

STATE OF INDIANA  
CIVIL RIGHTS COMMISSION

DOCKET NO. EDha08100620  
DOCKET NO. EDrt08110681

FILE DATED

JAN 27 2012

INDIANA CIVIL RIGHTS COMMISSION

ELIZABETH BRIDGEWATER o/b/o ALYSSA BRIDGEWATER,  
Complainant,

v.

FISHERS ADOLESCENT CATHOLIC ENRICHMENT SOCIETY,  
INC.;  
Respondent.

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

On October 20, 2011, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision").

On November 4, 2011, Complainant, Elizabeth Bridgewater ("Elizabeth") Bridgewater o/b/o Alyssa Bridgewater ("Alyssa") (collectively "Bridgewater") filed Complainant's Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order. Also on November 4, 2011, Respondent – Fishers Adolescent Catholic Enrichment Society, Inc. ("FACES") – filed Respondent's Appeal From Proposed Findings Of Fact, Conclusions Of Law And Order.

On December 19, 2011, Bridgewater filed Complainant's Motion *In Limine*, Or To Exclude Portions Of Respondent's Appeal And Oral Argument On Jurisdictional Issue. On January 3, 2012, FACES file Respondent's Response To Complainant's Motion *In Limine*.

On January 9, 2011, Bridgewater filed her Brief Of Complainant In Support Of Objections To Proposed Findings Of Fact, Conclusions Of Law And Order. Also on January 9, 2012, FACES filed Respondent's Brief in Support of Its Appeal From, And Objections To, The Proposed Findings of Fact, Conclusions of Law and Proposed Order.

On January 23, 2012, FACES filed Respondent's Notice Of Supplemental Authority. On January 26, 2012, Bridgewater filed Complainant's Response To Respondent's Notice Of Supplemental Authority.

Alpha Blackburn, Chairperson of the ICRC, presided over oral argument on the parties' objections on January 27, 2012. Other Commissioners present were David C. Carter (the Vice-Chairperson), Barry Baynard, Tehiji G. Crenshaw, John E. Garcia, Charles D. Gidney, and Steven A. Ramos. Elizabeth and Alyssa were present and were represented by counsel, Michael C. Healy, Esq., Staff Counsel. FACES was represented by counsel, Patrick T. Gillen, Esq. of Naples, Florida of the Thomas More Society. Also present on behalf of FACES were Virginia Zender ("Zender"), its President, and Vanessa Alexander and Margaret Beard.

Arguments of counsel were heard, questions were asked by members of the ICRC and the cause was taken under advisement.

Having carefully considered the foregoing and being duly advised in the premises, the ALJ finds and rules as follows.

1. A party objecting to a proposed decision by an ALJ has the burden of demonstrating an error that affected the result.
2. Neither Bridgewater nor FACES has met that burden, with the exception that the amount of damages awarded in the proposed decision is too high.

### **IT IS, THEREFORE, ORDERED**

1. Complainant's Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order are **OVERRULED**.
2. Respondent's Appeal From Proposed Findings Of Fact, Conclusions Of Law And

Order is **OVERRULED**, except to the extent reflected below.

3. Conclusion Of Law 17 is modified to read as follows, with the change reflected in bold print:

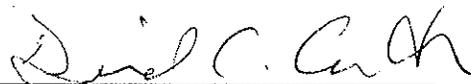
17. "Complainant's losses" include damages for pain and suffering and emotional distress. *Indiana Civil Rights Commission v. Adler*, 714 N.E.2<sup>nd</sup> 632 (Ind. 1999). Bridgewater has proven that Alyssa sustained pain, suffering, and emotional distress as a result of the proven, unlawful discriminatory practice. **\$2,500.00** is an appropriate amount in this case.

4. Paragraph 5 of the Order is modified to read as follows, with the change reflected in bold print:

5. FACES shall deliver to the ICRC a check payable to Alyssa in the amount of **\$2,500.00** within 30 days of the effective date of this Order.

5. In all other respects, the ICRC adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference .

### INDIANA CIVIL RIGHTS COMMISSION

  
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COMMISSIONER

Dated: 27 January 2012

To be served by first class mail on the following parties and attorneys of record:

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STATE OF INDIANA  
CIVIL RIGHTS COMMISSION

DOCKET NO. EDha08100620  
DOCKET NO. EDrt08110681

ELIZABETH BRIDGEWATER o/b/o ALYSSA BRIDGEWATER,  
Complainant,

v.

FISHERS ADOLESCENT CATHOLIC ENRICHMENT SOCIETY,  
INC.;  
FILE DATED  
Respondent.

OCT 20 2011

Indiana State Civil Rights Commission  
**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

These consolidated cases have a history of some relevance that preceded the Hearing, In DOCKET NO. EDha08101620 ("the original complaint"), Complainant, Elizabeth Bridgewater ("Elizabeth") o/b/o Alyssa Bridgewater ("Alyssa") ("Bridgewater" when referring to the complainant), alleged that Respondent – Fishers Adolescent Catholic Enrichment Society, Inc. ("FACES") – violated the Indiana Civil Rights Law, IC 22-9-1-1, *et. seq.* ("the ICRL") by refusing to reasonably accommodate Alyssa's disability with respect to a Ball held by FACES in October of 2008. In DOCKET NO. EDrt08110681 ("the retaliation complaint"), Bridgewater claims that FACES committed unlawful retaliation by expelling her family from membership because of the filing of the original complaint.

After a Finding of Probable Cause in the original complaint, FACES moved to dismiss, arguing, among other things, that the Indiana Civil Rights Commission ("ICRC") could not exercise jurisdiction over FACES since it was a private religious organization of families who are home schooling their children. At about the same time, FACES filed a motion to quash a subpoena issued in aid of investigation of the retaliation complaint, making essentially the same argument. Both of these motions were fully briefed and

argued. The Administrative Law Judge (“ALJ”) denied the motion to dismiss the original complaint and granted the motion to quash the subpoena in the retaliation complaint. The difference, according to the ALJ, was that the complaint about the menu at the Ball did not threaten to entangle the ICRC in matters that were religious in nature, while the complaint about the Bridgewater’s membership did threaten such entanglement.

FACES filed an Appeal of the denial of the motion to dismiss and Bridgewater filed an objection to the granting of the motion to quash. The ICRC heard oral argument on both and ultimately ruled in favor of Bridgewater on both issues.

FACES then filed a Petition For Judicial Review in the Hamilton Superior Court. This Petition was dismissed on motion by the ICRC, the Court ruling that FACES had not established immediate and irreparable harm and had not exhausted its administrative remedies. The ICRC completed its investigation of the retaliation complaint and found probable cause to believe that a violation of the ICRL had occurred. Thereafter, these consolidated cases were scheduled for discovery, a Pre-Hearing Conference, and a Hearing.

That Hearing was held in these consolidated cases before the ALJ on September 29 and 30, 2010. Bridgewater was represented by counsel, Michael C. Healy, Esq., Staff Counsel and Joshua S. Brewster, Esq., Deputy Director. Elizabeth and Alyssa were present for the entire Hearing, except a brief period when Alyssa was absent from the room. FACES was represented by counsel, Patrick T. Gillen, Esq. of Naples, Florida and Peter Breen, Esq. of the Thomas More Society of Chicago, Illinois. Also present on behalf of FACES was Virginia Zender (“Zender”), its President.

