Levy County Board of County Commissioners
RFP_2023_002
Code Enforcement Special Magistrate

April 27, 2023

Ayanna Hypolite
Weiss Serota Helfman Cole + Bierman, P.L.
2631 NW 41 Street,
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Gainesville, FL 32606
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352-416-0066

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Tab 1
Cover Page &
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LEVY COUNTY BOARD OF COUNTY COMMISSIONERS
PROCUREMENT DEPARTMENT
P.O. BOX 310
310 SCHOOL STREET
BRONSON, FL 32621
PHONE: (352) 486-5218 EXT. 2
FAX: (352) 486-5167
EMAIL: TRETHEWAY-ALI@LEVYCOUNTY.ORG

COVER PAGE
RFP_2023_002 – CODE ENFORCEMENT SPECIAL MAGISTRATE

LAST DAY FOR QUESTIONS: 4/20/23, 5:00 PM EST	**DUE DATE: 4/27/23, 2:00 P.M. EST**

SUMMARY OF SCOPE: Levy County is seeking proposals from qualified attorneys or law firms to serve as a Code Enforcement Special Magistrate to conduct hearings and issue orders regarding alleged violations of County Code and ordinances and to hear and decide other matters as requested by the County.

SUBMITTAL OF PROPOSAL: Levy County only accepts electronic submittals through "E-Bidding" on the DemandStar platform, www.DemandStar.com. In order to submit a proposal in response to this solicitation the proposer must be registered with DemandStar.

For questions relating to this proposal, contact Ali Tretheway, Procurement Coordinator at tretheway-ali@levycounty.org.

ITEMS THAT MUST BE INCLUDED WITH PROPOSAL: Submitting an incomplete document may deem the proposal non-responsive, causing rejection. Please check each box for each item sumbitted with proposal. Prior to submitting my proposal, I have verified that all forms are attached are considered as part of my proposal:

- ☐ COVER PAGE
- ☐ COVER LETTER
- ☐ STAFF QUALIFICATIONS AND PROFESSIONAL TEAM
- ☐ RELEVANT EXPERIENCE
- ☐ SCHEDULE AND AVAILABILITY
- ☐ PROPOSED PRICING
- ☐ PROPOSAL SIGNATURE FORM
- ☐ NON-COLLUSION AFFIDAVIT
- ☐ CONFLICT OF INTEREST DISCLOSURE STATEMENT
- ☐ CONTRACT EXCEPTION FORM
- ☐ VENDOR INFORMATION FORM
- ☐ W9

Company Name: Weiss Serota Helfman Cole + Bierman, P.L.
Name: Ayanna A. Hypolite
Address: 2631 NW 41ST Street, Building B, Gainesville, Florida 32606
Mailing Address (if different): ____________
Email (Required): ahypolite@wsh-law.com
Telephone: 352-416-0066 FEIN: 20-8112403

By signing this form, I acknowledge I have read and understand, any my firm complies with all General Conditions and requirements set forth herein:

SIGNATURE OF AUTHORIZED REPRESENTATIVE:
DATE SUBMITTED: 4/24/2023

THIS DOCUMENT MUST BE COMPLETED AND RETURNED WITH YOUR SUBMITTAL

Ayanna Hypolite
ahypolite@wsh-law.com
(352) 416-0066

April 13, 2023

Ali Tretheway, Procurement Coordinator
Levy County Board of County Commissioners
Procurement Department

Re: RFP_2023_002 – CODE ENFORCEMENT SPECIAL MAGISTRATE

Dear Ms.Tretheway:

On behalf of Weiss Serota Helfman Cole + Bierman, P.L. (the "Firm"), I am pleased to submit this proposal to provide special magistrate services to Levy County. I, Ayanna Hypolite, will be the County's primary contact throughout the duration of the contract.

I and my colleague, David Delaney, are Gainesville-based government lawyers who have practiced our entire legal careers in North Central Florida. We represent local government entities in North Central Florida and statewide. We have practiced a combined 30+ years in Alachua County and/or Levy County (formerly with Dell Graham PA, which joined Weiss Serota in 2022).

Our firm is the product of innovative thinking. In 1991, our founders saw a need in the legal market for a high-end, boutique firm dedicated to a small number of integrated practice areas. More than 30 years later, we continue to outpace sophisticated market players with focused practice groups, teamwork and a zealous commitment to our clients.

We have grown to more than 90 lawyers in offices throughout the state who look to our Unifying Principles to maintain an ethical and people-focused business model that puts our clients' needs at the heart of our practice. Our business philosophy is we are committed to creative problem-solving for our clients while maintaining respect for the finest principles of traditional legal practice. The firm has grown to five offices throughout Florida with management spread throughout the offices. I reside in the Firm's Gainesville office. Our Gainesville office is located at 2631 NW 41 Street, Building B, Gainesville, FL 326061.

Our lawyers have excelled at top-ranked law schools, trained at large international firms, and cultivated years of integral relationships with Florida's state and local government officials and decision-makers in this capacity. As leaders in their areas of law, they are frequent speakers, writers, and board members of bar and civic organizations. We are AV rated by Martindale-Hubbell and, for years, have been ranked as a Tier-1 law firm by U.S. News Media Group and Best Lawyers® in our core practice areas. Our lawyers are also recognized by Chambers USA as "Leaders in their Field" in several practice areas.

Whether we are serving governments, corporations, or individuals, solving our clients' problems is our highest priority–you can count on us.

Few firms in Florida can match our experience representing local governments and serving as special magistrate. Our attorneys have experience in all facets of local government law including code enforcement, government affairs, public policy, regulatory matters, land use and zoning, general corporate matters, employment laws, and public-private transactions. Many of our attorneys are former state, county and city attorneys. Because we serve as general counsel for dozens of public entities across Florida, we understand how local government works and we are exceedingly respectful of our assigned role in your matters.

We are very excited about the potential opportunity to work with Levy County. If you have any questions, please do not hesitate to contact me at (352) 416-0066 or ahypolite@wsh-law.com.

Sincerely yours,

Ayanna Hypolite

Tab 2
Staff Qualifications and Professional Team

Lead Attorney:

AYANNA

HYPOLITE

ASSOCIATE

Gainesville
(352) 416-0066
ahypolite@wsh-law.com

Ayanna is an experienced civil litigator focusing her practice on K-12 education law with significant knowledge of tort and civil rights laws. She is also a Florida Supreme Court Certified County Court Mediator and works with the firm's other certified mediators to help disputing parties reach win-win resolutions.

Ayanna is an active supporter of K-12 and higher education and is committed to serving the North Central Florida community. She volunteers with local mentorship organizations and supports community events.

Ayanna has been practicing law in Florida since 2016.

PROFESSIONAL & COMMUNITY INVOLVEMENT

- Florida Bar Education Law Committee, Member, 2021-present
- Florida Bar Governmental and Public Policy Advocacy Committee, Member, 2022-present
- Florida Bar Eighth Judicial Circuit Grievance Committee "A", Member, 2022-present
- Eighth Judicial Circuit Bar Association, Member, 2017-present
- Eighth Judicial Circuit Bar Association Leadership Roundtable Committee, Member, 2019-present
- Eighth Judicial Circuit Bar Association Mentorship Program, Mentor, 2019-present
- Josiah T. Walls Bar Association, Member, 2018-present
- Josiah T. Walls Bar Association, Past President, 2019-2020

REPRESENTATIVE EXPERIENCE

- Counseled school board members at workshops and school board meetings

PRACTICE AREAS

- Special Counsel to Local Government
- Labor and Employment
- Labor and Employment Litigation
- Education Law
- Supreme Court Certified County Court Mediator

ADMISSIONS

- Florida, 2016

EDUCATION

- Barry University School of Law, J.D., 2016
  - Honors Certificate in Environmental and Earth Law
  - Book Award: Land Use Planning
- Lewis University, M.B.A., 2006
  - Concentration: Marketing
- Lewis University, B.S.B.A., 2004
  - Minor: Human Resources

CERTIFICATIONS

- Florida Supreme Court Certified County Court Mediator

PRESS MENTIONS

- *December 1, 2022 On the Move*, The Florida Bar News, December 1, 2022
- *Weiss Serota Creates Six-Atty Mediation Group In Fla.*, Law360, November 7, 2022
- *Weiss Serota Helfman Cole + Bierman Adds Mediation Services Practice Group*, Attorney at Law Magazine, November 4, 2022
- *Weiss Serota Helfman Cole + Bierman Adds Mediation Services Practice Group*, Citybiz, November 3, 2022
- *Weiss Serota Helfman Cole + Bierman Bolsters Education Practice with Addition of Boutique Gainesville Law Firm*, June 13, 2022

PRESENTATIONS

- *Bullying and Suicide in the Higher Ed Environment,* Association of Florida Colleges 73rd Annual Meeting & Conference, November 16, 2022

DAVID M. DELANEY

Partner
Chair of the education practice group

Gainesville
(352) 416-0066
ddelaney@wsh-law.com

David leads the firm's education law group. He represents public and private schools, school boards and colleges and universities throughout Florida in complex transactions, disputes and day-to-day legal needs. He is a Florida Bar Board Certified attorney in Education Law with deep experience serving as general counsel and litigation counsel for public schools. With a thorough understanding of the many challenges faced by elementary and secondary schools, he helps clients anticipate and resolve issues so that they can stay focused on their primary mission of educating children.

David has developed Title IX investigation resources that have been adopted by some of Florida's largest school districts.

David is an active supporter of public education and is a mentor for children represented by Take Stock in Children, a non-profit organization in Florida that helps low-income youth become the first generation in their family to attend college.

PROFESSIONAL & COMMUNITY INVOLVEMENT

- Florida Bar Education Law Committee, Member
- Florida Bar Education Law Certification Committee, Member

- Federal Bar Association, Member
- Federal District Court – Northern District of Florida, Lawyers Advisory Committee, Member
- Florida Track Club, Member

AWARDS & RECOGNITION

- *Super Lawyers Magazine,* Super Lawyer, 2014-2015
- Martindale-Hubbell Peer Review Ratings: AV Preeminent, 2011
- *Super Lawyers Magazine*, Rising Star, 2011

PRESENTATIONS

- *"Representing the Whole School Board After a Divisive Election: Moving from 'I' to 'We,'"* Council of School Attorneys 2023 Spring School Law Seminar, March 31, 2023
- *Direct Employment vs. Contracted Law Firm: The Ins and Outs of Hiring Your Board Attorney,* FSBA/FADSS 77th Annual Joint Conference, December 1, 2022
- *The Perils of Posting, Tips Before Retweeting: Social Media Best Practices for School Board Members,* FSBA/FADSS 77th Annual Joint Conference, November 30, 2022
- *Title IX In the #MeToo Era,* LRP Special Education Conference, January 2019

REPORTED DECISIONS

- *Winslow v. School Bd. of Alachua Co.*, 88 So. 3d 112 (Fla. 2012)

PRACTICE AREAS

- Special Counsel to Local Government
- Ethics
- Labor and Employment
- Administrative Claims and Hearings
- Counseling and Risk Management Services
- Employee Training
- Litigation
- Workplace Investigation
- Administrative Proceedings
- Appellate
- Civil Rights and Torts
- Labor and Employment Litigation

ADMISSIONS

- Florida, 1997
- U.S. Court of Appeals, Eleventh Circuit, 2001
- U.S. District Court for the Middle District of Florida, 1999
- U.S. District Court for the Northern District of Florida, 1999

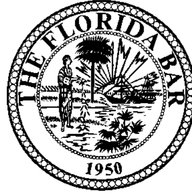
EDUCATION

- University of Florida Levin College of Law, J.D. *with honors,* 1997
- Baylor University, B.A., 1994

CERTIFICATIONS

- Board Certified by The Florida Bar in Education Law, 2013

Legal Writing, Licenses/Certifications, and Certificate of Insurance:
Attached on the following pages are writing samples from Ayanna Hypolite and David Delaney**,** the Florida Bar Certification of Good Standing for Ayanna Hypolite and David Delaney, and the Firm's Certificate of Insurance.



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

State of Florida)

County of Leon)

In Re: 0124740
Ayanna Collins Hypolite
Weiss Serota Helfman Cole & Bierman P.L.
2631 NW 41st St Ste B
Gainesville, FL 32606-6689

I CERTIFY THE FOLLOWING:

I am the custodian of membership records of The Florida Bar.

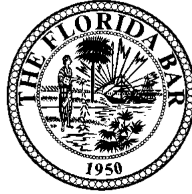
Membership records of The Florida Bar indicate that The Florida Bar member listed above was admitted to practice law in the state of Florida on **September 22, 2016**.

