (S.D. Fla. 1988) (citing numerous cases in which an employer's employment action was lawfully motivated by subjective evaluation of an employee or applicant's personality and judgment). Courts have found that poor performance during an interview satisfies an employer's burden to produce a legitimate, non-discriminatory reason for rejecting an applicant. *Chapman v. AI Transport,* 229 F.3d 1012, 1028 (11th Cir. 2000); *Samedi v. Miami-Dade County,* 134 F.Supp.2d 1320, 1346 (S.D. Fla. 2001). As an example, poor scores on the interpersonal skills component of an interview are sufficient to establish a legitimate, nondiscriminatory reason for rejection of an applicant. *Samedi,* 134 F.Supp.2d at 1346; see also *McCarthney v. Griffin-Spalding County Bd. of Ed.,* 791 F.2d 1549, 1550 (11th Cir. 1986) (affirming district court's finding that superintendent's belief that plaintiff lacked necessary interpersonal skills overcame presumption of discriminatory motive).

"It is not the role of federal courts to second-guess the hiring decisions of business entities." *Schoenfeld v. Babbitt,* 168 F.3d 1257, 1269 (11th Cir. 1999) (citing *Nix v. WLCY Radio/Rahall Comms.,* 738 F.2d 1181, 1187 (11th Cir. 1984)). Defendant's advancement of a nondiscriminatory explanation of its action is sufficient to satisfy its burden of production. *Id*.

5. Plaintiff Cannot Establish Pretext

Ultimately, regardless of whether Plaintiff can establish a prima facie case of race or national origin discrimination, summary judgment is nonetheless warranted because no reasonable jury could find that Defendant's legitimate, nondiscriminatory reason for maintaining Plaintiff's current employment yet determining she was not the best qualified candidate for the applied-for positions was pretext for discrimination. Plaintiff has the burden to establish that the reason proffered by Defendant is pretextual. *Pennington v. City of Huntsville,* 261 F.3d 1262, 1266 (11th Cir. 2001). To meet this burden, Plaintiff must demonstrate "such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could find them unworthy of credence." *Vessels v. Atlanta Indep. Sch. Sys.,* 408 F.3d 763, 771 (11th Cir. 2005).

Here, Plaintiff has not attempted to present any evidence of pretext at all, as she relies solely on the conclusory statement that Defendant filled the subject

positions with people outside Plaintiff's protected class in support of her allegations of racial discrimination. Plaintiff cannot point to any comments, notes, statements, policies, or practices of Defendant that could possibly infer a racially discriminatory motive, because none exist. If any such inferential material did exist, then Plaintiff reasonably would have encountered and been aware of it given she has been and remains an employee of Defendant and would surely have alleged such evidence in this suit.

At most, the allegations by Plaintiff which Defendant concedes are accurate is that she was sufficiently qualified to be considered for the subject positions (with exception to that single position (Curriculum Specialist, 10 applicants, 09/12/19, ID: 190906001) excluded due to Plaintiff's formatting mistake of her electronic application submission). This only means that Plaintiff met the minimum threshold for consideration for the subject positions, as did every other applicant who were interviewed by the hiring committee. Although it is possible to show pretext by arguing one's qualifications, it can only be successful if "disparities in qualifications [are] of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff for the job in question." *Cooper v. Southern Co.,* 390 F.3d 695, 732 (11th Cir. 2004) (quotations and citation omitted, cert. denied, 546 U.S. 960 (2005). "[A] plaintiff… may not establish that an employer's proffered reason is pretextual merely by

questioning the wisdom of the employer's reason as long as the reason is one that might motivate a reasonable employer." *Pennington,* 261 F.3d at 1267.

Plaintiff has made other allegations that are illogical and without any basis in fact, including that Plaintiff "has applied for … non-competitive (resume and qualification promotion positions)". [Doc. 9, para. 17]. All of the subject positions are competitive and were filled by the application and interview process as explained above. Had any of the subject positions been merely "non-competitive" and "resume and qualification promotion" as alleged, then only Plaintiff would have been eligible to receive them, and no other individual could have filled that position in her place. Such a circumstance belies the overarching fact acknowledged by Plaintiff that other individuals received the subject positions instead of her.

Similarly, Plaintiff's allegation that the selected individuals "were either less qualified or in some cases, did not meet the minimum qualifications of degrees or certifications" should be disregarded on its face, because Plaintiff does not have access to that knowledge. [Doc. 9, para. 18]. This is particularly true as a significant number of the qualified individuals were external candidates. The allegation by Plaintiff is nothing but hopeful conjecture to support her position. This basis is without a foundation further revealed by Plaintiff's allegation that the individuals who received the positions were "younger" than she, given that plain seniority is not a determinative factor in Defendant's decision as to whom is the best qualified

candidate for the position. [Doc. 9, para. 18]. These allegations are simply Plaintiff attempting to manufacture reasons to support her subjective belief that she did not receive the positions because of her race, rather than Defendant's actual legitimate and nondiscriminatory decision-making based upon the measurement of Plaintiff's merit against the other qualified candidates. "Subjective belief, however genuine, does not constitute evidence of pretext or provide a basis for judicial relief." *Durham v. Bryant Nursing Center,* 1987 WL 16434 (M.D. Ga. 1987) (*citing Ramsey v. Leath,* 706 F.2d 1166 (11th Cir. 1983).