In the way of preliminaries, the parties stipulated to the admissibility of the following exhibits: Complainant’s Exhibit 1 (“CX\_”), CX2, CX3, CX4, CX5, CX6, CX7, CX8, CX9, CX10, CX11, CX12, CX14, CX15, CX16, CX19, CX21, CX22, CX23, CX25, CX27, CX28, CX29, CX32, CX33, CX34, CX35, CX36, CX37, CX39, CX43, CX44, CX45, CX46, CX48, CX50, CX51, CX56, Respondent’s Exhibit 1 (“RX\_”), RX2, RX3, RX4, RX5, RX6, RX7, RX8, RX9, RX10, RX11, RX12, RX13, RX14, RX15, RX16, RX17, RX18, RX19, RX20, RX21, RX22, RX23, RX24, RX25, RX26, RX27, RX28, RX29, RX30, RX31, RX32, RX33, RX34, RX35, RX36, RX37, RX38, RX39, RX40,

RX41, RX42, RX43, RX44, RX45, RX46, RX47, RX48, RX50, RX51, RX52, RX53, RX54, RX55, RX56, RX57, RX58, RX59, RX60, RX61, RX62, RX63, RX64, RX65, RX66, RX67, RX68, RX69, RX70, RX71, RX72, RX73, RX74, RX75, RX76, RX77, RX78, RX79, RX80, RX81, RX82, RX83, RX84, RX85, RX86, RX87, RX88, RX89, RX90, RX91, RX92, RX93, RX94, RX95, RX96, RX97, RX98, RX99, RX100, RX103, RX104, RX105, RX107, AND RX108. All were admitted into evidence.

After opening statements were heard, Bridgewater called the following witnesses on September 29: William D. Nicholls ("Nicholls"), Jon Hankenhoff ("Hankenhoff"), April Rutherford ("Rutherford"), Diane Shelby Mitchell ("Mitchell"), Weston Bridgewater ("Wes"), Alyssa, and Elizabeth. Proceedings on the first day were recessed after the direct examination of Elizabeth.

On September 30, the remaining forms of examination of Elizabeth were completed. During the presentation of Bridgewater's case, CX17 was admitted without objection, CX13 was admitted over objection, and RX106 was identified but neither offered nor admitted into evidence.

After Bridgewater rested her case, FACES called Zender, Vanessa Alexander ("Alexander"), and Margaret Beard ("Beard") to testify on its behalf. During the presentation of FACES' case, RX49 was offered, but not admitted, into evidence; RX102 and CX41 were admitted into evidence over objection; CX42, CX55, and CX30 were admitted into evidence without objection; and RX107 was identified but neither offered nor admitted into evidence. Bridgewater elected not to present any evidence in rebuttal.

Both parties waived oral closing arguments. The ALJ took the cause under advisement. The ALJ also ordered the parties to submit what they suggested that the ALJ enter as Proposed Findings Of Fact, Conclusions Of Law, And Order on or before November 30, 2010 and that the parties could file briefs by the same date. This deadline was adjusted twice, the last time to December 17, 2010. ORDER ADJUSTING BRIEFING SCHEDULE (November 29, 2010); SECOND ORDER ADJUSTING BRIEFING SCHEDULE (December 29, 2010).

On December 17, 2010, Bridgewater filed Complainant's (Suggested) Proposed Findings Of Fact, Conclusions Of Law, And Order and her Brief Of Complainant. Also on December 17, 2010, FACES filed Respondent's Proposed Findings of Fact and Conclusions Of Law

## **FINDINGS OF FACT**

1. The issues to be resolved in these consolidated cases are as follows:
  - A. Was Alyssa discriminated against because of disability when she was denied an accommodation pertaining to the Masquerade Ball?
  - B. Whether FACES retaliated against Bridgewater by expelling the family from FACES shortly after the complaint was filed;
  - C. If either A or B is answered affirmatively, what relief should be awarded
  - D. FACES contends that Alyssa's condition is not a disability.
  - E. FACES denies that Bridgewater was discriminated against.
  - F. FACES contends that the ICRL does not require accommodation.
  - G. FACES contends that the expulsion occurred because of behavior by Elizabeth.
  - H. FACES maintains its position that the ICRC lacks jurisdiction over the subject matter because of the religious nature of FACES. This issue has already been decided by the ICRC and, evidence about the nature of FACES that goes beyond background will, upon proper objection, be excluded  
FOURTH PRE-HEARING ORDER ¶1 (September 21, 2010).
2. Alyssa, who is Elizabeth's daughter, was, at all relevant times, a resident of the state of Indiana. Alyssa turned 18 years of age in March of 2011.
3. Alyssa has a severe case of eosinophilic esophagitis ("EE").
4. In persons with EE, a type of white blood cell (an eosinophil) builds up in the esophagus as a reaction to foods, acid reflux or allergens. When that buildup is sufficiently severe, the eosinophils can inflame or injure the esophageal tissue, which can affect swallowing and/or breathing, an effect that can be sufficiently extreme to be

fatal. There is no currently known cure for EE. Alyssa's condition is sufficiently severe to be life threatening. CX14.

5. A person with EE, or a guardian responsible for them, has a need to identify and avoid the foods and allergens that can cause these reactions. That identification is easier said than done, and involves a lot of trial and error.

6. Alyssa's food allergies were fairly sensitive, in that they could be triggered by extremely small portions of foods to which she was allergic. The Bridgewaters' practices included separate pots and pans and Alyssa's food was not to touch things to which she was allergic.

7. Among the foods to which Alyssa was allergic were chicken and soda pop.

8. The Bridgewaters are Catholic and had chosen to educate Alyssa through home schooling.

9. At some time in 2007, the Bridgewater family became members of FACES for the purpose of supplementing the education of both Alyssa and her brother Wes by having them participate in educational, social, and other group activities.

10. FACES is a religious-based not for profit corporation recognized as such under section 501(c)(3) of the Internal Revenue Code. FACES was formed by a group of parents of home schooled children and its purpose is to provide educational, spiritual, and social enhancement for those children by providing them with opportunities to interact with other adolescents that are not inherent in the home schooling experience. FACES admits family affiliates who desire a Catholic environment and who pay a modest annual fee. It meets once a week for some thirty weeks during the school year and periodically for limited social engagements, such as the Ball out of which this case arose. FACES has somewhere in the neighborhood of a dozen family affiliates. At all material times, the members of the Board of Directors of FACES were Zender, Alexander, and Beard.

11. At its weekly meetings, FACES offered classes in such subjects as Biology lab, Speech, French, English Literature, Government, Microsoft Powerpoint, Microsoft Word, E-Congress, and Skit Writing.