The Florida Bar member above is an active member in good standing of The Florida Bar who is eligible to practice law in the state of Florida.

Dated this 3rd day of **April**, **2023**.

Cynthia B. Jackson, CFO
Administration Division
The Florida Bar

PG:R10
CTM-222667



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State of Florida)

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In Re: 0121060
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I CERTIFY THE FOLLOWING:

I am the custodian of membership records of The Florida Bar.

Membership records of The Florida Bar indicate that The Florida Bar member listed above was admitted to practice law in the state of Florida on **September 27, 1997**.

The Florida Bar member above is an active member in good standing of The Florida Bar who is eligible to practice law in the state of Florida.

Dated this 3rd day of **April**, **2023**.

Cynthia B. Jackson, CFO
Administration Division
The Florida Bar

PG:R10
CTM-222755

Writing Sample 1`

IN THE CIRCUIT COURT OF THE
EIGHTH JUDICIAL CIRCUIT IN AND
FOR TAYLOR COUNTY, FLORIDA

CASE NO.:

Plaintiff,

vs.

Defendant.
_______________________________/

THE ’S MOTION FOR SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM OF LAW

Pursuant to Florida Rule of Civil Procedure 1.510, the through undersigned counsel, asks this Court to grant final summary judgment in its favor, because “the pleadings and summary judgment evidence on file show there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.” Fla. R. Civ. P. 1.510(c). Indeed, Plaintiff has not and cannot state a discrimination claim, because he has failed to carry his burden and identify a similarly situated employee, was not qualified, and the had legitimate, nondiscriminatory reasons for the termination.

I. BACKGROUND

This case involves an uncertified substitute teacher, improperly seeking the salary of a certified full-time teacher and who was terminated for legitimate, non-discriminatory reasons, which included sleeping on the job when he should have been have been supervising special needs students. (2d Am. Compl. at ¶¶ 11-13; Ex. A. Photograph of D.P. sleeping; Ex. B. D. P. Resp. Interrog., at No. 6 and No. 18). During the 2014-2015 school year, the hired Plaintiff,

an African American, as a floating substitute teacher for various schools throughout the District. (Ex. C. D.P. Dep., at 47:14-20).

In September 2015, Plaintiff accepted a fill-in substitute teaching position with (“TCHS”). (2d Am. Compl. at ¶¶ 6-10; Ex. C., at 48:5-7). As a fill-in substitute, Plaintiff did not continuously remain in the same classroom, or the same position instructing students throughout the day. (Ex. D. Beshears Aff., at ¶ 5; Ex. E. J.W. Dep., at 10:10-21, 36:12-19). Instead, Plaintiff served only as a fill-in substitute when a full-time teacher needed to step away from the classroom. (Ex. D., at ¶ 5; Ex. E., at 10:10-21, 36:12-19). Plaintiff did not create any lesson plans, or grade any students. (Ex. C., at 52:5-53:4; Ex. E., at 49:15-50:2). All planning, teaching, and grading responsibilities remained with the full-time teacher. (Ex. C., at 52:5-53:4; Ex. D., at ¶ 7; Ex. E., at 49:15-50:2). In accordance with the policy, since Plaintiff did not continuously substitute the same classroom for ten consecutive days without interruption, Plaintiff received fill-in/floating substitute salary. (Ex. E., at 41:9-42:11). Plaintiff worked for TCHS until May 2016. (2d Am. Compl. at ¶¶ 6-10).

Subsequently, in August 2016, Plaintiff accepted a new position with , (“TCES”), as a substitute teacher for a special education classroom, due to the unavailability of a certified full-time teacher. (Ex. C., at 60:10-18; Ex. F. Finley Aff., at ¶ 4). As the substitute teacher for a special education classroom, Plaintiff agrees that he was required to continuously monitor students with disabilities. (Ex. C., at 75:14-76:1). Plaintiff further concedes that it would be inappropriate to ever leave these students unsupervised or unattended. (Ex. C., at 75:14-76:1). However, on several occasions, Plaintiff failed to continuously monitor these students and was caught red handed sleeping on the job, in the classroom, with his students, while he was

meant to be teaching his special needs students. (Ex. F., at ¶ 6; Ex. G. S.L. Dep. at 19:17-21, 19:25-20:8, 20:25-21:7).

Throughout the course of Plaintiff's employment, Plaintiff did not possess a valid teaching certification issued by the State of Florida. (2d Am. Compl. at ¶ 13; Ex. C., at 17:14-16). More specifically, Plaintiff testified:

23	Q.	Do you have any teaching certificates issued
24		by the State of Florida?
25	A.	No.

(Ex. C., at 16:23-25). Plaintiff further testified that:

15	Q.	And just so I'm clear, have you ever held a
16		teaching certificate issued by the State of Florida at
17		any point in your career?
18	A.	No.
19	Q.	Have you ever applied for such a teaching
20		certificate?
21	A.	No. I don't think I did. I didn't -- I knew
22		I wasn't going to stay in the school system, so I
23		didn't follow through…

(Ex. C., at 21:15-22:1). Due to Plaintiff's lack of certification, and to its detriment, the

was obligated, by law, to inform parents and students that Plaintiff did not meet the "state qualifications and licensing criteria for the grade level and subject area" which Plaintiff was providing instruction. (Ex. F., at ¶ 5). The also informed the parents that it would do everything possible to ensure Plaintiff acquired the requisite certification, but Plaintiff failed to obtain the required certification. (Ex. F., at ¶ 5).

Upon accepting the position with TCES, Plaintiff's job performance began to dramatically decline. (Ex. F., at ¶ 6). As a result, on September 16, 2016, Plaintiff was terminated due to inadequate performance, specifically: "failing to continuously monitor or supervise students with disabilities, sleeping in the classroom, inadequately instructing students, untimely completion of

educational and behavioral plans, and failure to timely respond to supervisory communications." (Ex. F., at ¶ 6). In addition to Plaintiff's inadequate performance, Plaintiff did not possess the required certification, and failed to even submit an application. (Ex. C., at 21:19-21).

After Plaintiff's termination in September 2016, on October 10, 2016, Plaintiff sent a letter to ("Mr. Ash"), Principal of TCHS. (Ex. C., at 21:19-22; Ex. C., at Ex. 2). In that letter, Plaintiff, for the first time, expressed his desire to receive certified full-time teacher pay for his time employed at TCHS, from September 2015 to May 2016, rather than the fill-in/floating substitute teacher salary Plaintiff received. (Ex. C., at 91:20-25).

Upon receiving Plaintiff's letter, Mr. Ash immediately responded to Plaintiff with a subsequent letter. (Ex. H. Ash Reply Letter). Mr. Ash reminded Plaintiff that Plaintiff's position at TCHS was a fill-in substitute teacher, and not a certified full-time teacher. (Ex. H.). Mr. Ash further stated that under policy, fill-in substitute teachers in Plaintiff's capacity are ineligible for certified full-time teacher pay. (Ex. H.).

Following these events, Plaintiff filed a two-count Second Amended Complaint, alleging that: [1] Plaintiff was subject to adverse employment actions after disclosing unlawful employment practices, pursuant to Fla. Stat. § 112.3187 *et seq.* (Florida Whistleblower's Act). (2d Am. Compl. at ¶¶ 32-36); and [2] the discriminated against Plaintiff on the basis of his race, pursuant to Chapter 760, Florida Statutes (2016), (Florida Civil Rights Act). (2d Am. Compl. at ¶¶ 44-46).

Importantly, Plaintiff does not allege any instance of direct racial discrimination. (Ex. C., at 108:18-109:5). Instead, Plaintiff attempts to point to three alleged incidents as a basis for his claims. (2d Am. Compl. at ¶¶ 44-52; Ex. B., at No. 6).

In the first alleged incident, Plaintiff claims Superintendent Paul Dyal discriminated against him, because Superintendent Dyal was out of the office, on work assignments, and unable to schedule a meeting with Plaintiff. (Ex. C., at 113:19-115:1). Next, Plaintiff claims he received discriminatory treatment when TCES Secretary, approached Plaintiff, and informed him that he was "only a substitute teacher." (Ex. C., at 95:18-96:14). Plaintiff admits Secretary Miles made no statement regarding Plaintiff's race, but Plaintiff claims the remark was rude and embarrassing. (Ex. C., at 96:11-20). Finally, Plaintiff alleges the monitored his classroom computer, but Plaintiff admits the computer belonged to the , and was never Plaintiff's personal property. (Ex. C., at 94:3-95:11).

As a result of the above, and lack of evidence presented on the Plaintiff's part, the filed a Motion for Summary Judgment on September 14, 2018. Two days prior to the first scheduled Motion for Summary Judgment hearing, Plaintiff filed a Response and Memorandum in Opposition to the 's Motion for Summary Judgment with over 500 pages of exhibits attached, including an affidavit of Plaintiff.

Shortly thereafter, this case was assigned to another trial court judge as a result of Plaintiff's Motion to Disqualify Judge Blue. The then filed a Motion to Strike Plaintiff's Affidavit from Plaintiff's Response and Memorandum in Opposition to the s Motion for Summary Judgment due to Plaintiff's statements written to create an issue of fact and statements that were directly refuted by deposition testimony taken in this matter. The trial court correctly granted the Motion for Summary Judgment and Motion to Strike Plaintiff's affidavit on April 24, 2019.

Plaintiff appealed the trial court's ruling which resulted in the Appellate court dismissing Plaintiff's whistleblower claim. The appellate court, however, reversed the trial court's ruling on

the ’s Motion to Strike Plaintiff’s affidavit, thereby remanding the case for further proceedings on the discrimination claim.

Despite Plaintiff’s allegations, the remains entitled to summary judgment as a matter of law, because Plaintiff’s allegations – and the evidence in support thereof – do not support a finding of a violation of Florida’s Civil Rights Act. Instead, the record demonstrates that the had legitimate, nondiscriminatory reasons for terminating Plaintiff.

II. SUMMARY JUDGMENT STANDARD OF REVIEW

It is important for the Court to note that Florida has a new Summary Judgment standard since this Court previously granted Summary Judgment in Defendant’s favor. Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *See* Fla. R. Civ. P. 1.510; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial. *See Celotex*, 477 U.S. at 330. A moving party discharges its burden on a motion for summary judgment by “showing” or “pointing out” to the Court that there is an absence of evidence to support the non-moving party’s case. *Id.* at 325. When a moving party has discharged its burden, the non-moving party must then “go beyond the pleadings,” and by its own affidavits, or by “depositions, answers to interrogatories, and admissions on file,” designate specific facts showing there is a genuine issue for trial. *Id.* at 324.

The Florida Supreme Court recently stated that,

> [u]nder our new rule, “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, **a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment**.” *Scott v. Harris*, 550 U.S. 372, 380 (2007). **In Florida it will no longer be plausible to maintain that “the existence of *any* competent evidence creating an issue of fact**, however credible or incredible, substantial or trivial, stops the inquiry and

> precludes summary judgment, so long as the 'slightest doubt' is raised." Bruce J. Berman & Peter D. Webster, *Berman's Florida Civil Procedure* § 1.510:5 (2020 ed.) (describing Florida's pre-amendment summary judgment standard).

2021 FLORIDA COURT ORDER 0024 (C.O. 0024).

In determining whether the moving party has met its burden of establishing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, the court must draw inferences from the evidence in the light most favorable to the non-movant and resolve all reasonable doubts in that party's favor. *See Samples on behalf of Samples v. City of Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988). "[F]acts must be viewed in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts." *Scott v. Harris*, 550 U. S. 372, 380 (2007). The nonmoving party's evidentiary material must consist of more than their self-serving or conclusory sworn statements to create an issue of fact for trial. *Avirgan v. Hull*, 932 F.2d 1572, 1577 (11th Cir.1991). A mere "scintilla" of evidence in support of the nonmoving party's position is not sufficient; there must be evidence upon which a jury could reasonably find for the nonmoving party. *Anderson*, 477 U.S. at 252; *see also Fullman v. Graddick*, 739 F.2d 553, 557 (11th Cir. 1984) ("Mere verification of party's own conclusory allegations is not sufficient to oppose summary judgment . . ."). Summary judgment is warranted against a nonmoving party who "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

III. ARGUMENT

Plaintiff has not and cannot state a cause of action under Florida's Civil Rights Act because (i) Plaintiff has not and cannot identify a valid similarly situated employee treated more favorably

outside Plaintiff's protected class, (ii) Plaintiff was not qualified for the position, and (iii) the legitimate reason for the termination is not a pretext.