In support of Defendant's position that Plaintiff cannot show the pretext necessary to succeed on her claims, it is salient to explain the efforts which Defendant has previously undertaken to accommodate Plaintiff instead of discriminating against her. In 2014, Plaintiff suffered a disability to her vocal cords which substantially impairs her ability to speak. As a teacher, the ability for Plaintiff to adequately communicate with her students is requisite. Defendant accommodated Plaintiff's disability by providing her with a voice amplification system and modifying the tiles in her classroom for acoustical benefit, which Plaintiff relies upon to this day to enable her to adequately vocalize such that she has regained the ability to sufficiently communicate with her students. In this light, Plaintiff cannot rationally establish pretext to a reasonable jury that Defendant has racially discriminative motives against her but yet Defendant also has provided her with

these necessary disability accommodations enabling her to remain employed eight years later and counting.

Even when viewed in the light most favorable to Plaintiff, no reasonable jury could find that pretext has been sufficiently established by Plaintiff. "Pretext means more than a mistake on the part of the employer, pretext 'means a lie, specifically a phony reason for some action'." *Chapman* at 1050 (quoting *Wolf v. Buss (America) Inc.,* 77 F.3d 914, 920 (7th Cir. 1996)). Here, there is no evidence in the record supporting Plaintiff's burden to prove that Defendant's reasons for not selecting her were false, or that discrimination was the real reason Plaintiff was not selected.

IV. CONCLUSION

WHEREFORE, Defendant, FLAGLER COUNTY SCHOOL BOARD, respectfully submits that the Court should grant Defendant's Motion for Summary Judgment and dismiss Plaintiff's action in its entirety.

LOCAL RULE 3.01(G) CERTIFICATION

I HEREBY CERTIFY that the undersigned counsel met and conferred with Plaintiff's counsel in compliance with Local Rule 3.01(G), who stated that Plaintiff does not agree to stipulate to the relief requested herein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of March, 2022, a true and correct copy of the foregoing, Defendant's Motion for Summary Judgment and Supporting

Memorandum of Law, was electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of filing via electronic mail to: Blair Jackson, Esq., Law Office of Corey I. Cohen & Associates, 21 Park Lake Street, Orlando, FL 32803, blair@coreycohen.com.

s/ Dylan J. Hall, Esq.
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Exhibit "A"

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

JAWANDA DOVE,
Plaintiff, **Case No.: 3:20-cv-547-J-34MCR**
v.
FLAGLER COUNTY SCHOOL BOARD,
Defendant.
_____/

AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM OF LAW

1. My name is Jewel Johnson. I am employed as the Chief Human Resources Officer since September 2019 for the Flagler County School Board, Defendant in this lawsuit.

2. I am over the age of eighteen (18) and have personal knowledge of the facts alleged herein.

3. I am an African American female.

4. A responsibility of my employment is that I am a member of the School Board's hiring interview committee panel, which is typically comprised of 3-7 employees ranging from teachers to principals to executive directors.

5. The School Board fills its employment vacancies by a process that begins with posting and advertising an open position and receiving applications from all interested individuals, including both internal and external candidates. Defendant next interviews all qualified applicants by a hiring interview committee panel. Once

the interviews are completed, the District Superintendent hires the candidate recommended by the committee as the best qualified to fill the position.

6. The School Board implements and abides by equal employment opportunity procedures for its personnel, including School Board Policy 606 titled Unlawful Discrimination Prohibited, including as to all of Ms. Dove's applied-for positions, which states:

> No person shall, on the basis of race, color, religion, gender, age, marital status, sexual orientation, disability, political or religious beliefs, national or ethnic origin, or genetic information, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity, or in any employment conditions or practices.

7. Ms. Dove did not meet the minimum qualifications for the position of Curriculum Specialist ID: 190906001 at the time she applied, in that she formatted her electronic application submission such that certain required ESE credentials were unviewable to the School Board's hiring committee at the time the position was open. Had these ESE credentials been viewable to the hiring committee at that time, then Ms. Dove would have been qualified for consideration for the position.

8. After completion of the entire application and interview processes, the hiring committee determined that Ms. Dove was not the best qualified candidate out of all applicants for the remaining seven applied-for positions at issue.

9. The School Board did not base any of its hiring decisions on the race or national origin of any of the applicants, including Ms. Dove.

10. The School Board does not have or use any discriminatory motive in making employment decisions, including as to the race and national origin of applicants, including Plaintiff.