12. During the 2007-2008 academic year, at the suggestion of Elizabeth, FACES agreed to hold their Christmas luncheon at Chili's in Noblesville (instead of the Pizza Hut the past site) because Elizabeth stated that Chili's had a special menu from which Alyssa could eat. This was done to accommodate Alyssa's allergies, even though holding the event at that venue imposed a financial burden, albeit a modest one, on other member families, some of whom were struggling due to the economic downturn. RX81.
13. Elizabeth reported to Alexander that, while Alyssa had had a great time at Chili's, she had developed a headache. Alexander, perhaps incorrectly, took this to mean she had had an allergic reaction and it was with that understanding that Alexander reported this information to the other board members of FACES.
14. Families who belonged to FACES were assigned to arrange a social activity for the kids once each year and Elizabeth was assigned the month of February 2008. For one reason or another, this activity did not occur.
15. Elizabeth's failure to perform her responsibility to schedule an event in February, 2008 disappointed Zender. FACES claims that there was discussion about whether the Bridgewater should be allowed to join FACES for the 2008-09 year. In the end, they were allowed to join because the board members enjoyed having the Bridgewater children in the group, and they believed that Elizabeth Bridgewater would be able to make up for her failure in the coming school year.
16. Later in 2008, Elizabeth was assigned by FACES the responsibility of arranging for the menu and reserving the banquet hall for the 2008 Masquerade Ball to be held on November 2, 2008 at the Ritz Charles ("the Ritz"), a catering facility in Carmel.
17. When the Board had not heard of the progress toward arranging the Ball as quickly as they would have liked, Zender asked her daughter Emily, who was employed at the Ritz, to see what contacts, if any, Elizabeth had made with the Ritz. Elizabeth objected to this step and actually yelled at Alexander in expressing her anger. See RX30.
18. Elizabeth did contact Nicholls, the operator of the Ritz. In the first conversation between Elizabeth and Nicholls, she inquired whether the Ritz could prepare a

...ate meal for Alyssa to which Nicholls replied "no problem".

19. Later, after discussing menu prices and options, Elizabeth decided upon the \$16 lasagna buffet. She sent an e-mail to Zender and Alexander in May of 2008 notifying them of that and also including the following sentence: "I also mentioned that Alyssa (and I) will have a separate meal (which I will pay for), because of her allergies." CX25.

20. The Board was not satisfied with the timing of these efforts or the results and decided to take over the responsibility from Elizabeth; consequently, Elizabeth was directed to stop contacting the Ritz regarding the event. RX30.

21. Later that summer, Elizabeth ran into Alexander at the Dolphin Club, after learning that the meal planned for the Ball featured chicken, and mentioned that Alyssa would need beef because she could not eat chicken. Alexander stated that that would make the boys jealous.

22. Following this incident, there were a number of communications between Elizabeth and the officers of FACES. These included the following:

A. On September 7, 2008, Elizabeth sent an e-mail to Zender and Alexander proposing that the Ritz serve Alyssa a steak or a hamburger. CX27. A few days later, on September 10, Zender replied, stating, among other things, that "[w]e are not going to make any special accommodations". CX28.

B. Elizabeth wrote back on September 15 asking if it would be acceptable if they brought Alyssa's meal and whether there would be an adjustment to the price. CX28. This time, Zender's response was more positive, indicating that it would be acceptable to bring Alyssa's meal, although there would be no adjustment in the ticket price. CX28.

C. A few weeks later, Elizabeth had a change of heart and sent Zender, Alexander and Beard an e-mail on October 8 at 12:40 P.M., requesting that the Board permit the Ritz to prepare a meal for Alyssa. This e-mail requested a response by 4:00 P.M. the next day and threatened that the family would "be forced to take this matter to another level." RX72.

D. The only response came from Beard who said, at 1:28 A.M. on October 9  
", ... I am offering to pay for all of your tickets to the Ball. I cannot do anything

about the food. This is the best I can do. It is a personal offer, not any official one....” The Bridgewaters declined Beard’s offer. CX56.

23. On October 9, 2008, Bridgewater filed the original complaint.

24. By the time the Ball actually occurred, Elizabeth had arranged with Nicholls to have the Ritz prepare a special meal for Alyssa (and an identical meal for Elizabeth) and to serve them those meals at the Ball, even though both Elizabeth and Nicholls had been directed by FACES not to do so. The Bridgewaters paid an additional fee for these meals.

25. Alyssa did not have an adverse reaction of any sort to the food that she was served at the Ball.

26. FACES did provide a reasonable accommodation for Alyssa for the Ball. It may not have been the ideal accommodation and it was not the specific accommodation in Elizabeth’s most recent request for accommodation, but it was a reasonable accommodation.

27. What was reasonable for FACES, a tiny organization putting on its very first Ball and being operated by volunteers for whom FACES was not their primary occupation, may not have been reasonable for a larger organization or for an organization operated by professionals.

28. FACES received the original complaint on October 15, 2010. CX4.

29. On or about November 6, 2008, Zender, on behalf of FACES, sent the Bridgewater family a letter advising that the Board had voted to remove the family as members of FACES. RX1, CX10. This letter itemized four reasons: (1) Elizabeth contacted a teacher about problems with an activity, instead of notifying the leaders of FACES, as required by the policies and procedures at section II, paragraph 1; (2) Elizabeth refused to leave a classroom when requested on October 30, 2008; (3) also on October 30, 2008, Alyssa had a tape recorder in the classroom; and (4) Elizabeth contacted the Ritz after being asked not to do so.

30. This letter gave the Bridgewaters an opportunity to be heard, orally or in writing, and the removal was to be effective on November 30, 2008. Various time limits were set in the letter. RX1, CX10.

The Bridgewaters chose to be heard, and to be heard in writing, and did so in a letter from Elizabeth dated November 13, 2008 RX2, CX11. The responses to the asserted reasons were: (1) Elizabeth's problem was not with the activity; she was concerned that FACES might retaliate against her children because of the filing of the original complaint; thus, she did not violate the policy; (2) Elizabeth did not refuse to leave a classroom; she left when the teacher arrived; (3) there was no rule prohibiting tape recording classes; and (4) Elizabeth conceded that she contacted the Ritz about arrangements for Alyssa but she contended that she did not contact the Ritz about arrangements for the group.

32. The Board responded, by a letter dated November 24, 2008. The Board maintained its position that the Bridgewaters' membership with FACES had ended. CX56.

33. Bridgewater has proven by a preponderance of the evidence that retaliation was one of the reasons for the family's expulsion from FACES. The decision to expel the Bridgewaters is too close in time to the filing of the complaint to consider it coincidental.

34. FACES has not proven by a preponderance of the evidence that it would have reached the same decision without consideration of the filing of the original complaint. FACES asserted 4 reasons for the Bridgewaters' expulsion.

A. One involved direct contact with a volunteer teacher, which does violate a FACES policy; however, it is hardly uncommon to contact the person with whom one has an issue. It is unworthy of credence that a violation of this policy would be a motive for expulsion.

B. The second reason cited was a refusal to leave a class when requested. The e-mail from the teacher that Zender solicited reflects that Elizabeth left when the teacher arrived, not that she refused to leave when requested. This, then, cannot have been a reason for the expulsion.

C. Another reason cited by FACES for expelling the Bridgewaters is Alyssa's use of a tape recorder. This behavior, like that involved with the first reason, is fairly typical behavior and in this instance, FACES does not cite a rule or policy it contravened. This reason, too, is unlikely to have caused the expulsion.

D. The fourth reason cited by FACES - contacting the Ritz after being told not to - does have some validity and would carry more weight if it were not so tied in with the event that led to the filing of the original complaint.