A. Plaintiff has failed to state a cause of action for Race Discrimination.

Florida's Civil Rights Act ("FCRA") is designed to protect all individuals within the state from discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or marital status. Fla. Stat. §760.01(2). Specifically, the FCRA protects individuals from racial discrimination, and makes it unlawful for any employer to terminate an individual on the basis of race.[1] Fla. Stat. §760.01(1)(a). To state a claim for race discrimination, relying on circumstantial evidence, as Plaintiff attempts to do here, Plaintiff must show that he (1) was a member of a protected class; (2) was qualified for the position; (3) suffered an adverse employment action; and (4) similarly situated employees outside the protected class were treated more favorably. *Fla. Dep't of Cmty. Affairs v. Bryant*, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991). For purposes of this Motion, the will focus on the second and fourth elements. Simply, Plaintiff has presented no valid similarly situated employee outside Plaintiff's protected class that was treated more favorably, and Plaintiff was not qualified for the position. For these reasons, Plaintiff's claim of alleged discrimination fails.

i. Plaintiff Cannot Identify a valid "Similarly Situated" Comparator.

To establish a prima facie claim, Plaintiff must "demonstrate that [he or his] proffered comparators were similarly situated in all material respects." *Lewis v. City of Union City, Georgia*, 918 F.3d 1213, 1218 (11th Cir. 2019).

---

[1] Since the FCRA is modeled after Title VII of the Federal Civil Rights Act of 1964, as amended, 42. U.S.C. §2000e et seq., courts look to federal case law, as well as Florida decisions to interpret the statute. *See Johnson v. Great Expressions Dental Centers of Fla., P.A.*, 132 So. 3d 1174, 1176 (Fla. 1st DCA 2014) (*citing Fla. Dep't of Cmty. Affairs v. Bryant*, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991).

> Every qualified minority employee who gets fired, for instance, necessarily satisfies the first three prongs of the traditional prima facie case. **But that employee could have been terminated because she was chronically late, because she had a foul mouth, or for any of a number of other nondiscriminatory reasons**. It is only by demonstrating that her employer has treated "like" employees "differently"—*i.e.*, through an assessment of comparators—that a plaintiff can supply the missing link and provide a valid basis for inferring unlawful *discrimination*.
>
> *Lewis*, 918 F.3d at 1223 (emphasis added).

The *Lewis* Court listed instances for similarly situated comparators:

> • will have engaged in the same basic conduct (or misconduct) as the plaintiff, *see, e.g., Mitchell v. Toledo Hosp*., 964 F.2d 577, 580, 583 (6th Cir. 1992) (holding that a plaintiff terminated for "misuse of [an employer's] property" could not rely on comparators allegedly guilty of "absenteeism" and "insubordination");
>
> • will have been subject to the same employment policy, guideline, or rule as the plaintiff, *see, e.g., Lathem*, 172 F.3d at 793 (holding that a plaintiff's proffered comparators were valid where all were subject to the same "workplace rules or policies");
>
> • will ordinarily (although not invariably) have been under the jurisdiction of the same supervisor as the plaintiff, *see, e.g., Jones v. Gerwens*, 874 F.2d 1534, 1541 (11th Cir. 1989) (observing that "disciplinary measures undertaken by different supervisors may not be comparable for purposes of Title VII analysis"); and
>
> • will share the plaintiff's employment or disciplinary history, *see, e.g., Tennial v. United Parcel Serv., Inc*., 840 F.3d 292, 304 (6th Cir. 2016) (explaining that "[d]ifferences in experience and disciplinary history" can disqualify a plaintiff's proffered comparators).
>
> In short, as its label indicates–"all material respects"–a valid comparison will turn not on formal labels, but rather on substantive likenesses. To borrow phrasing from a recent Supreme Court decision, a plaintiff and her comparators must be sufficiently similar, in an objective sense, that they "cannot reasonably be distinguished." *Young*, 135 S.Ct. at 1355.
>
> ***
>
> **An all-material-respects standard also leaves employers the necessary breathing space to make appropriate business judgments**. *See McKennon*, 513 U.S. at 361, 115 S.Ct. 879; *Furnco*, 438 U.S. at 578, 98 S.Ct. 2943. An employer is well within its rights to accord different treatment to employees who are differently situated in "material respects"—e.g., **who engaged in different conduct**, who were subject to different policies, or who have different work histories.

Lewis, 918 F.3d at 1227–28 (emphasis added); *see also St. Louis v. Fla. Int'l Univ.*, 60 So. 3d 455, 459 (Fla. 3d DCA 2011); *see Johnson*, 132 So. 3d at 1176-77 (*finding* that comparators must have reported to the same supervisor, and must have been subject to the same standards governing performance, evaluation, and discipline); *Washington v. Sch. Bd. of Hillsborough Cnty.*, 731 F. Supp. 2d 1309, 1318 (M.D. Fla. 2010) (*finding* that the comparator must have been accused of the same misconduct, but disciplined differently); *Stephen v. H. Lee Moffitt Cancer Ctr. & Research Inst. Lifetime Cancer Screening Ctr., Inc.*, 259 F. Supp. 3d 1323, 1336 (M.D. Fla. 2017) ("When faced with a proposed comparator for a discriminatory discharge claim, the Court must consider **whether the employees are involved in or accused of the same or similar conduct** and are disciplined in different ways." (quotation marks and citation omitted))(emphasis added). Where a Plaintiff fails to present sufficient evidence that a similarly situated comparator was treated more favorably, the Defendant is entitled to summary judgment. *See Lewis*, 918 F.3d at 1224; *Holifeld v. Reno*, 115 F.3d 1555, 1562 (11th Cir. 1997); *Stephen*, 259 F. Supp. at 1336.

Here, Plaintiff has not and cannot, identify a valid similarly situated comparator treated more favorably. Plaintiff attempts to present Sharon Jandula, ("Ms. Jandula"), as a comparator. (2d Am. Compl. at ¶ 27). This attempt must fail because Ms. Jandula is outside of Plaintiff's protected class. Ms. Jandula and Plaintiff do not, and have never, shared the same position. Ms. Jandula is a guidance counselor, not a substitute teacher. *Id.* Valid comparators must be nearly identical in all relevant aspects, including position, job duties, and responsibilities. *St. Louis*, 60 So. 3d at 459. Even considering Plaintiff's own testimony, he did not work directly with Ms. Jandula, or share the same job duties and responsibilities. (Ex. C., at 110:5-24). Therefore, Ms. Jandula is not a valid comparator. Moreover, Ms. Jandula was not found sleeping on the job as Appellant was.

Next, Plaintiff has loosely mentioned William Wentworth, of whom he did not even know by name, only that he was the son of a Principal. (Pl. Resp. to Def. MSJ filed 11/18/18 at p.18; Ex. C., at 112:15-113:8). The only thing that Plaintiff even attempted to assert regarding Mr. Wentworth was that he was a permanent substitute and received teacher pay. (Pl. Resp. to Def. MSJ filed 11/18/18 at p.18; Ex. C., at 113:5-12). In fact, he could not even be sure of that fact as he was only able to recall that a principal's son was a permanent substitute, with no additional facts or names of who even told him this information or where this information came from. (Ex. C., at 112:19-113:8). However, Plaintiff's assumptions that Mr. Wentworth could be a similarly situated comparator are incorrect. Mr. Wentworth was in fact not a permanent substitute, but a daily substitute. (Ex. E., at 31:22-32:6). A daily substitute that never received teacher pay. (Ex. E., at 32:21-33:2). Mr. Wentworth would not have even qualified for a permanent substitute position because he was a college student and only held a high school diploma, and thus was not even required to have any type of certification. (Ex. E., at 31:22-33:2). Therefore, Mr. Wentworth fails to qualify as a similarly situated comparator for Plaintiff.

Lastly, Plaintiff attempts to present William Peacock, ("Mr. Peacock"), as a comparator. (2d Am. Compl. at ¶ 27). Again, however, Mr. Peacock is <u>not</u> a valid similarly situated comparator for a number of reasons. Unlike Plaintiff, who failed to continuously monitor students with disabilities and was found sleeping in a classroom with these students with disabilities, and did not apply for his teaching certification, Mr. Peacock had no such misconduct. (Ex. E., at 27:13-28:21, 29:23-30:3).

> The "quantity and quality of the comparator's misconduct [must] be nearly identical." *Burke-Fowler v. Orange County*, 447 F.3d 1319, 1323 (11th Cir. 2006) (internal quotation marks omitted); *see also Rioux v. Atlanta*, 520 F.3d 1269, 1280 (11th Cir. 2008) ("Misconduct merely 'similar' to the misconduct of the disciplined plaintiff is insufficient.")

***

> The Court notes that Mark Cunningham, Rob Gainey, David Harley, and Paul Johnson were accused of engaging in only one act of misconduct. Considering the quantity and quality of these individuals' violations, the Court finds that they are not nearly identical to the six violations of company policy for which Plaintiff was discharged. *See White v. Fla. Dep't of Highway Safety & Motor Vehicles*, 343 Fed.Appx. 532, 535 (11th Cir. Sept. 1, 2009) (stating the plaintiff failed to identify a comparator who "had the same 'number of problems in [as] many areas' as he had"); *Curtis v. Broward County*, 292 Fed.Appx. 882, 884 (11th Cir. Sept. 16, 2008) (stating that the plaintiff did not establish the comparator "engaged in the same quantity of misconduct that she did"); *Ramsay*, 2008 WL 111304, at *5 n.4 (*citing Silvera v. Orange County Sch. Bd*., 244 F.3d 1253, 1259 (11th Cir. 2001)) ("**Where one individual has committed multiple infractions but another has not, the two individuals are not similarly situated for purposes of employment discrimination litigation**."). Therefore, Mark Cunningham, Rob Gainey, David Harley, and Paul Johnson are not similarly situated to Plaintiff.

Horn v. United Parcel Serv., 308CV00953J25MCR, 2010 WL 11507196, at *4, 6 (M.D. Fla. July 20, 2010), *aff'd sub nom. Horn v. United Parcel Services, Inc*., 433 Fed. Appx. 788 (11th Cir. 2011); *see also Lewis*, 918 F.3d at 1227–28 (a similarly situated comparator "will have engaged in the same basic conduct (or misconduct) as the plaintiff, *see, e.g., Mitchell v. Toledo Hosp*., 964 F.2d 577, 580, 583 (6th Cir. 1992) (holding that a plaintiff terminated for "misuse of [an employer's] property" could not rely on comparators allegedly guilty of "absenteeism" and "insubordination"").

Here, in this case, Plaintiff committed a serious violation by falling asleep while on the job, in the classroom with special needs students. Furthermore, Plaintiff did not apply for his teaching certificate as required to remain in the position and failed to timely complete educational plans for his special needs students. (Ex. F., at ¶¶ 6-7). Mr. Peacock was not terminated from his position, nor has Plaintiff alleged that, and moreover, Mr. Peacock did not engage in any misconduct even close to Plaintiff's. Furthermore, unlike Plaintiff, Mr. Peacock obtained the certification necessary to remain in the permanent substitute position. (Ex. E., at 27:13-28:1).

Despite Plaintiff's claims that since the   hired a new substitute teacher outside Plaintiff's protected class and the new substitute teacher was treated more favorably, courts have

held that merely hiring "a person outside the employee's protected class . . . for the same position . . . does not . . . create an inference of discriminatory intent," or favorable treatment. *St. Louis*, 60 So. 3d at 459. Plaintiff has failed to show that any of his suggested comparators refused to follow directions or were terminated after being caught red handed sleeping in a classroom full of special needs students. Thus, Plaintiff fails to satisfy the similarly situated element of the claim. *Alford v. Florida*, 390 F. Supp. 2d 1236, 1249 (S.D. Fla. 2005)

> ("Ms. Alford does not satisfy the third element of a prima facie case with regard to other executive secretaries vis-a-vis her suspension, reprimands, and termination. Ms. Alford has not demonstrated that any of the other non-black executive secretaries were accused of insubordination or of refusing to follow directives. Since no other executive secretaries refused to follow directives or to make deliveries when requested, Ms. Alford is not able to show that she was disciplined differently for similar conduct.").

Because Plaintiff has not and cannot identify a valid, similarly situated comparator who was treated more favorably, the is entitled to summary judgment.

ii. Plaintiff Was Not Qualified for the Position.