11. The School Board has hired and currently employs the following individuals of the same protected class as Ms. Dove in similar or more prestigious positions than the subject positions that Ms. Dove applied for:

a. Lashakia Moore, Director of Teaching and Learning

b. Dontarrious Rowls, Director of Transportation

c. Marquez Johnson, Director of Student Services

d. Jewel Johnson, Chief Human Resources Officer

e. Travis Lee, Principal, Rymfire Elementary School

f. Toussaint Roberson, Assistant Principal, Buddy Taylor Middle School

g. Fred Terry, Assistant Principal, Wadsworth Elementary School

h. Priscilla Campbell, Dean, Belle Terre Elementary School

12. The School Board has accommodated a disability Plaintiff suffered to her vocal cords by providing her with a voice amplification system and modifying the tiles in her classroom for acoustical benefit, which Plaintiff relies upon to this day to enable her to adequately vocalize such that she has regained the ability to sufficiently communicate with her students.

13. FURTHER AFFIANT SAYETH NAUGHT.

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Dated: 3/28/2022

By: Jewel Johnson
JEWEL JOHNSON, AFFIANT,
Chief Human Resources Officer,
Flagler County School Board

STATE OF FLORIDA)
COUNTY OF _____)

BEFORE ME, the undersigned authority, personally appeared JEWEL JOHNSON, in their aforesaid capacity, who is {✓} personally known to me or who { } produced _____ as identification, and who said that the information contained in the foregoing Answers to Defendant, MILLER AND MILLER INVESTIGATIVE AND SECURITY SERVICES, LLC's Interrogatories, is true to the best of their knowledge and belief.

SWORN TO (or AFFIRMED) and SUBSCRIBED before me in the County and State aforesaid on this 28th day of March, 2022.

Catherine Shopovick
NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires: March 28, 2024

CATHERINE SHOPOVICK
MY COMMISSION # GG 961382
EXPIRES: March 28, 2024
Bonded Thru Notary Public Underwriters

Exhibit "B"

flaglerschools
Engage. Educate. Empower.

Book	School Board Policy Manual
Section	Chapter 6: HUMAN RESOURCES
Title	Unlawful Discrimination Prohibited
Code	606
Status	Active
Legal	STATUTORY AUTHORITY 1001.41 1012.22 1012.23, F.S. LAWS IMPLEMENTED 1000.05 1012.22, F.S.
Adopted	September 15, 1998
Last Revised	July 23, 2013

1. No person shall, on the basis of race, color, religion, sex, gender, age, marital status,sexual orientation, disability, political or religious beliefs, national or ethic origin, or genetic information, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity, or in any employment conditions or practices.
2. The School Board shall comply with the Americans with Disabilities Act of 1990 (ADA). This law makes it unlawful to discriminate against a qualified individual with a disability who can perform the essential functions of his/her job with reasonable accommodations.

Exhibit "C"

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

- [ ] FEPA
- [X] EEOC — 510-2020-00948

Florida Commission On Human Relations and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)	Home Phone (Incl. Area Code)	Date of Birth
Ms. Jawanda Dove		

Street Address / City, State and ZIP Code: **250 Palm Coast Parkway NE, Suite 607, PMB 173, Palm Coast, FL 32137**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (*If more than two, list under PARTICULARS below.*)

Name	No. Employees, Members	Phone No. (Include Area Code)
FLAGLER SCHOOLS	**15 - 100**	**(386) 437-7326**

Street Address / City, State and ZIP Code: **1769 East Moody Blvd., Bldg. #2, Bunnell, FL 32110**

Name	No. Employees, Members	Phone No. (Include Area Code)

Street Address / City, State and ZIP Code:

DISCRIMINATION BASED ON (*Check appropriate box(es).*)

- [ ] RACE
- [X] COLOR
- [ ] SEX
- [ ] RELIGION
- [ ] NATIONAL ORIGIN
- [X] RETALIATION
- [ ] AGE
- [ ] DISABILITY
- [ ] GENETIC INFORMATION
- [ ] OTHER (*Specify*)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest	Latest
01-26-2019	**11-22-2019**

- [ ] CONTINUING ACTION

THE PARTICULARS ARE (*If additional paper is needed, attach extra sheet(s)*):

I. I am Black with a dark brown complexion. I am a 20-year veteran educator employed with the above named Employer an assigned to Indian Trails Middle School. I was denied promotional opportunities because of my race and color and in retaliation for filing a previous charge with the EEOC in 2014.

II. On 6/8/18 and through 8/27/18 I applied for 3 Leadership positions and 7 Leadership positions from 5/30/19 through 9/12/19. The Employer said I must obtain my ESE Certification even though many of the positions I applied for did not require an ESE Certification. Nevertheless, I later obtained my ESE Certification on 9/11/19, and applied for a Curriculum Specialist position. However, I was not selected. Jewel Johnson, Chief HR Officer said my ESE certificate was not processed in my file or on my application. Instead, the Employer has promoted less experienced and less qualified white individuals that did not meet the minimum qualifications of degrees or certifications. I have a master's degree in Reading, a Specialist degree in Educational Leadership and a bachelor's degree in Elementary Education.

III. I believe the Employer discriminated against me in violation of Title VII of the Civil Right Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

DOB 04/10/1975

12/18/2019 — Date

Jawanda Dove — Charging Party Signature

NOTARY – *When necessary for State and Local Agency Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (*month, day, year*)

Received DEC 20 2019 EEOC Miami District Office