E. Moreover, FACES, having exaggerated the significance of some events and cited one that did not occur, did not cite any incidents that occurred before the filing of the original complaint. It appears as if FACES discovered these "problems" because they were looking to find reasons to rid themselves of the Bridgewaters, because of the filing of the original complaint.

35. There can be little doubt that Alyssa experienced emotional distress as a result of being dismissed from FACES because of the filing of the original complaint. She has been professionally treated for psychological conditions and has had medication prescribed. On the other hand, it cannot be denied that not all of that distress can be attributed to the dismissal. Some of that distress is doubtlessly attributable to how FACES dealt with the food issue at the Ball, which has been found to be lawful, and it is probable that some of her distress arose from factors in her life that have nothing whatsoever to do with FACES.

36. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

## **CONCLUSIONS OF LAW**

1. The ICRC has jurisdiction over the subject matter and the parties. See ORDER DENYING APPEAL (January 29, 2010) regarding the original complaint, ORDER SUSTAINING OBJECTIONS (January 29, 2010) regarding the retaliation complaint, and FOURTH PRE-HEARING ORDER ¶1 (September 21, 2010).

2. Elizabeth, Alyssa, and FACES are each a "person", as that term is defined in section 3(a) of the ICRL. IC 22-9-1-3(a).

3. Section 3(r) of the ICRL provides, in material part:

"Disabled" or "disabled" means the physical or mental condition of a person that constitutes a substantial disability. ...  
IC 22-9-1-3(r).

Alyssa's EE is a disability under that definition. It is permanent, serious, and affects a major, and daily, life activity – eating.

5. What constitutes a discriminatory practice is set out in the following subsection of the ICRL:

“Discriminatory practice” means:

(1) the exclusion of a person from equal opportunities because of ... disability...

...  
IC 22-9-1-3(1)(1).

6. Section 13(c) of the ICRL provides that “ [t]his section shall not be construed to require any **employer** to modify any physical accommodations or administrative procedures to accommodate a person with a disability.” IC 22-9-1-13(c) (emphasis supplied).

7. Section 13(c) of the ICRL clearly indicates that modifications to physical accommodations or administrative procedures to accommodate a person with a disability would be required of an employer if that section had not been enacted. It follows that, since there is no similar exception with respect to organizations engaged in activities relating to education, that FACES is required by the ICRL to accommodate persons with disabilities.

8. FACES met its burden of making a reasonable accommodation for Alyssa with respect to the Ball by agreeing to allow food to be brought from home.

9. FACES did not commit an unlawful discriminatory practice when it agreed to allow Bridgewater to bring a meal from home to the Ball, but did not agree to allow the Ritz to prepare a meal for Alyssa.

10. If the ICRC finds that a person has not committed an unlawful discriminatory practice, it must dismiss the complaint as against that person. IC 22-9-1-6(m).

11. Section 6(h) of the ICRL prohibits what is commonly referred to as “retaliation” and grants the ICRC the following power and duty:

(h) The commission shall prevent any person from ... expelling ... any other person because he filed a complaint....

IC 22-9-1-6(h).

Other person because he filed a complaint...  
IC 22-9-1-6(h).

13. Bridgewater met her burden of showing unlawful retaliation by demonstrating that, a mere 22 days after FACES received notice of the original complaint, the Bridgewater family was expelled from FACES.

14. Bridgewater proved by a preponderance of the evidence that the legitimate, non-retaliatory reasons asserted by FACES for the expulsion of the Bridgewaters were pretexts for unlawful retaliation.

14. FACES committed an unlawful discriminatory practice when it expelled the Bridgewater family because of the filing of the original complaint.

15. If the ICRC finds that a person has committed an unlawful discriminatory practice it shall issue an order requiring the person to cease and desist from that practice, and to take further affirmative action as will effectuate the purpose of the ICRL, which may include restoring Complainant's losses incurred as a result of the discriminatory treatment. IC 22-9-1-6(k)(A).

16. Generally, expenses of litigation are not included in damages unless there is a contract or statute expressly providing for their inclusion. *Bituminous Fire & Marine Ins. Co. v. Culligan Fyrprotexion, Inc.*, 437 N.E.2d 1360 (Ind. Ct. App. 1982); *Cooper v. High*, 262 Ind. 405, 317 N.E.2d 177 (1974).

17. "Complainant's losses" include damages for pain and suffering and emotional distress. *Indiana Civil Rights Commission v. Adler*, 714 N.E.2<sup>nd</sup> 632 (Ind. 1999).

Bridgewater has proven that Alyssa sustained pain, suffering, and emotional distress as a result of the proven, unlawful discriminatory practice. \$5,000.00 is an appropriate amount in this case.

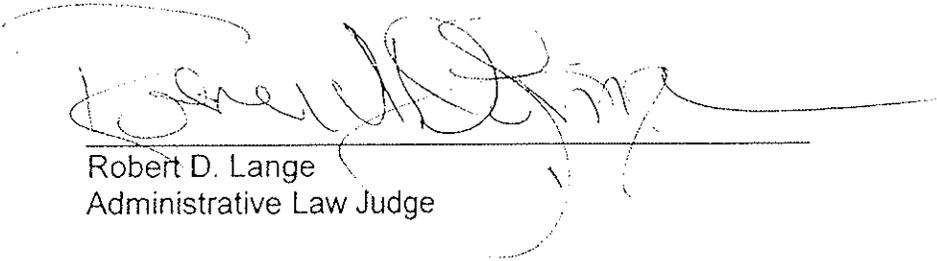
18. Administrative review of this proposed decision may be obtained by an interested and affected person who is not in default by the filing of a writing specifying with reasonable particularity each basis for each objection within 15 days after service of this proposed decision. IC 4-21.5-5-23-29(d).

19. Any Finding of Fact that should have been a Conclusion of Law is hereby adopted as such.

## ORDER

1. The original complaint is **DISMISSED**, with prejudice.
2. FACES shall cease and desist from retaliating against persons because they filed a complaint with the ICRC.
3. FACES shall post a link to these Findings Of Fact, Conclusions Of Law, And Order on all web sites on which they have communicated information regarding this case.
4. FACES shall offer reinstatement of the Bridgewater family to full membership, including all benefits.
5. FACES shall deliver to the ICRC a check payable to Alyssa in the amount of \$5,000.00 within 30 days of the effective date of this Order.
6. FACES shall deliver a copy of the foregoing check to the ICRC within 30 days of the effective date of this Order
7. This Order shall take effect immediately after it is approved and signed by a majority of the members of the ICRC, unless it is modified by the ICRC pursuant to IC 4-21.5-5-3-31(a), stayed the ICRC pursuant to IC 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated: 20 October 2011



Robert D. Lange  
Administrative Law Judge

To be served by first class mail this 20<sup>th</sup> day of October, 2011 on the following parties and attorneys of record:

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BY: David L. Swider, Esq.  
Attorneys for Respondent Fishers Adolescent Enrichment Society, Inc.  
111 Monument Circle, Suite 2700  
Indianapolis, IN 46204

and to be personally served this 20<sup>th</sup> day of October, 2011 on the following attorney of record:

Michael C. Healy, Esq.; Staff Counsel  
Indiana Civil Rights Commission  
Attorney for Complainant Elizabeth Bridgewater o/b/o Alysa Bridgewater  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

and to be served by electronic mail this 20<sup>th</sup> day of October, 2011 on the following:

Indiana Civil Rights Commission  
c/o Jamal L. Smith, Executive Director

STATE OF INDIANA  
CIVIL RIGHTS COMMISSION

DOCKET NO. EDha08100620  
DOCKET NO. EDrt08110681

FILE DATED

JAN 27 2012

INDIANA CIVIL RIGHTS COMMISSION

ELIZABETH BRIDGEWATER o/b/o ALYSSA BRIDGEWATER,  
Complainant,

v.