Plaintiff cannot establish a prima facie claim unless Plaintiff can prove he was qualified for the position. *Evans v. Cnty. of Alachua*, 937 So. 2d 693, 694-95 (Fla. 1st DCA 2006). To satisfy this element, Plaintiff must prove he possessed the objective qualifications for the position. *Vessels v. Atlanta Indep. Sch. Sys.*, 408 F. 3d 763, 769 (11th Cir. 1997). Plaintiff's own subjective opinion of qualifications, without more, is insufficient to establish that fact. *Holifield*, 115 F. 3d at 1565.

Here, according to the policy, an on-call substitute teacher qualifies for full-time teacher pay only when the substitute remains in the same position for ten consecutive days without interruption. (Ex. H; Ex. D., at ¶ 6). While Plaintiff misunderstands the policy, and subjectively believes he was qualified for full-time teacher pay, Plaintiff did not meet the

objective qualifications. (Ex. H.; Ex. E., at 10:10-11:11, 36:12-19, 41:18-42:11, 47:6-20, 49:8-50:2). As a fill-in substitute, Plaintiff did not continuously remain in the same classroom instructing students for ten consecutive days uninterrupted. (Ex. D., at ¶ 5; Ex. E., at 10:10-11:3, 36:12-19). Instead, Plaintiff only served in a fill-in capacity when the full-time teacher needed to step away from the classroom. (Ex. D., at ¶ 5; Ex. E., at 10:10-11:3, 36:12-19).

Further, Plaintiff was not qualified for the position while at

because Plaintiff did not possess the required teaching certification issued by the State of Florida. Plaintiff was merely qualified in the sense that he was legally allowed to be the teacher in the classroom at , but he was required to be taking steps to get certification in order to remain a teacher at the school. (Ex. E., at 7:6-15; Ex. F., at ¶ 5). Plaintiff did not even apply for certification, and thus could not consider him to be qualified to continue to teach. (Ex. C., at 21:15-22:1; Ex. E., at 7:16-25; Ex. F., at ¶¶ 6-8).

It is established that "qualification" is determined by the employer's objective qualification requirements, such as "education, years of experience, and **state certification**." *Vessels*, 408 F. 3d at 768 (emphasis supplied). Despite Plaintiff's subjective beliefs of his capabilities of fulfilling the duties of a certified full-time teacher, Plaintiff's subjective opinions are insufficient to prove the qualification element. *Holifield*, 115 F. 3d at 1565. Similar to *Samedi v. Miami-Dade County*, where an employee was not qualified due to a lack of education level requirement, Plaintiff's lack of required certification also makes him unqualified for the position. *Samedi*, 134 F. Supp. 2d 1320, 1345 (S.D. Fla. 2001). The necessity of the certification is evidenced by the 's legal obligation to inform all parents of Plaintiff's lack of required certification. (Ex. F., at ¶ 5; Ex.

F, at Ex. 1). Because Plaintiff was not qualified for the position, the is entitled to summary judgment as a matter of law.

iii. The School Board's Legitimate Nondiscriminatory Reason is not a Pretext.

Assuming arguendo, that Plaintiff established a prima facie claim, under the *McDonnell Douglas* analysis, once a prima facie claim is established, the need only articulate a legitimate, nondiscriminatory reason for the termination. *Fla. Dep't of Cmty. Affairs*, 586 So. 2d at 1209; *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). Once the articulates a legitimate reason, Plaintiff must then prove the stated reason is pretext. *Fla. Dep't of Cmty. Affairs*, 586 So. 2d at 1209. To establish pretext, Plaintiff must show the 's stated reason is not the true reason, and discrimination was the true intent. *Fla. State Univ. v. Sondel*, 685 So. 2d 923, 926 (Fla. 1st DCA 1996). Indeed, Plaintiff must show weaknesses, implausibility, inconsistencies, or contradictions in the proffered reason. *Valenzuela v. GlobeGround N. Am., LLC.*, 18 So. 3d 17, 25 (Fla. 3d DCA 2009).

Here, Plaintiff was terminated due to inadequate performance, such as, failing to continuously monitor students with disabilities, inadequately instructing students, and sleeping in the classroom. (Ex. F., at ¶¶ 6-7; Ex. I. P.P. Dep., at 8:25-9:1). Indeed, termination based on unsatisfactory performance is a legitimate nondiscriminatory reason, and not a pretext for discrimination. *See Jarvis v. Siemens Med. Sol. USA, Inc.*, 460 Fed. Appx. 851, 856-57 (11th Cir. Mar. 8, 2012).

Importantly, Plaintiff admits the never made any discriminatory remarks. (Ex. C., at 108:10-25). While Plaintiff may have *perceived* Secretary Miles' statement of Plaintiff being "only a substitute teacher," as rude or unprofessional, it is well recognized that rude, insensitive, or embarrassing remarks do not rise to the level necessary to establish pretext.

Mendoza v. Borden, Inc., 195 F. 3d 1238, 1253 (11th Cir. 1999). Further, Plaintiff's conclusory allegations that the monitored the classroom computer, and did not want to meet with him, are unfounded, and insufficient to establish discriminatory intent. *See Valenzuela*, 18 So. 3d at 25 (finding that conclusory allegations, without more, is insufficient to establish pretext or discriminatory intent). Likewise, merely hiring a person outside Plaintiff's protected class does not prove discriminatory intent. *St. Louis*, 60 So. 3d at 459. Thus, the is entitled to summary judgment, because the 's legitimate nondiscriminatory reasons are not pretext.

IV. Conclusion

Based on the foregoing arguments, any of which is sufficient to grant the 's motion, the respectfully requests that this Court enter an order, granting final summary judgment in the 's favor, dismissing Plaintiff's action with prejudice, and granting any other and further relief that may be just and proper.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Florida Courts E-Filing Portal and designated service to the following in accordance with Rule 2.516, Florida Rules of Judicial Administration: Marie Mattox, Marie A. Mattox, P.A., 310 East Bradford Rd., Tallahassee, FL 32303, gautier@mattoxlaw.com; marie@mattoxlaw.com, michelle2@mattoxlaw.com, marlene@mattoxlaw.com; rebecca@mattoxlaw.com on this 15th day of October 2021.

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Writing Sample 2

IN THE CIRCUIT COURT OF THE
THIRD JUDICIAL CIRCUIT, IN AND
FOR TAYLOR COUNTY, FLORIDA

CASE NO.:

Plaintiff,

vs.

Defendant.
_________________________/

THE ________________'S MOTION FOR SUMMARY JUDGMENT OF PLAINTIFF'S COMPLAINT AND INCORPORATED MEMORANDUM OF LAW

Pursuant to Florida Rule of Civil Procedure 1.510, the ,
through undersigned counsel, asks this Court to grant final summary judgment in its favor, because the pleadings and summary judgment evidence on file show there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a). Indeed, Plaintiff has not and cannot show any instance of direct racial discrimination nor retaliation. Therefore, Plaintiff cannot prove that the was racially discriminatory towards her or that the School Board acted in retaliation towards Plaintiff.

I. BACKGROUND

This case is about interpersonal differences between co-workers, an employee who lacked seniority, and a contract that was not renewed due to documented budget cuts. It has nothing to do with discrimination. Plaintiff filed a two-count Complaint against the ("School Board") alleging the School Board exercised differential treatment and hostility toward her as a form of racial discrimination. (Compl. at ¶¶ 30-37). Additionally, Plaintiff claims the

School Board retaliated against her after she spoke out about "unlawful employment practices and the adverse employment action taken thereafter." (Compl. at ¶¶ 13-15, 18-19, 22-23, 25-26, 43-44). However, Plaintiff has failed to state a cause of action upon which relief may be granted. Even when the facts are taken in the light most favorable to the Plaintiff, the facts still show that Plaintiff's contract was nonrenewed due to budget cuts and an outside the district third-party recommendation to reduce Instructional Coach positions to strengthen the School Board's financial viability.

Plaintiff was employed by the School Board as an Instructional Reading Coach from August 3, 2016 through June 1, 2017. (Ex. A, Employment Contract). During that time, Plaintiff alleges she received disparate treatment than her white female co-workers and that her superiors, namely Assistant Principal and Principal , refused or failed to act, thereby condoning and participating in discrimination towards her. (Compl. at ¶¶ 8-13, 32). Plaintiff further claims she encountered retaliation after voicing her concerns – specifically, additional work assignments, racially charged classroom lessons, contract nonrenewal, and lack of internal transfer to another position – none of which were purportedly experienced by her alleged white counterparts, teachers Ms. and Ms. . (Compl. at ¶¶ 13-15, 18-19, 22-23, 25-26, 43-44).

To support her claims that the School Board acted in a racially discriminatory manner towards her, Plaintiff relies on events where students or other employees were treated "unfairly." In her Complaint, Plaintiff alleges,

> 14. By way of example, [teacher Leslie] High wrote the word "Nigger" on the board in her classroom, under the guise of introducing her students to the book "To Kill a Mockingbird" and to teach students the meaning of the word. . . . When ***Plaintiff learned of this from students***, she spoke with High and suggested a better way to contextually introduce the book rather than using such a demoralizing and demeaning word that is extremely derogatory to African Americans.

> 15. In addition, ***the discrimination was displayed directly towards students***. When one student became upset at the derogatory term and voiced his concern to High, the student was disciplined.
>
> 16. Defendant also has engaged in a pattern of racial discrimination in its hiring practices, with ***very few African American teachers being employed by Defendant***.
>
> 17. ***Prior to Plaintiff working for Defendant, only one (1) African American teacher has been hired*** at the high school that is 35% African American. Upon information and belief, African Americans are fearful of working for Defendant due to its strong history and continued acts of blatant racism.
>
> 20. In another instance, Ms. Victoria "Denise" MacNeil, ***an African American teacher's aide, was required to administer an Advanced Placement exam*** solely because a white teacher refused to do so.
>
> 24. In or around the first week of May 2017, Mr. Jeff Byers***, a white teacher disrespected a Hispanic female substitute teacher*** so greatly that minority students grieved for her.

(Compl. at ¶¶ 14-17, 20, 24) (emphasis added).

Each of Plaintiff's racial discrimination examples above involve incidents where allegedly discriminatory behavior was exhibited to persons not a party to this lawsuit. *Id.* The only other allegations Plaintiff provides in support of her race discrimination claim involve a heated discussion about classroom strategies with her co-worker , reluctance to discipline about it, and and missing a workshop led by Plaintiff. (Compl. ¶¶ 8-13; Ex. B., Dep., at 123:16-124:14).

Plaintiff further complains that and ESE Teacher discriminated and retaliated against her by making racially derogatory statements about other black people around her. (Ex. B., at 33:17-34:6, 36:3-39:13, 72:8-73:1, 122:17-123:15). However, in her deposition, Plaintiff could not recall a single instance where anyone directed a derogatory statement or action towards her. *Id.*

Plaintiff alleges retaliation occurred when "[a]ll white females were reappointed; however Plaintiff, a black female, was not reappointed." (Compl. at ¶ 22). In this instance, Plaintiff compares herself to three **dissimilar** white female employees – Assistant Principal and District-funded teachers and . *Id.* (Ex. B., at 7:15-9:1). Plaintiff does not compare herself to other Title II Grant-funded Instructional Reading Coaches who shared her same duties, funding, and job description. (*See generally*, Compl.; Ex. B., at 8:4-14). Moreover, Plaintiff fails to even mention Ms. Ann Joiner, a white female Title II Instructional Reading Coach who absorbed Plaintiff's responsibilities the following school year. Similar to Plaintiff, Ms. Joiner was 50% grant-funded and 50% District funded. (Ex. C., Ashley Valentine Aff., at ¶¶ 6-7). Ms. Joiner was the District's middle school Institutional Reading Coach while Plaintiff was the District's high school Institutional Reading Coach. (Ex. D., Sharon Hathcock Dep., at 48:19-23). However, unlike Plaintiff, Ms. Joiner worked for the District consecutively since 1981. Plaintiff worked in the District less than a year before her allegations began. (Ex. B., at 11:7-9). Ms. Joiner and another Instructional Coach, Ms. Melanie Morgan, had continuing, renewable contracts due to their long-term employment with the District.[1] (Ex. C., at ¶¶ 25-27). Conversely, Plaintiff had an Annual Contract, which is defined as "an employment contract for a period of no longer than 1 school year ***which the district school board may choose to award or not award without cause.***" (Ex. A., at 1; Ex. C., at ¶ 26; § 1012.335(1)(a) (2016), Fla. Stat. (emphasis added)). Ms. Joiner and Ms. Morgan were reappointed at the end of the 2016-2017 school year. (Ex. C., at ¶ 28). However, Plaintiff

[1] Pursuant to §231.36(3)(a) (1998), § 1012.33(3) (2010), and § 1012.335(2)(a) (2016), Fla. Stat., "continuing contracts" were available to persons employed by the District prior to 1984. From 1984 to 2011, a similar contract named a "professional service contract" was available to employees. Both contracts granted automatic annual renewal, absent unsatisfactory performance, for persons employed three years or more in the District. After 2011, annual contract employees were only awarded one-year, non-guaranteed contracts. It has been the District's common practice to use the terms "continuing contracts" and "professional service contracts" interchangeably. As such, the two terms will be used interchangeably in this Motion and its supporting documents.

was on a probationary contract that allowed her to be "dismissed without cause" because it was her first year with the District. § 1012.335(1)(c)-(2)(a), Fla. Stat.

Plaintiff complains race- related retaliation occurred when she observed Ms. Leslie High's class discussion on the book "To Kill a Mockingbird" and the word "Nigger." (Compl. at ¶¶ 14-15). However, Plaintiff admits she was not called a Nigger and no racially charged or derogatory term was directed towards her. (Ex. B., at 39:9-13). Plaintiff even provided a favorable observation of Ms. High's lesson, stating,

> Suggestion: None, although I personally would have waited to introduce this derogatory term closer to its introduction in the book.
>
> Notes: Overall, students were engaged.

(Ex. E., Eval. of High dated January 16, 2017).

Plaintiff claims she is a "member of a protected class because he [sic] reported unlawful employment practices and was the victim of retaliation thereafter." (Compl. at ¶ 44). However, Plaintiff did not make a protected disclosure under the Florida Whistleblower's Act when employed by TCSB. (*See generally*, Compl.). While Plaintiff did file a complaint with the Florida Commission on Human Relations ("FCHR"), she did not file it until June 5, 2017 – four days after her TCSB employment contract expired. (Ex. F., Employment Complaint of Discrimination).

II. SUMMARY JUDGMENT STANDARD OF REVIEW

Florida's summary judgment standard recently changed, pursuant to the Florida Supreme Court's December 31, 2020 and April 29, 2021 orders titled "In Re: Amendments to Florida Rule of Civil Procedure 1.510." *In re Amends. to Fla. Rule of Civ. Pro. 1.510*, 309 So. 3d 192, 192 (Fla. 2020) and *In re Amends. to Fla. Rule of Civ. Pro. 1.510*, 46 Fla. L. Weekly S95 (Fla. Apr. 29, 2021). Florida Rule of Civil Procedure 1.510 is now largely consistent with Federal Rule of Civil

Procedure 56. *Id.* The new version of Fla. R. Civ. P. 1.510, which took effect May 1, 2021, aligns Florida's summary judgment standard with federal courts and a supermajority of states. *Id.*

Under Florida's new standard, summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *See* Fla. R. Civ. P. 1.510; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine issues of material fact to be decided at trial. *See Celotex*, 477 U.S. at 330. A moving party discharges its burden on a motion for summary judgment by "showing" or "pointing out" to the Court that there is an absence of evidence to support the non-moving party's case. *Id.* at 325. *See also Bedford v. Doe*, 880 F.3d 993, 996 (8th Cir. 2018) ("In other words, if the nonmoving party must prove *X* to prevail, the moving party at summary judgment can either produce evidence that *X* is not so or point out that the nonmoving party lacks the evidence to prove *X*.") (emphasis in original). When a moving party has discharged its burden, the non-moving party must then "go beyond the pleadings," and by its own affidavits, or by "depositions, answers to interrogatories, and admissions on file," designate specific facts showing there is a genuine issue for trial. *Celotex*, 477 U.S. at 324.

The Florida Supreme Court recently stated,

> Under our new rule, "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, **a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment**." *Scott v. Harris*, 550 U.S. 372, 380 (2007). **In Florida it will no longer be plausible to maintain that "the existence of *any* competent evidence creating an issue of fact**, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the 'slightest doubt' is raised." Bruce J. Berman & Peter D. Webster, *Berman's Florida Civil Procedure* § 1.510:5 (2020 ed.) (describing Florida's pre-amendment summary judgment standard).

2021 FLORIDA COURT ORDER 0024 (C.O. 0024).

In determining whether the moving party has met its burden, the court must draw inferences from the record in the light most favorable to the non-movant and resolve all reasonable doubts in that party's favor. *See Samples on behalf of Samples v. City of Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988). "[F]acts must be viewed in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts." *Scott v. Harris*, 550 U. S. 372, 380 (2007). *Accord Ricci v. DeStefano*, 557 U.S. 557, 586 (2009). The nonmoving party's evidentiary material must consist of more than self-serving or conclusory sworn statements to create an issue of fact for trial. *Avirgan v. Hull*, 932 F.2d 1572, 1577 (11th Cir.1991). A mere "scintilla" of evidence in support of the nonmoving party's position is not sufficient; there must be evidence upon which a jury could reasonably find for the nonmoving party. *Anderson*, 477 U.S. at 252; *see also Fullman v. Graddick*, 739 F.2d 553, 557 (11th Cir. 1984) ("Mere verification of party's own conclusory allegations is not sufficient to oppose summary judgment . . .") *and Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (non-movant "must do more than simply show that there is some metaphysical doubt as to the material facts"). Summary judgment is warranted against a nonmoving party who "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. *See also Matsushita*, 475 U.S. at 587 ("Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.").

III. ARGUMENT

Discrimination

Plaintiff has not, and cannot, state a cause of action under Florida's Civil Rights Act because (i) Plaintiff has not and cannot identify a valid, similarly situated employee treated more favorably

outside Plaintiff's protected class and (ii) the School Board's legitimate reason for the termination is not a pretext.

Florida's Civil Rights Act ("FCRA") is designed to protect all individuals within the state from discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or marital status. §760.01(2), Fla. Stat. (2021). Specifically, the FCRA protects individuals from racial discrimination, and makes it unlawful for any employer to terminate an individual on the basis of race. §760.01(1)(a), Fla. Stat. To state a claim for race discrimination, relying on circumstantial evidence, as Plaintiff attempts to do here, **Plaintiff must show that she (1) was a member of a protected class; (2) was qualified for the position; (3) suffered an adverse employment action; and (4) similarly situated employees outside the protected class were treated more favorably. *Fla. Dep't of Cmty. Affairs v. Bryant*, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991).** For purposes of this Motion, the School Board will focus on the fourth element. Simply, Plaintiff has presented no valid similarly situated employee outside Plaintiff's protected class that was treated more favorably than herself. For this reason, Plaintiff's claim of alleged discrimination fails.

A. Plaintiff Has Failed To State A Cause Of Action For Race Discrimination.

Although Plaintiff alleges that the School Board discriminated against her based upon race, Plaintiff's litany of "differential treatment" is merely a collection of stand-alone grievances against her co-workers. Plaintiff has not and cannot establish a prima facie case of racial discrimination under the *McDonnell Douglas* standard because Plaintiff cannot prove that a similarly situated employee was treated differently than her.

The First District Court of Appeals recently restated the *McDonnell Douglas* standard, which governs intentional discrimination and summary judgement, in *Mitchell v. Young*. *Mitchell v. Young*, 309 So. 3d 280 (Fla. 1st DCA 2020). In that case, the court opined,

> Under *McDonnell Douglas*, the plaintiff establishes a prima-facie case of discrimination by showing that: (1) he belongs to a protected class; (2) he was subject to an adverse employment action; (3) he was qualified to perform his job; and (4) his employer treated similarly situated employees outside his protected class more favorably.

Id. at 284, citing *Lewis v. City of Union City, Georgia*, 918 F.3d 1213, 1220-21 (11th Cir. 2019); *Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17, 22 (Fla. 3d DCA 2009). *See also*, *Hartwell v. Spencer*, 792 Fed. App'x. 687, 690 (11th Cir. 2019) ("***Where, as here, a plaintiff relies on circumstantial evidence to prove discrimination, the three-part burden-shifting framework from* McDonnell Douglas Corp. v. Green *provides "a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination***." citing *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 577, 98 S.Ct. 2943, 57 L.Ed.2d 957 (1978) (internal citation omitted)(emphasis added)).

i. Plaintiff Cannot Identify a valid "Similarly Situated" Comparator.

To establish a prima facie claim, Plaintiff must present a similarly situated comparator who is "similarly situated in all material respects." *Lewis*, 918 F.3d at 1218. Comparators must share the same position, job duties, and responsibilities. *St. Louis v. Fla. Int'l Univ.*, 60 So. 3d 455, 459 (Fla. 3d DCA 2011). *See Johnson*, 132 So. 3d at 1176-77 (finding comparators must have reported to the same supervisor, and must have been subject to the same standards governing performance, evaluation, and discipline); *see also Mitchell*, 309 at 285 (finding comparators were dissimilar where they reported to different supervisors, did not share the same rank, and had different disciplinary histories); *Cf. Brillinger v. City of Lake Worth*, 317 Fed. App'x. 871, 876 (11th Cir. 2008) (***finding comparators were not "appropriate comparators" where they differed in rank, work team, years in the workforce***, and prior disciplinary history) (emphasis added); *Hartwell*, 792 Fed. App'x. 687, 694 (11th Cir. 2019) (finding dissimilarities especially significant where

Plaintiff claimed discrimination from her direct supervisor but proffered comparator from another supervisor who treated subordinates differently). **Where a Plaintiff fails to present sufficient evidence that a similarly situated comparator was treated more favorably, the Defendant is entitled to summary judgment**. *See Holifeld v. Reno*, 115 F.3d 1555, 1562-63 (11th Cir. 1997); *Stephen v. H. Lee Moffitt Cancer Ctr. & Research Inst. Lifetime Cancer Screening Ctr., Inc.*, 259 F. Supp. 3d 1323, 1336 (M.D. Fla. 2017).

In *Mitchell*, Sheriff Sergeant Brandon Mitchell was fired for incompletion of reports and documents, endangering others through neglect of job duties, and gross insubordination. *Mitchell*, 309 at 283. Mr. Mitchell sued the Sheriff's Department, alleging race discrimination through better treatment of similarly situated comparators and retaliation for reporting misconduct of other employees. *Id.* Mr. Mitchell argued that his comparators were "similarly situated in all material respects." *Id.* However, the First District Court of Appeals found Mr. Mitchell's argument unpersuasive, citing,

> In the usual case, a comparator who is 'similarly situated in all material respects' 'will have engaged in the same basic conduct (or misconduct) as the plaintiff'; 'will have been subject to the same employment policy, guideline, or rule'; 'will ordinarily (although not invariably) have been under the jurisdiction of the same supervisor as the plaintiff'; and 'will share the plaintiff's employment or disciplinary history.'

Id. at 284, quoting *Hartwell*, 792 F. App'x at 693 (11th Cir. 2019). *Accord Lewis*, 918 F.3d at 1227, *Chittenden v. Hillsborough County*, 2021 WL 2300714, at *4 (M.D. Fla. Mar. 15, 2021), report and recommendation adopted, 2021 WL 2291112 (M.D. Fla. June 4, 2021). Ultimately, the court found that Mr. Mitchell's failure to select similarly situated comparators meant that "he was unable to prove a prima-facie case of race discrimination." *Mitchell*, 309 at 285.

In the instant case, Plaintiff's race discrimination claims revolve around whether she was treated differently than white female counterparts during her employment and the contract nonrenewal process. In *Lewis*, the court held,

> [T]he proper test for evaluating comparator evidence is neither plain-old "same or similar" nor "nearly identical," as our past cases have discordantly suggested. Nor is it the Seventh Circuit's so-long-as-the-comparison-isn't-useless test. Rather, we conclude that **a plaintiff asserting an intentional-discrimination claim under *McDonnell Douglas* must demonstrate that she and her proffered comparators were "similarly situated in all material respects."**

Lewis, 918 F.3d at 1218.

In the instant case, Plaintiff alleges she received three assignments outside her job description as of proof "involuntary servitude" as a form of race discrimination or retaliation – a 504 coordination task, drafting ESE reading goals for one ESE student, and completing a GAP analysis. (Compl. at ¶¶ 18-19). However, Plaintiff fails to prove that non-protected class employees in similarly situated positions were not assigned similar tasks outside their job descriptions. (*See generally*, Compl.). Additionally, it was not uncommon for grant-funded TCSB employees to receive occasional assignments outside their job description, so long as it did not interfere with their core duties. Moreover, Plaintiff's job description required her to "[p]erform other tasks consistent with the goals and objectives of [her] position." (Ex. G., Job Description, at ¶ *67). Plaintiff's "Job Goal" was "[t]o *assist and support classroom teachers* in providing a balanced and effective reading program *for all students*." (Ex. G., at 1 (emphasis added)). Further, Plaintiff's Performance Responsibilities included "[p]rovid[ing] appropriate instructional modification for students with special needs, including exceptional education students and students who have limited English proficiency" and "[*using*] *appropriate* material, technology, and other *resources to help meet learning needs of all students*." (Ex. G., at ¶¶ *32, *33 (emphasis added)).