FISHERS ADOLESCENT CATHOLIC ENRICHMENT SOCIETY,  
INC.;  
Respondent.

### FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On October 20, 2011, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision").

On November 4, 2011, Complainant, Elizabeth Bridgewater ("Elizabeth") Bridgewater o/b/o Alyssa Bridgewater ("Alyssa") (collectively "Bridgewater") filed Complainant's Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order. Also on November 4, 2011, Respondent – Fishers Adolescent Catholic Enrichment Society, Inc. ("FACES") – filed Respondent's Appeal From Proposed Findings Of Fact, Conclusions Of Law And Order.

On December 19, 2011, Bridgewater filed Complainant's Motion *In Limine*, Or To Exclude Portions Of Respondent's Appeal And Oral Argument On Jurisdictional Issue. On January 3, 2012, FACES file Respondent's Response To Complainant's Motion *In Limine*.

On January 9, 2011, Bridgewater filed her Brief Of Complainant In Support Of Objections To Proposed Findings Of Fact, Conclusions Of Law And Order. Also on January 9, 2012, FACES filed Respondent's Brief in Support of Its Appeal From, And Objections To, The Proposed Findings of Fact, Conclusions of Law and Proposed Order.

On January 23, 2012, FACES filed Respondent's Notice Of Supplemental Authority. On January 26, 2012, Bridgewater filed Complainant's Response To Respondent's Notice Of Supplemental Authority.

Alpha Blackburn, Chairperson of the ICRC, presided over oral argument on the parties' objections on January 27, 2012. Other Commissioners present were David C. Carter (the Vice-Chairperson), Barry Baynard, Tehiji G. Crenshaw, John E. Garcia, Charles D. Gidney, and Steven A. Ramos. Elizabeth and Alyssa were present and were represented by counsel, Michael C. Healy, Esq., Staff Counsel. FACES was represented by counsel, Patrick T. Gillen, Esq. of Naples, Florida of the Thomas More Society. Also present on behalf of FACES were Virginia Zender ("Zender"), its President, and Vanessa Alexander and Margaret Beard.

Arguments of counsel were heard, questions were asked by members of the ICRC and the cause was taken under advisement.

Having carefully considered the foregoing and being duly advised in the premises, the ALJ finds and rules as follows.

1. A party objecting to a proposed decision by an ALJ has the burden of demonstrating an error that affected the result.
2. Neither Bridgewater nor FACES has met that burden, with the exception that the amount of damages awarded in the proposed decision is too high.

### **IT IS, THEREFORE, ORDERED**

1. Complainant's Objections To Proposed Findings Of Fact, Conclusions Of Law, And Order are **OVERRULED**.
2. Respondent's Appeal From Proposed Findings Of Fact, Conclusions Of Law And

Order is **OVERRULED**, except to the extent reflected below.

3. Conclusion Of Law 17 is modified to read as follows, with the change reflected in bold print:

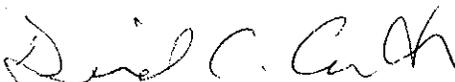
17. "Complainant's losses" include damages for pain and suffering and emotional distress. *Indiana Civil Rights Commission v. Adler*, 714 N.E.2<sup>nd</sup> 632 (Ind. 1999). Bridgewater has proven that Alyssa sustained pain, suffering, and emotional distress as a result of the proven, unlawful discriminatory practice. **\$2,500.00** is an appropriate amount in this case.

4. Paragraph 5 of the Order is modified to read as follows, with the change reflected in bold print:

5. **FACES** shall deliver to the ICRC a check payable to Alyssa in the amount of **\$2,500.00** within 30 days of the effective date of this Order.

5. In all other respects, the ICRC adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference .

### INDIANA CIVIL RIGHTS COMMISSION

  
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COMMISSIONER

  
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COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER

Dated: 27 January 2012

To be served by first class mail on the following parties and attorneys of record:

Elizabeth Bridgewater o/b/o Alyssa Bridgewater  
29516 Leonard Road  
Atlanta, IN 46031

FACES (Fishers Adolescent Catholics Enrichment Society, Inc.)  
c/o Virginia Zender, President  
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Fishers, IN 46038-0948

BOSE McKINNEY & EVANS LLP  
BY: David L. Swider, Esq.  
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Chicago, IL 60603

and to be personally served on the following attorney of record:

Michael C. Healy, Esq.; Staff Counsel  
Indiana Civil Rights Commission  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

STATE OF INDIANA  
CIVIL RIGHTS COMMISSION

DOCKET NO. EDha08100620  
DOCKET NO. EDrt08110681

ELIZABETH BRIDGEWATER o/b/o ALYSSA BRIDGEWATER,  
Complainant,

v.

FISHERS ADOLESCENT CATHOLIC ENRICHMENT SOCIETY,  
INC.;  
FILE DATED  
Respondent.

OCT 20 2011

Indiana State Civil Rights Commission  
**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

These consolidated cases have a history of some relevance that preceded the Hearing, In DOCKET NO. EDha08101620 ("the original complaint"), Complainant, Elizabeth Bridgewater ("Elizabeth") o/b/o Alyssa Bridgewater ("Alyssa") ("Bridgewater" when referring to the complainant), alleged that Respondent – Fishers Adolescent Catholic Enrichment Society, Inc. ("FACES") – violated the Indiana Civil Rights Law, IC 22-9-1-1, *et. seq.* ("the ICRL") by refusing to reasonably accommodate Alyssa's disability with respect to a Ball held by FACES in October of 2008. In DOCKET NO. EDrt08110681 ("the retaliation complaint"), Bridgewater claims that FACES committed unlawful retaliation by expelling her family from membership because of the filing of the original complaint.

After a Finding of Probable Cause in the original complaint, FACES moved to dismiss, arguing, among other things, that the Indiana Civil Rights Commission ("ICRC") could not exercise jurisdiction over FACES since it was a private religious organization of families who are home schooling their children. At about the same time, FACES filed a motion to quash a subpoena issued in aid of investigation of the retaliation complaint, making essentially the same argument. Both of these motions were fully briefed and

argued. The Administrative Law Judge ("ALJ") denied the motion to dismiss the original complaint and granted the motion to quash the subpoena in the retaliation complaint. The difference, according to the ALJ, was that the complaint about the menu at the Ball did not threaten to entangle the ICRC in matters that were religious in nature, while the complaint about the Bridgewater's membership did threaten such entanglement.

FACES filed an Appeal of the denial of the motion to dismiss and Bridgewater filed an objection to the granting of the motion to quash. The ICRC heard oral argument on both and ultimately ruled in favor of Bridgewater on both issues.