In her Complaint, Plaintiff states "[o]ther white *teachers* in comparable positions were not given these demands and additional responsibilities." (Compl. at ¶¶ 19) (emphasis added). However, Plaintiff was not a teacher. (Ex. B., at 7:15-9:1). Plaintiff was an Institutional Reading Coach, as evidenced by her employment agreement. (Ex. A., and Ex. H., Recommendation and Appointment of Instructional Personnel). Plaintiff's role was considered "instructional," however, it did not have the same goals or outcomes as and teacher positions. (Ex. B., at 7:25-9:1, 73:2-7). Plaintiff's role was to assist teachers. *Id.* Plaintiff admits she had no responsibility to teach students or maintain grade books. (Ex. B., at 8:15-20). Plaintiff's duties were distinct from teachers and other Full Time Enrollment (FTE)-funded positions. (Ex. B., at 7:18-8:20). Teachers and positions were fully FTE or District-funded and renewable annually based on enrollment. (Ex. B., at 8:4-14; Ex. D., at 63:14-64:5). However, Plaintiff's grant-funded position had specific measures and outcomes unique to its federal grant funding requirements. *Id.*

There were at least two other Title II Grant-funded Institutional Reading Coaches employed at TCSB during Plaintiff's employment. (Ex. C., at ¶¶ 24-25; Ex. D., at 48:19-23). Ms. Ann Joiner, a white female Institutional Reading Coach, Ms. Cherie LaValle, and Ms. Melanie Morgan were all Instructional Coaches employed at the same time as Plaintiff. *Id.* Just like Plaintiff's position, Ms. Joiner, Ms. LaValle, and Ms. Morgan's positions were 50% grant-funded and 50% District-funded. (Ex. C., at ¶¶ 6-7). Curiously, Plaintiff excluded these employees from her Complaint and instead selected two comparators in different positions, under different funding, with different job titles, descriptions, and responsibilities than herself. (Compl. at ¶¶ 18, 19, 22).

Plaintiff has failed to show her proffered comparators are "similarly situated in all material aspects" and therefore has not proven a prima facie case of intentional race discrimination.

Mitchell, 309 at 284-285. The Court has no basis upon which to determine if Plaintiff's claim is truly race-based discrimination. *St. Louis*, 60 So. 3d at 459-60 (citing *Food Fair Stores of Fla. v. Sommer,* 111 So. 2d 743, 746 (Fla. 3d DCA 1959) (internal citations omitted) (finding **"[a] jury's verdict can not rest on a mere probability or guess**, and we cannot affirm a verdict where it has no rational predicate in the evidence."") (emphasis added).

ii. The School Board's Legitimate Nondiscriminatory Reason is not a Pretext.

Even if Plaintiff is able to establish a prima facie case of discrimination, she cannot establish that the District's legitimate reasons for its actions are a pretext.

In *Mitchell*, Florida's First District Court of Appeals opined,

> Under this framework, the **plaintiff must first establish a prima-facie case of discrimination or retaliation**. **If the plaintiff makes this showing, the burden then shifts to the employer to proffer a legitimate, nondiscriminatory or non-retaliatory reason for the adverse action.** If the employer does so, the plaintiff must then be afforded an opportunity to show that the employer's proffered reason was really a pretext for discrimination or retaliation.

Mitchell, 309 at 286 (internal citations omitted).

Plaintiff was terminated due to federal funding cuts, a 2017 Florida Association of District School Superintendents ("FADSS") Report Recommendation for long term sustainability, and the Superintendent's subsequent choice to eliminate positions. (Ex. C., at ¶¶ 17-24; Ex. I., FADSS Report, at 1, 11, 13). Indeed, contract nonrenewal based on race-neutral reasons such as these are legitimate, nondiscriminatory, and not a pretext for discrimination. *See Jarvis v. Siemens Med. Sol. USA, Inc.*, 460 Fed. App'x. 851, 856-57 (11th Cir. Mar. 8, 2012).

Despite Plaintiff's allegations, the School Board is entitled to summary judgment as a matter of law because Plaintiff's allegations and supporting evidence do not support a finding of racial discrimination. Instead, the record demonstrates that the School Board had legitimate,

nondiscriminatory reasons for its actions. Count I of Plaintiff's Complaint should be dismissed on that basis alone.

Retaliation

a. Plaintiff has failed to establish a prima facie case of retaliation.

To establish a prima facie case for retaliation, the employee must show that: (1) he engaged in a statutorily protected expression; (2) there was an adverse employment action; and (3) there was a causal connection between the participation in the protected expression and the adverse action." *St. Louis*, 60 So. 3d at 460*; see also Blizzard v. Appliance Direct, Inc.,* 16 So. 3d 922, 926 (Fla. 5th DCA 2009). Plaintiff complained to Principal about her co-workers' perceived discrimination, which was a protected expression. (Compl. at ¶ 11). Plaintiff alleges that the adverse employment action included nonrenewal of her contract. (Compl. at ¶ 26). However, Plaintiff has failed to show a causal connection between her reporting of "differential treatment" and any adverse action(s) which may have occurred.

i. No causal connection exists between Plaintiff's protected expression and TCSB's adverse action(s).

After reporting her discontent to Principal Plaintiff alleges writing of the word "Nigger" on the classroom board during a book discussion was a form of retaliation, even though Plaintiff later praised the discussion in a written evaluation. (Compl. at ¶ 14; Ex. E., at 5). Plaintiff further asserts that her completion of three work assignments not listed in her job description amount to "involuntary servitude" by Assistant Principal (Compl. at ¶¶ 18 - 19). Additionally, Plaintiff states that her contract nonrenewal was a form of retaliation, not the result of budget cuts. (Compl. at ¶¶ 23, 26; Ex. B., at 106:2-108:13, 122:17-22). Lastly, Plaintiff alleges that and were reappointed to new positions at other TCSB schools but

Plaintiff was not offered an alternate position. (Compl. at ¶¶ 22, 25-26). However, there is absolutely no causal link between Plaintiff's discussion with Principal and the above allegations.

In *Mitchell*, a December 14, 2020 decision from Florida's First District Court of Appeals, the court found Plaintiff's retaliation claim of termination from the Sheriff's Office "wholly unrelated" to his protected activity of twice reporting a Lieutenant's racially charged behavior. *Mitchell*, 309 at 285. The court opined that there was no "close temporal proximity" or "causal relationship . . . from a series of adverse actions taken immediately after a plaintiff engages in protected activity" to establish a causal connection. *Id*. As in *Mitchell*, Plaintiff in the instant case fails to show a sequential line of connected events or even a series of successive events to establish a causal link between her initial complaints to Principal and her retaliation claims. In *Mitchell*, the court found a three- or four-month delay after the protected activity was too long to infer a close temporal proximity to retaliatory actions. *Id*. In the case at bar, three months went by between Plaintiff's complaints to Principal about October 24, 2016 telephone call to her and Plaintiff's complaint about January 16, 2017 classroom discussion. (Compl. at ¶¶ 11-12, 23; Ex. E., at 1). Over ***five months*** passed between Plaintiff's October 24, 2016 "disparate treatment" complaints to Principal and Plaintiff receiving her April 1, 2017 contract nonrenewal notice. (Compl. at ¶¶ 11-12, 23).

Plaintiff has failed to create a causal link between her co-worker spats and the alleged adverse actions of TCSB. Merely stating that a causal connection exists is not enough to establish a prima facie case. *St. Louis*, 60 at 459–60, citing *Food Fair Stores of Fla. v. Sommer,* 111 So. 2d 743, 746 (Fla. 3d DCA 1959) (citing *Golden v. Morris,* 55 So. 2d 714, 715 (Fla.1951)). *See also Jacksonville Coach Co. v. Early,* 78 So. 2d 369, 371 (Fla.1955) (finding "**[a] jury's verdict can**

not rest on a mere probability or guess, and we cannot affirm a verdict where it has no rational predicate in the evidence.") (emphasis added). Plaintiff has not met her burden of proof to create a prima facie case of retaliation. Count II of Plaintiff's Complaint should be dismissed on that basis alone.

b. Plaintiff failed to shift the burden of proof to Defendant.

Plaintiff has failed to shift the burden of proof to the Defendant to prove a legitimate, nondiscriminatory reason for its actions. In *Mitchell*, the court opined,

> [D]iscrimination and retaliation claims based on circumstantial evidence are analyzed according to a burdenshifting framework. *Hartwell v. Spencer*, 792 F. App'x 687, 690 (11th Cir. 2019); *Callahan*, 805 F. App'x at 753. Under this framework, the plaintiff must first establish a prima-facie case of discrimination or retaliation. *Hartwell*, 792 F. App'x at 690; *Callahan [v. City of Jacksonville, Fla.*, 805 Fed. Appx. 749, 753 (11th Cir. 2020)]. If the plaintiff makes this showing, the burden then shifts to the employer to proffer a legitimate, nondiscriminatory or non-retaliatory reason for the adverse action.

Mitchell, 309 at 286. In *Mitchell*, the court declined to apply the burden shifting framework or the issue of pretext where a prima facie case was not met. *Id*. Nonetheless, even if the facts are taken in the light most favorable to the Plaintiff and the Court assumes a prima facie case exists, Defendant has documented budget cuts to its Title II funding, which financed 50% of Plaintiff's position. (Ex. C., at ¶¶ 6-14). Additionally, Plaintiff was not the only person whose contract was nonrenewed at the end of that fiscal year. (Ex. C., at ¶¶ 15-25). The School Board's decision to cut certain positions was due to an external evaluation and recommendation by the Florida Association of District School Superintendents ("FADSS"). (Ex. I., at 1, 11, 13). The March 2017 FADSS Report specifically recommended a reduction in Institutional Reading Coach positions, stating,

> Academic coaches should service more than one school. If other quasi-administrative responsibilities are eliminated, the coaches could be shared between schools.
>
> . . .
>
> In addition, **because of the current financial condition, a careful review should be made with the goal of reducing non-classroom positions such as** deans, counselors, **reading and math coaches**, media specialists, teachers on special assignment, and resource teachers. **Principals should be given as much flexibility as possible to make the staffing decisions for their school.**

Id. (emphasis added).

Superintendent implemented the March 2017 FADSS recommendations, including its recommendation to reduce and share instructional coach positions across multiple schools. *Id.* Although Superintendent met with Plaintiff after she received her nonrenewal notice, Plaintiff did not mention race, retaliation, or any of the allegations in her Complaint to him. (Ex. B., at 42:16-23, 95:12-96:16). Consequently, Superintendent was not aware of any of her concerns. *Id.* Moreover, Superintendent entrusted Principal to execute the final staffing decisions for his subordinates. (Ex. B., at 97:8-13). Ironically, Plaintiff has not accused Principal – her supervisor – of discrimination or retaliation, instead saying he was "nice to black people" and was not part of the "good old boys club." (Ex. B., at 105:9-20).

Additionally, the suffered an unanticipated federal funding cut for the 2017-18 school year ***and*** a significant decline in the District's general fund balance . (Ex. C., at ¶¶ 9-12, 33-39). Title II Grant funding fell from $72,516.00 in 2016-2017 to $39, 820.00 in 2017-2018. (Ex. C., at ¶¶ 9-10). The difference was $32,696.00 – a 45% decrease in Title II funds. (Ex. C., at ¶ 11). Plaintiff's role was funded 50% by Title II Grant funds. ((Ex. C., at ¶¶ 7-8). The District could not maintain the same number of Instructional Reading Coach positions in 2017-2018 as it did in the 2016-2017 school year based on its funding. (Ex. C., at ¶¶ 12-14). In short, the School Board's actions resulted from unanticipated funding shortfalls and external recommendations to

streamline staffing and achieve long-term sustainability. (Ex. C., at ¶¶ 6-40; Ex. I., at 1, 11, 13). Plaintiff has not and cannot prove by a preponderance of the evidence that Defendant's actions were in fact a pretext for discrimination.

Even if Plaintiff could prove the District's actions were a pretext for discrimination, Plaintiff failed to follow the District's personnel complaint policy. 's Policy 7.375 states,

> Any and all complaints against any employee of the are to be reported to your immediate supervisor and to the District Equity Coordinator. The Equity Coordinator will follow school district policy to investigate such complaints and make recommendations to the Superintendent.

This policy is in compliance with the School Board's rulemaking authority vested by Florida Statutes §§ 1001.41, 1012.22, and 1012.23 and were in effect at the time of Plaintiff's employment.

Despite Plaintiff's allegations, the School Board is entitled to summary judgment as a matter of law because Plaintiff's allegations and supporting evidence do not support a finding of racial discrimination or retaliation. Instead, the facts of this case demonstrate that the School Board had legitimate, nondiscriminatory reasons for its actions. Count II of Plaintiff's Complaint should be dismissed on that basis alone.

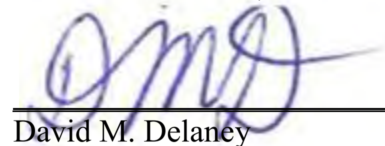
IV. CONCLUSION

Based on the foregoing, the School Board respectfully requests that this Court enter an order, granting final summary judgment in the School Board's favor, dismissing Plaintiff's action with prejudice, and granting any other relief this Court deems just and proper.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Florida Courts E-Filing Portal and designated service to the following in accordance with Rule 2.516, Florida Rules of Judicial Administration: Marie A. Mattox, Elena Komsky, Marie A. Mattox, P.A., 203 N Gadsden St., Tallahassee, FL 32301, marie@mattoxlaw.com, michelle2@mattoxlaw.com, marlene@mattoxlaw.com, elena@mattoxlaw.com, elizabeth@mattoxlaw.com; this April 25, 2023.

DELL GRAHAM, P.A.



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Writing Sample 3

IN THE CIRCUIT COURT OF THE
THIRD JUDICIAL CIRCUIT, IN AND
FOR TAYLOR COUNTY, FLORIDA

CASE NO.:

Plaintiff,

vs.

Defendant.
_________________________/

EXHIBIT LIST

Exhibit A – Employment Contract

Exhibit B – Deposition Transcript

Exhibit C – Ashley Valentine Affidavit

Exhibit D – Sharon Hathcock Deposition Transcript

Exhibit E – Evaluation of High dated January 16, 2017

Exhibit F – Employment Complaint of Discrimination

Exhibit G – Instructional Reading Coach Job Description

Exhibit H – Recommendation and Appointment of Instructional Personnel

Exhibit I –Florida Association of District School Superintendents ("FADSS") 2017 Report

Cases

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Callahan [*v. City of Jacksonville, Fla.*, 805 Fed. Appx. 749, 753 (11th Cir. 2020) 16
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Cf. Brillinger v. City of Lake Worth, 317 Fed. App'x. 871, 876 (11th Cir. 2008) 9
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Hartwell, 792 Fed. App'x. 687, 694 (11th Cir. 2019) 9
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In re Amends. to Fla. Rule of Civ. Pro. 1.510, 309 So. 3d 192, 192 (Fla. 2020) 5
Jacksonville Coach Co. v. Early, 78 So. 2d 369, 371 (Fla.1955) 15
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Scott v. Harris, 550 U.S. 372, 380 (2007) 6
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Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17, 22 (Fla. 3d DCA 2009) 9

IN THE CIRCUIT COURT OF THE
THIRD JUDICIAL CIRCUIT, IN AND
FOR TAYLOR COUNTY, FLORIDA

CASE NO.:

Plaintiff,

vs.

Defendant.
_________________________/

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND ENTRY OF FINAL JUDGMENT

THIS MATTER, having come before the Court on the 's Motion for Summary Judgment as supported by the deposition testimony, affidavits[1], interrogatory answers, and other evidence presented. Upon consideration of the foregoing summary judgment evidence and pleadings, as well as the argument of counsel for all parties, the court finds that there are no genuine issues of law or material facts.

THEREFORE IT IS ORDERED AND ADJUDGED:

1. Summary judgment is appropriate where there are no genuine issues of material fact and the moving parties' entitled to judgment is a matter of law. *See* Fla. R. Civ. P. 1.510; Celotex Corp. v. Catrett, 477 U.S. 317 (1986). A moving party discharges its burden on a Motion for Summary Judgment by "showing" or "pointing out" to the Court that there is an absence of evidence to support the non-moving parties case. Id. at 325. Further, as a result of the Florida Supreme Court's adoption of the federal standard for review of summary judgment motions, "…it will no longer be plausible to maintain that **the**

[1] See also Order Granting Defendant's Motion to Strike Paragraphs of Plaintiff's affidavit.

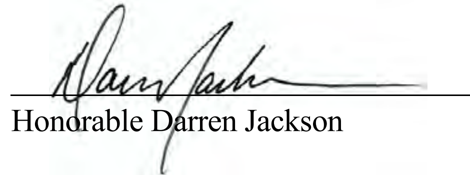
existence of *any* competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the 'slightest doubt' is raised." Bruce J. Berman & Peter D. Webster, Berman's Florida Civil Procedure § 1.510:5 (2020 ed.) (describing Florida's pre-amendment summary judgment standard).

2. Defendant's Motion for Summary Final Judgment is **GRANTED.** Defendant is entitled to summary final judgment as a matter of law as the Plaintiff has not met his burden to establish a cause of action for race discrimination. To state a claim for race discrimination, relying on circumstantial evidence, as Plaintiff does here, Plaintiff must show that he (1) was a member of a protected class; (2) was qualified for the position; (3) suffered an adverse employment action; and (4) similarly situated employees outside the protected class were treated more favorably. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); Fla. Dep't of Cmty. Affairs v. Bryant, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991). However, Plaintiff has not done so. First, Plaintiff has not and cannot identify a valid similarly situated employee that is "similarly situated in all material aspects." Lewis v. City of Union City, Georgia, 918 F.3d 1213, 1218 (11th Cir. 2019). Plaintiff's case is devoid of any similarly situated employees that "have engaged in the same basic conduct (or misconduct) as the plaintiff," "share the plaintiff's employment or disciplinary history," or are "sufficiently similar, in an objective sense, that they cannot reasonably be distinguished." Id. at 1227–28. Where a Plaintiff fails to present sufficient evidence that a similarly situated comparator was treated more favorably, as is the case here, the Defendant is entitled to summary judgment. Id. at 1224. Furthermore, the Plaintiff failed to establish a cause of action for discrimination as it has not been proven that Plaintiff was qualified

for the position. Plaintiff has not proven that he possessed the objective qualifications for the position. Vessels v. Atlanta Indep. Sch. Sys., 408 F. 3d 763, 769 (11th Cir. 1997). Plaintiff failed to obtain a temporary certification as required and the evidence shows that Plaintiff failed to begin the process to obtain a temporary certification which was required for him to be able to remain in the permanent substitute position. Plaintiff has failed to establish two elements needed in order to state a cause of action for race discrimination. Therefore, the Court concludes that Defendant has carried its burden of establishing the absence of evidence to support the Plaintiff's case.

3. Judgment is hereby entered in favor of Defendant which shall go hence without day.
4. Jurisdiction of the Court is reserved for the consideration of attorney's fees and costs to be awarded to Defendant.

DONE AND ORDERED in Chambers in __Mayo____, __Lafayette_____ County, Florida, this __11____ day of July 2022.



Honorable Darren Jackson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Florida Courts E-Filing Portal and designated service to the following in accordance with Rule 2.516, Florida Rules of Judicial Administration: David M. Delaney, Natasha S. Mickens, Weiss Serota Helfman Cole + Bierman, 2631 NW 41st Street, Suite B, Gainesville, FL 32606, ddelaney@wsh-law.com, nmickens@wsh-law.com, kgregory@wsh-law.com, lcampbell@wsh-

law.com,; Marie Mattox, Marie A. Mattox, P.A., 203 North Gadsden Street, Tallahassee, FL 32301, marie@mattoxlaw.com, michelle2@mattoxlaw.com, Marlene@mattoxlaw.com, this July 11, 2022.

_____dmoore_________________
Judicial Assistant

WEISSER-01 MCLA

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 4/10/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Lauren M. McCann	
Gemini Risk Partners, LLC 720 N.Old Woodward Avenue Suite 202 Birmingham, MI 48009	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS: lmccann@gemiiriskpartners.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Travelers Casualty & Surety Co	
INSURED Weiss Serota Helfman Cole & Bierman, P.L. 2800 Ponce de Leon Blvd Suite 1200 Coral Gables, FL 33134	INSURER B : Travelers Casualty & Surety Company of America	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE / OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY / PRO-JECT / LOC OTHER:						EACH OCCURRENCE	$
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
							PRODUCTS - COMP/OP AGG	$
								$
	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY / SCHEDULED AUTOS HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR EXCESS LIAB / CLAIMS-MADE DED / RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					PER STATUTE / OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	22/23 Crime Policy	N	N	107110305	9/20/2022	9/20/2023		$1,000,000 Limit
B	22/23 Cyber Policy	N	N	107507548	11/19/2022	11/19/2023	$1,000,000 Limit	$1MM - Bus Interruption

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
Levy County, Florida Physical address: 355 Garner Street Mailing address: P.O. Box 310 Bronson, FL 32621-	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE [signature]

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 4/10/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
RSC Insurance Brokerage, Inc. 9350 S Dixie Hwy Suite 1400 Miami FL 33156	PHONE (A/C, No, Ext): (305) 446-2271	FAX (A/C, No):
	E-MAIL ADDRESS: MIA-Certificates@risk-strategies.com	
	INSURER(S) AFFORDING COVERAGE	**NAIC #**
	INSURER A : Sentinel Ins. Co.	11000
INSURED	INSURER B : Hartford Accident & Indemnity	22357
Weiss, Serota, Helfman, Cole & BIERMAN, P.L 200 E Broward Blvd Ste 1900 Fort Lauderdale FL 33301	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** CL22111609733 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT X LOC OTHER:			21SBABV7690	11/19/2022	11/19/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS			21SBABV7690	11/19/2022	11/19/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000			21SBABV7690	11/19/2022	11/19/2023	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000 $
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		21WECAJ4308	11/19/2022	11/19/2023	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Evidence of Insurance only.

CERTIFICATE HOLDER	CANCELLATION
Levy County, Florida P.O. Box 310 Bronson, FL 32621	**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.** AUTHORIZED REPRESENTATIVE R Ins. Brokerage/JANP

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WEISSER-01 MCLA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 4/10/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Gemini Risk Partners, LLC
720 N.Old Woodward Avenue
Suite 202
Birmingham, MI 48009

CONTACT NAME:
PHONE (A/C, No, Ext): FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Endurance American Specialty Ins Co	41718
INSURER B : ASCOT UNDERWRITING, INC.	24147
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Weiss Serota Helfman Cole & Bierman, P.L.
2800 Ponce de Leon Blvd
Suite 1200
Coral Gables, FL 33134

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY; CLAIMS-MADE; OCCUR; GEN'L AGGREGATE LIMIT APPLIES PER: POLICY; PRO-JECT; LOC; OTHER:						EACH OCCURRENCE	$
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
							PRODUCTS - COMP/OP AGG	$
								$
	AUTOMOBILE LIABILITY; ANY AUTO; OWNED AUTOS ONLY; SCHEDULED AUTOS; HIRED AUTOS ONLY; NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB; OCCUR; EXCESS LIAB; CLAIMS-MADE; DED; RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N; ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH); If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					PER STATUTE; OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Lawyers Professional Liability	N	N	LPN30008168601	6/24/2022	6/24/2023	$3MM p/o $5MM Each Claim	$3MM p/o $5MM Aggregate
B	Comm'l Professional Liability	N	N	LPPL2210000470-02	6/24/2022	6/24/2023	$2MM p/o $5MM Each Claim	2MM p/o $5MM Each Claim

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

Levy County, Florida
Physical address: 355 Garner Street
Mailing address: P.O. Box 310
Bronson, FL 32621-

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Tab 3
Relevant Experience

When it comes to enforcing city code provisions, nothing is more important than experience. Our code enforcement lawyers have a strong track record, having handled thousands of code enforcement matters for our municipal clients. We understand that depending on the character of your community, your needs will vary — whether you are on an island with a small population of full-time residents, a number of waterways and lots of tourists, or in an inland city that borders the Everglades and consists primarily of gated residential development.

Our lawyers are thought leaders in the industry and can provide guidance on constantly evolving code violation issues. Vacation rentals and sober homes have created gray areas when it comes to state and federal laws, but our team can guide you through the applicable laws and different local codes. We also assist in using code enforcement powers to regulate the residency of sexual offenders and implement other safety measures designed to protect the health, safety and welfare of your residents.