FACES then filed a Petition For Judicial Review in the Hamilton Superior Court. This Petition was dismissed on motion by the ICRC, the Court ruling that FACES had not established immediate and irreparable harm and had not exhausted its administrative remedies. The ICRC completed its investigation of the retaliation complaint and found probable cause to believe that a violation of the ICRL had occurred. Thereafter, these consolidated cases were scheduled for discovery, a Pre-Hearing Conference, and a Hearing.

That Hearing was held in these consolidated cases before the ALJ on September 29 and 30, 2010. Bridgewater was represented by counsel, Michael C. Healy, Esq., Staff Counsel and Joshua S. Brewster, Esq., Deputy Director. Elizabeth and Alyssa were present for the entire Hearing, except a brief period when Alyssa was absent from the room. FACES was represented by counsel, Patrick T. Gillen, Esq. of Naples, Florida and Peter Breen, Esq. of the Thomas More Society of Chicago, Illinois. Also present on behalf of FACES was Virginia Zender ("Zender"), its President.

In the way of preliminaries, the parties stipulated to the admissibility of the following exhibits: Complainant's Exhibit 1 ("CX\_"), CX2, CX3, CX4, CX5, CX6, CX7, CX8, CX9, CX10, CX11, CX12, CX14, CX15, CX16, CX19, CX21, CX22, CX23, CX25, CX27, CX28, CX29, CX32, CX33, CX34, CX35, CX36, CX37, CX39, CX43, CX44, CX45, CX46, CX48, CX50, CX51, CX56, Respondent's Exhibit 1 ("RX\_"), RX2, RX3, RX4, RX5, RX6, RX7, RX8, RX9, RX10, RX11, RX12, RX13, RX14, RX15, RX16, RX17, RX18, RX19, RX20, RX21, RX22, RX23, RX24, RX25, RX26, RX27, RX28, RX29, RX30, RX31, RX32, RX33, RX34, RX35, RX36, RX37, RX38, RX39, RX40,

RX41, RX42, RX43, RX44, RX45, RX46, RX47, RX48, RX50, RX51, RX52, RX53, RX54, RX55, RX56, RX57, RX58, RX59, RX60, RX61, RX62, RX63, RX64, RX65, RX66, RX67, RX68, RX69, RX70, RX71, RX72, RX73, RX74, RX75, RX76, RX77, RX78, RX79, RX80, RX81, RX82, RX83, RX84, RX85, RX86, RX87, RX88, RX89, RX90, RX91, RX92, RX93, RX94, RX95, RX96, RX97, RX98, RX99, RX100, RX103, RX104, RX105, RX107, AND RX108. All were admitted into evidence.

After opening statements were heard, Bridgewater called the following witnesses on September 29: William D. Nicholls ("Nicholls"), Jon Hankenhoff ("Hankenhoff"), April Rutherford ("Rutherford"), Diane Shelby Mitchell ("Mitchell"), Weston Bridgewater ("Wes"), Alyssa, and Elizabeth. Proceedings on the first day were recessed after the direct examination of Elizabeth.

On September 30, the remaining forms of examination of Elizabeth were completed. During the presentation of Bridgewater's case, CX17 was admitted without objection, CX13 was admitted over objection, and RX106 was identified but neither offered nor admitted into evidence.

After Bridgewater rested her case, FACES called Zender, Vanessa Alexander ("Alexander"), and Margaret Beard ("Beard") to testify on its behalf. During the presentation of FACES' case, RX49 was offered, but not admitted, into evidence; RX102 and CX41 were admitted into evidence over objection; CX42, CX55, and CX30 were admitted into evidence without objection; and RX107 was identified but neither offered nor admitted into evidence. Bridgewater elected not to present any evidence in rebuttal.

Both parties waived oral closing arguments. The ALJ took the cause under advisement. The ALJ also ordered the parties to submit what they suggested that the ALJ enter as Proposed Findings Of Fact, Conclusions Of Law, And Order on or before November 30, 2010 and that the parties could file briefs by the same date. This deadline was adjusted twice, the last time to December 17, 2010. ORDER ADJUSTING BRIEFING SCHEDULE (November 29, 2010); SECOND ORDER ADJUSTING BRIEFING SCHEDULE (December 29, 2010).

On December 17, 2010, Bridgewater filed Complainant's (Suggested) Proposed Findings Of Fact, Conclusions Of Law, And Order and her Brief Of Complainant. Also on December 17, 2010, FACES filed Respondent's Proposed Findings of Fact and Conclusions Of Law

## FINDINGS OF FACT

1. The issues to be resolved in these consolidated cases are as follows:
  - A. Was Alyssa discriminated against because of disability when she was denied an accommodation pertaining to the Masquerade Ball?
  - B. Whether FACES retaliated against Bridgewater by expelling the family from FACES shortly after the complaint was filed;
  - C. If either A or B is answered affirmatively, what relief should be awarded
  - D. FACES contends that Alyssa's condition is not a disability.
  - E. FACES denies that Bridgewater was discriminated against.
  - F. FACES contends that the ICRL does not require accommodation.
  - G. FACES contends that the expulsion occurred because of behavior by Elizabeth.
  - H. FACES maintains its position that the ICRC lacks jurisdiction over the subject matter because of the religious nature of FACES. This issue has already been decided by the ICRC and, evidence about the nature of FACES that goes beyond background will, upon proper objection, be excluded  
FOURTH PRE-HEARING ORDER ¶1 (September 21, 2010).
2. Alyssa, who is Elizabeth's daughter, was, at all relevant times, a resident of the state of Indiana. Alyssa turned 18 years of age in March of 2011.
3. Alyssa has a severe case of eosinophilic esophagitis ("EE").
4. In persons with EE, a type of white blood cell (an eosinophil) builds up in the esophagus as a reaction to foods, acid reflux or allergens. When that buildup is sufficiently severe, the eosinophils can inflame or injure the esophageal tissue, which can affect swallowing and/or breathing, an effect that can be sufficiently extreme to be

fatal. There is no currently known cure for EE. Alyssa's condition is sufficiently severe to be life threatening. CX14.

5. A person with EE, or a guardian responsible for them, has a need to identify and avoid the foods and allergens that can cause these reactions. That identification is easier said than done, and involves a lot of trial and error.

6. Alyssa's food allergies were fairly sensitive, in that they could be triggered by extremely small portions of foods to which she was allergic. The Bridgewater's practices included separate pots and pans and Alyssa's food was not to touch things to which she was allergic.

7. Among the foods to which Alyssa was allergic were chicken and soda pop.

8. The Bridgewaters are Catholic and had chosen to educate Alyssa through home schooling.

9. At some time in 2007, the Bridgewater family became members of FACES for the purpose of supplementing the education of both Alyssa and her brother Wes by having them participate in educational, social, and other group activities.

10. FACES is a religious-based not for profit corporation recognized as such under section 501(c)(3) of the Internal Revenue Code. FACES was formed by a group of parents of home schooled children and its purpose is to provide educational, spiritual, and social enhancement for those children by providing them with opportunities to interact with other adolescents that are not inherent in the home schooling experience. FACES admits family affiliates who desire a Catholic environment and who pay a modest annual fee. It meets once a week for some thirty weeks during the school year and periodically for limited social engagements, such as the Ball out of which this case arose. FACES has somewhere in the neighborhood of a dozen family affiliates. At all material times, the members of the Board of Directors of FACES were Zender, Alexander, and Beard.