We have represented various municipalities in Code Enforcement such as:

- The Town of Cutler Bay
- The City of Pompano Beach
- The Town of Davie
- The Village of Pinecrest
- The City of Homestead
- Bal Harbour Village
- The Village of Key Biscayne
- The Town of Medley
- The Town of Surfside
- The City of Miami Springs
- The City of Marco Island
- The City of North Miami Beach
- North Bay Village

Among others, our experience in Code Enforcement matters include:

Confidential Municipal Clients	Representation of various municipal building departments in unsafe structure cases, including the presentation of cases before County unsafe structure boards and successfully obtaining demolition orders to abate structural conditions that present a threat to life and safety.
The City of Marco Island	Representation of Marco Island for purposes of obtaining an inspection warrant to conduct inspection of alleged unsafe structure.
The Village of Key Biscayne	Representation of the Key Biscayne Fire Marshall in administrative appeal before the Miami-Dade County Fire Prevention and Safety Appeals Board. A condominium in Key Biscayne appealed the Fire Marshall's denial of its Engineered Life Safety System, which proposed an alternative to having sprinklers throughout the building.
Bal Harbour Village	Representation of Bal Harbour in its enforcement of its resort tax ordinance against a restaurant that failed to pay taxes within a two-year period.

The Town of Cutler Bay	Representation of The Town of Cutler Bay against a motel, which was subject to numerous criminal incidents and nuisance activities.
Various Municipalities in South Florida	Drafted code enforcement ordinances and provided legal guidance on related enforcement procedures for the Town of Medley, the City of Miami Springs and North Bay Village.

In addition to the public entities mentioned above, we represent the following governmental entities (listed chronologically):

- City of North Miami
- City of Hollywood
- Bal Harbour Village
- Village of Bal Harbour
- City of Homestead
- City of Lauderhill
- Town of Davie
- Village of Key Biscayne
- City of Miami
- Miami Shores Village
- Town of Golden Beach
- Town of Surfside
- City of Aventura
- City of Coral Gables
- City of Miami Springs
- Miami Springs
- City of South Miami
- City of Weston
- City of Dania Beach
- City of Boca Raton
- Martin County
- City of Sunrise
- City of Naples
- City of Hallandale Beach
- City of Deerfield Beach
- City of Parkland
- Town of Miami Lakes
- Village of Pinecrest
- City of Coconut Creek
- City of Pembroke Pines
- City of West Palm Beach
- City of Doral
- City of Margate
- Town of Cutler Bay
- Village of Royal Palm Beach
- Town of Lauderdale-By-The-Sea
- Town of Lauderdale By The Sea
- Lauderhill Housing Authority
- City of Riviera Beach
- Cooper City
- Indian Creek Village
- City of Dunedin
- Dania Beach Community Redevelopment Agency
- City of Margate
- City of Miami Beach
- Village of Palmetto Bay
- City of Port St. Lucie
- City of Delray Beach
- City of Fort Lauderdale
- City of Miami Gardens
- Town of Medley
- City of Florida City
- City of North Miami Beach
- City of Marco Island
- Town of Davie CRA
- City of Deerfield Beach
- City of Parkland
- Town of Palm Beach
- Town of Gulf Stream
- City of Greenacres
- City of Hollywood
- City of Sunrise
- City of Miami Beach
- City of North Port
- North Bay Village
- City of Safety Harbor
- City of Port St. Lucie
- City of Oakland Park Police and Fire Pension Plan Board of Trustees
- City of Sebastian
- City of Lake Worth Beach
- Housing Authority of Pompano Beach
- Deerfield Beach Housing Authority
- Dania Beach Housing Authority

- Broward Sheriff's Office
- City of Bartow Municipal Police Officers' Retirement Trust
- City of Stuart
- Village of Golf
- Palm Beach County
- Hardee County
- Levy County School District
- Islamorada, Village of Islands
- Town of Kenneth City
- Kenneth City
- City of Venice
- City of Fernandina Beach
- City of South Miami
- Indian Trail Improvement District

References:

Client name: School Board of Levy County
Contact person: Chairman Paige Brookins
Phone number: (352) 535-5258
E-mail address: paige.brookins@levyk12.org
Description of services: We have served as Board Attorney since 2013 (formerly as Dell Graham PA), dealing with legal matters that are crucial to the day-to-day operations of the Board.

Client name: Alachua County School Board
Contact person: Tina Certain
Phone number: (395) 295 - 5746
Description of services: We have served as Board Attorney since 2009 (formerly as Dell Graham PA), dealing with legal matters that are crucial to the day-to-day operations of the Board.

Client name: Alachua County Public Schools
Contact person: Superintendent Shane Andrew
Phone number: (395) 295 - 5746
Description of services: We have served as special counsel on various matters since the early 1990s (formerly as Dell Graham PA), including legal representation in state, federal and administrative hearings.

Tab 4
Schedule and Availability

WSHC+B will work with Levy County to ensure all the duties of the Code Enforcement Special Magistrate are met in a timely and efficient manner. Ayanna, the lead attorney, has a flexible schedule with few standing meetings. She has standing appointments on the second and fourth Thursday of each month from 6 to 9pm and on the third Wednesday of the month from 9 to 11 am. Outside of those times, Ayanna is available to travel to Levy County and conduct hearings once per month or more as necessary to the success of the role, given advance notice.

Tab 5
Proposed Price

Below are our proposed hourly rates of attorneys and legal support staff:

Attorneys	**Hourly Rate**
Ayanna Hypolite	$225.00
David M. Delaney	$225.00
Paralegals	$95.00

The Firm is also willing to negotiate alternative or fixed fee arrangements on a case-by-case basis should the need arise.

Tab 6
Forms

PROPOSAL SIGNATURE FORM

The undersigned attests the authority to submit this proposal and to bind the proposer herein named to fully perform in accordance with the Request for Proposals (the "RFP"), if the proposer is awarded a contract by the County. The undersigned further certifies they have read the entire RFP package, and any other documentation relating to the RFP, and that this proposal is submitted with full knowledge and understanding of the requirements contained therein.

Proposer is an (please check one):

- INDIVIDUAL ☐
- PARTNERSHIP ☐
- CORPORATION ☐
- JOINT VENTURE ☐
- LLC ☒

Name: Ayanna A. Hypolite

Primary Office Address: 2631 NW 41ST Street, Building B

City, State, Zip: Gainesville, Florida 32606

Address (Servicing Levy County if Different from Above): ______________________________

____

Email Address: ahypolite@wsh-law.com

Name/Title of Levy County Rep: ____

Telephone: 352-416-0066 Fax: 352-416-0098

Signature: [signature] Date: 4/24/2023

Is Proposer a small or minority business, women's business enterprise, or labor surplus area firm?
☐ Yes ☒ No (Check which is applicable)

Cost/Fee Proposal (attached) ☒ Yes ☐ No

Addenda are considered a binding part of the RFP and it is critical each proposer acknowledge receipt of same. Your proposal may be considered non-responsive if receipt of addendum is not acknowledged below.

Receipt of Addenda Acknowledged:

Addendum No. N/A Dated ________ Signature ____________________________
Addendum No. ________ Dated ________ Signature ____________________________
Addendum No. ________ Dated ________ Signature ____________________________

NON-COLLUSION AFFIDAVIT

I, Ayanna A. Hypolite of the County of Alachua

According to law on my oath, and under penalty of perjury, depose and say that:

1. I am Ayanna A. Hypolite of the firm of Weiss Serota Helfman Cole + Bierman, P.L. providing this proposal in response to the RFP for Code Enforcement Special Magistrate Services, and that I executed the said proposal with full authority to do so.
2. This response has been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to qualifications or responses of any other responder or with any competitor; and no attempt has been made or will be made by the responder to induce any other person, partnership or corporation to submit, or not to submit, a response for the purpose of restricting competition;
3. The statements contained in this affidavit are true and correct, and made with full knowledge that Levy County relies upon the truth of the statements contained in this affidavit in awarding any contract for any services resulting from this RFP.

[signature] 4/26/2023

Signature of Proposer Representative Date

STATE OF: Florida

COUNTY OF: Alachua

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 26th day of April, 2023, by Ayanna A. Hypolite (name), as Primary Attorney (title) for Weiss Serota Helfman Cole + Bierman (name of proposer). ☐ Personally known OR ☒ Produced Identification FLDL (type of identification)

[signature]

NOTARY PUBLIC

My Commission Expires: April 05, 2024

CONFLICT OF INTEREST DISCLOSURE STATEMENT

The award hereunder is subject to the provisions of Chapter 112, Florida Statutes. All proposers must disclose with their proposals or bids the names of: (1) any officer, director, employee or agent of proposer is also an officer or an employee of the Levy County Board of County Commissioners; (2) any officer, partner, director or proprietor of the proposer is the spouse or child of one of the members of the Levy County Board of County Commissioners; (3) any County officer or employee who owns, directly or indirectly, an interest of five percent (5%) or more in the proposer or any of its branches or affiliates; (4) any employee, agent, lobbyist, previous employee of the Board, or other person, who has received or will receive compensation of any kind in connection with the response to this RFP.

All proposers are also required to include a disclosure statement of any potential conflict of interest that the proposer may have due to other clients, contracts, or interest associated with the performance of services under this RFP and any resulting agreement. Use additional sheets if necessary.

(1) Names of Officer, Director, Employee or Agent that is also an Employee of the Board:

_______________________________ _______________________________

(2) Names of Officer, Partner, Director or Proprietor who is spouse or child of Board Member:

_______________________________ _______________________________

(3) Names of County Officer or Employee that owns 5% or more in Proposers firm:

_______________________________ _______________________________

(4) Names of applicable person(s) who have received compensation:

_______________________________ _______________________________

Description of potential conflict(s) with other clients, contracts or interests:

____
____
____
____

Check here if none of the above are applicable: ☒

Signature: ____________________ Printed Name: Ayanna A. Hypolite

Proposer Name: Ayanna A. Hypolite

Date: 4/24/2023

CONTRACT EXCEPTION FORM

Any proposer who requires/requests revision(s) to the Form of Contract (contained in Section III of this RFP) must submit this completed Contract Exception Form during the Question portion of the RFP process. The County is under no obligation to grant any exceptions and proposals that are contingent on exceptions to the Contract being granted will not be accepted. If an exception is rejected by the County and the proposer subsequently submits a proposal, the proposer is deemed to have waived their request for a Contract exception.

Request for revision to Form of Contract
Identify the specific Contract provision(s) that Proposer takes exception to:
N/A
Explain the specific revision(s) that are being requested (such as, delete the provision or modify it to state. . . .)
N/A

Signature: ______________________ Printed Name: Ayanna A. Hypolite

Proposer Name: Ayanna A. Hypolite

Date: 4/24/2023

VENDOR INFORMATION SHEET

DATE: 4/24/2023

COMPANY NAME: Weiss Serota Helfman Cole + Bierman, P.L.

PHYSICAL ADDRESS: 2631 NW 41ST Street, Building B, Gainesville, FL 32606

MAILING ADDRESS: 2631 NW 41ST Street, Building B

CITY: Gainesville **STATE:** Florida **ZIP:** 32606

TELEPHONE NUMBER: 352-416-0066

FAX NUMBER: 352-416-0098

TOLL FREE NUMBER: ______

EMAIL: ahypolite@wsh-law.com

FEID NUMBER: 20-8112403 **OR SSN:** ______

CONTACT PERSON: Ayanna A. Hypolite

TITLE: Associate Attorney

CONTACT NUMBER: 352-416-0066

The information requested above is necessary to update our files or to add your name to the County's vendor list. You are a vital part of the operation of Levy County and we want to thank you for your support. The information on this form will allow us to pay you for the goods and/or services we have received in a timely manner and give us the ability to contact the necessary person in case there is a problem or question in processing.

Form **W-9** (Rev. October 2018) Department of the Treasury Internal Revenue Service

Request for Taxpayer Identification Number and Certification

▶ Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

Print or type. See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Weiss Serota Helfman Cole + Bierman, PL

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☑ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ ________

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) ________

Exemption from FATCA reporting code (if any) ________

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

2800 Ponce de Leon Blvd, Suite 1200

Requester's name and address (optional)

6 City, state, and ZIP code

Coral Gables, FL 33134

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN,* later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

[ ][ ][ ] – [ ][ ] – [ ][ ][ ][ ]

or

Employer identification number

2 0 – 8 1 1 2 4 0 3

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here **Signature of U.S. person ▶** Sonja Chavez **Date ▶** 01/12/2023

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9.*

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*