11. At its weekly meetings, FACES offered classes in such subjects as Biology lab, Speech, French, English Literature, Government, Microsoft Powerpoint, Microsoft Word, E-Congress, and Skit Writing.

12. During the 2007-2008 academic year, at the suggestion of Elizabeth, FACES agreed to hold their Christmas luncheon at Chili's in Noblesville (instead of the Pizza Hut, the past site) because Elizabeth stated that Chili's had a special menu from which Alyssa could eat. This was done to accommodate Alyssa's allergies, even though holding the event at that venue imposed a financial burden, albeit a modest one, on other member families, some of whom were struggling due to the economic downturn. RX81.

13. Elizabeth reported to Alexander that, while Alyssa had had a great time at Chili's, she had developed a headache. Alexander, perhaps incorrectly, took this to mean she had had an allergic reaction and it was with that understanding that Alexander reported this information to the other board members of FACES.

14. Families who belonged to FACES were assigned to arrange a social activity for the kids once each year and Elizabeth was assigned the month of February 2008. For one reason or another, this activity did not occur.

15. Elizabeth's failure to perform her responsibility to schedule an event in February, 2008 disappointed Zender. FACES claims that there was discussion about whether the Bridgewater's should be allowed to join FACES for the 2008-09 year. In the end, they were allowed to join because the board members enjoyed having the Bridgewater children in the group, and they believed that Elizabeth Bridgewater would be able to make up for her failure in the coming school year.

16. Later in 2008, Elizabeth was assigned by FACES the responsibility of arranging for the menu and reserving the banquet hall for the 2008 Masquerade Ball to be held on November 2, 2008 at the Ritz Charles ("the Ritz"), a catering facility in Carmel.

17. When the Board had not heard of the progress toward arranging the Ball as quickly as they would have liked, Zender asked her daughter Emily, who was employed at the Ritz, to see what contacts, if any, Elizabeth had made with the Ritz. Elizabeth objected to this step and actually yelled at Alexander in expressing her anger. See RX30.

18. Elizabeth did contact Nicholls, the operator of the Ritz. In the first conversation between Elizabeth and Nicholls, she inquired whether the Ritz could prepare a

arrange a separate meal for Alyssa to which Nicholls replied "no problem".

19. Later, after discussing menu prices and options, Elizabeth decided upon the \$16 lasagna buffet. She sent an e-mail to Zender and Alexander in May of 2008 notifying them of that and also including the following sentence: "I also mentioned that Alyssa (and I) will have a separate meal (which I will pay for), because of her allergies." CX25.

20. The Board was not satisfied with the timing of these efforts or the results and decided to take over the responsibility from Elizabeth; consequently, Elizabeth was directed to stop contacting the Ritz regarding the event. RX30.

21. Later that summer, Elizabeth ran into Alexander at the Dolphin Club, after learning that the meal planned for the Ball featured chicken, and mentioned that Alyssa would need beef because she could not eat chicken. Alexander stated that that would make the boys jealous.

22. Following this incident, there were a number of communications between Elizabeth and the officers of FACES. These included the following:

A. On September 7, 2008, Elizabeth sent an e-mail to Zender and Alexander proposing that the Ritz serve Alyssa a steak or a hamburger. CX27. A few days later, on September 10, Zender replied, stating, among other things, that "[w]e are not going to make any special accommodations". CX28.

B. Elizabeth wrote back on September 15 asking if it would be acceptable if they brought Alyssa's meal and whether there would be an adjustment to the price. CX28. This time, Zender's response was more positive, indicating that it would be acceptable to bring Alyssa's meal, although there would be no adjustment in the ticket price. CX28.

C. A few weeks later, Elizabeth had a change of heart and sent Zender, Alexander and Beard an e-mail on October 8 at 12:40 P.M., requesting that the Board permit the Ritz to prepare a meal for Alyssa. This e-mail requested a response by 4:00 P.M. the next day and threatened that the family would "be forced to take this matter to another level." RX72.

D. The only response came from Beard who said, at 1:28 A.M. on October 9  
", ... I am offering to pay for all of your tickets to the Ball. I cannot do anything

about the food. This is the best I can do. It is a personal offer, not any official one....” The Bridgewaters declined Beard's offer. CX56.

23. On October 9, 2008, Bridgewater filed the original complaint.

24. By the time the Ball actually occurred, Elizabeth had arranged with Nicholls to have the Ritz prepare a special meal for Alyssa (and an identical meal for Elizabeth) and to serve them those meals at the Ball, even though both Elizabeth and Nicholls had been directed by FACES not to do so. The Bridgewaters paid an additional fee for these meals.

25. Alyssa did not have an adverse reaction of any sort to the food that she was served at the Ball.

26. FACES did provide a reasonable accommodation for Alyssa for the Ball. It may not have been the ideal accommodation and it was not the specific accommodation in Elizabeth's most recent request for accommodation, but it was a reasonable accommodation.

27. What was reasonable for FACES, a tiny organization putting on its very first Ball and being operated by volunteers for whom FACES was not their primary occupation, may not have been reasonable for a larger organization or for an organization operated by professionals.

28. FACES received the original complaint on October 15, 2010. CX4.

29. On or about November 6, 2008, Zender, on behalf of FACES, sent the Bridgewater family a letter advising that the Board had voted to remove the family as members of FACES. RX1, CX10. This letter itemized four reasons: (1) Elizabeth contacted a teacher about problems with an activity, instead of notifying the leaders of FACES, as required by the policies and procedures at section II, paragraph 1; (2) Elizabeth refused to leave a classroom when requested on October 30, 2008; (3) also on October 30, 2008, Alyssa had a tape recorder in the classroom; and (4) Elizabeth contacted the Ritz after being asked not to do so.

30. This letter gave the Bridgewaters an opportunity to be heard, orally or in writing, and the removal was to be effective on November 30, 2008. Various time limits were set in the letter. RX1, CX10.

The Bridgewaters chose to be heard, and to be heard in writing, and did so in a letter from Elizabeth dated November 13, 2008 RX2, CX11. The responses to the asserted reasons were: (1) Elizabeth's problem was not with the activity; she was concerned that FACES might retaliate against her children because of the filing of the original complaint; thus, she did not violate the policy; (2) Elizabeth did not refuse to leave a classroom; she left when the teacher arrived; (3) there was no rule prohibiting tape recording classes; and (4) Elizabeth conceded that she contacted the Ritz about arrangements for Alyssa but she contended that she did not contact the Ritz about arrangements for the group.

32. The Board responded, by a letter dated November 24, 2008. The Board maintained its position that the Bridgewaters' membership with FACES had ended. CX56.

33. Bridgewater has proven by a preponderance of the evidence that retaliation was one of the reasons for the family's expulsion from FACES. The decision to expel the Bridgewaters is too close in time to the filing of the complaint to consider it coincidental.

34. FACES has not proven by a preponderance of the evidence that it would have reached the same decision without consideration of the filing of the original complaint. FACES asserted 4 reasons for the Bridgewaters' expulsion.

A. One involved direct contact with a volunteer teacher, which does violate a FACES policy; however, it is hardly uncommon to contact the person with whom one has an issue. It is unworthy of credence that a violation of this policy would be a motive for expulsion.

B. The second reason cited was a refusal to leave a class when requested. The e-mail from the teacher that Zender solicited reflects that Elizabeth left when the teacher arrived, not that she refused to leave when requested. This, then, cannot have been a reason for the expulsion.

C. Another reason cited by FACES for expelling the Bridgewaters is Alyssa's use of a tape recorder. This behavior, like that involved with the first reason, is fairly typical behavior and in this instance, FACES does not cite a rule or policy it contravened. This reason, too, is unlikely to have caused the expulsion.

D. The fourth reason cited by FACES - contacting the Ritz after being told not to - does have some validity and would carry more weight if it were not so tied in with the event that led to the filing of the original complaint.

E. Moreover, FACES, having exaggerated the significance of some events and cited one that did not occur, did not cite any incidents that occurred before the filing of the original complaint. It appears as if FACES discovered these "problems" because they were looking to find reasons to rid themselves of the Bridgewaters, because of the filing of the original complaint.

35. There can be little doubt that Alyssa experienced emotional distress as a result of being dismissed from FACES because of the filing of the original complaint. She has been professionally treated for psychological conditions and has had medication prescribed. On the other hand, it cannot be denied that not all of that distress can be attributed to the dismissal. Some of that distress is doubtlessly attributable to how FACES dealt with the food issue at the Ball, which has been found to be lawful, and it is probable that some of her distress arose from factors in her life that have nothing whatsoever to do with FACES.

36. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

## **CONCLUSIONS OF LAW**

1. The ICRC has jurisdiction over the subject matter and the parties. See ORDER DENYING APPEAL (January 29, 2010) regarding the original complaint, ORDER SUSTAINING OBJECTIONS (January 29, 2010) regarding the retaliation complaint, and FOURTH PRE-HEARING ORDER ¶1 (September 21, 2010).

2. Elizabeth, Alyssa, and FACES are each a "person", as that term is defined in section 3(a) of the ICRL. IC 22-9-1-3(a).

3. Section 3(r) of the ICRL provides, in material part:

"Disabled" or "disabled" means the physical or mental condition of a person that constitutes a substantial disability. ...  
IC 22-9-1-3(r).

Alyssa's EE is a disability under that definition. It is permanent, serious, and affects a major, and daily, life activity – eating.

5. What constitutes a discriminatory practice is set out in the following subsection of the ICRL:

“Discriminatory practice” means:

(1) the exclusion of a person from equal opportunities because of ... disability...

...  
IC 22-9-1-3(1)(1).

6. Section 13(c) of the ICRL provides that “ [t]his section shall not be construed to require any **employer** to modify any physical accommodations or administrative procedures to accommodate a person with a disability.” IC 22-9-1-13(c) (emphasis supplied).

7. Section 13(c) of the ICRL clearly indicates that modifications to physical accommodations or administrative procedures to accommodate a person with a disability would be required of an employer if that section had not been enacted. It follows that, since there is no similar exception with respect to organizations engaged in activities relating to education, that FACES is required by the ICRL to accommodate persons with disabilities.

8. FACES met its burden of making a reasonable accommodation for Alyssa with respect to the Ball by agreeing to allow food to be brought from home.

9. FACES did not commit an unlawful discriminatory practice when it agreed to allow Bridgewater to bring a meal from home to the Ball, but did not agree to allow the Ritz to prepare a meal for Alyssa.

10. If the ICRC finds that a person has not committed an unlawful discriminatory practice, it must dismiss the complaint as against that person. IC 22-9-1-6(m).

11. Section 6(h) of the ICRL prohibits what is commonly referred to as “retaliation” and grants the ICRC the following power and duty:

(h) The commission shall prevent any person from ... expelling ... any other person because he filed a complaint....

IC 22-9-1-6(h).

other person because he filed a complaint....  
IC 22-9-1-6(h).

12. Bridgewater met her burden of showing unlawful retaliation by demonstrating that a mere 22 days after FACES received notice of the original complaint, the Bridgewater family was expelled from FACES.

13. Bridgewater proved by a preponderance of the evidence that the legitimate, non-retaliatory reasons asserted by FACES for the expulsion of the Bridgewaters were pretexts for unlawful retaliation.

14. FACES committed an unlawful discriminatory practice when it expelled the Bridgewater family because of the filing of the original complaint.

15. If the ICRC finds that a person has committed an unlawful discriminatory practice it shall issue an order requiring the person to cease and desist from that practice, and to take further affirmative action as will effectuate the purpose of the ICRL, which may include restoring Complainant's losses incurred as a result of the discriminatory treatment. IC 22-9-1-6(k)(A).

16. Generally, expenses of litigation are not included in damages unless there is a contract or statute expressly providing for their inclusion. *Bituminous Fire & Marine Ins. Co. v. Culligan Fyrprotexion, Inc.*, 437 N.E.2d 1360 (Ind. Ct. App. 1982); *Cooper v. High*, 262 Ind. 405, 317 N.E.2d 177 (1974).

17. "Complainant's losses" include damages for pain and suffering and emotional distress. *Indiana Civil Rights Commission v. Adler*, 714 N.E.2<sup>nd</sup> 632 (Ind. 1999). Bridgewater has proven that Alyssa sustained pain, suffering, and emotional distress as a result of the proven, unlawful discriminatory practice. \$5,000.00 is an appropriate amount in this case.

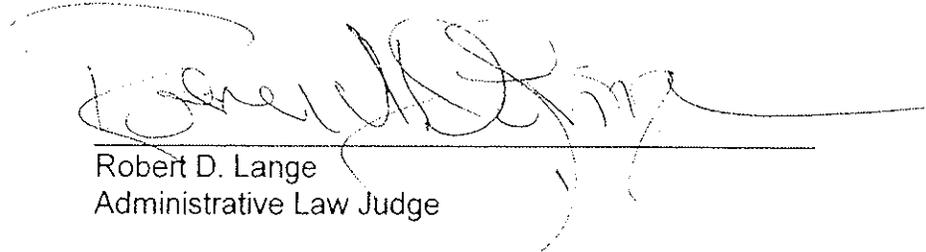
18. Administrative review of this proposed decision may be obtained by an interested and affected person who is not in default by the filing of a writing specifying with reasonable particularity each basis for each objection within 15 days after service of this proposed decision. IC 4-21.5-5-23-29(d).

19. Any Finding of Fact that should have been a Conclusion of Law is hereby adopted as such.

## ORDER

1. The original complaint is **DISMISSED**, with prejudice.
2. FACES shall cease and desist from retaliating against persons because they filed a complaint with the ICRC.
3. FACES shall post a link to these Findings Of Fact, Conclusions Of Law, And Order on all web sites on which they have communicated information regarding this case.
4. FACES shall offer reinstatement of the Bridgewater family to full membership, including all benefits.
5. FACES shall deliver to the ICRC a check payable to Alyssa in the amount of \$5,000.00 within 30 days of the effective date of this Order.
6. FACES shall deliver a copy of the foregoing check to the ICRC within 30 days of the effective date of this Order
7. This Order shall take effect immediately after it is approved and signed by a majority of the members of the ICRC, unless it is modified by the ICRC pursuant to IC 4-21.5-5-3-31(a), stayed the ICRC pursuant to IC 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated: 20 October 2011



---

Robert D. Lange  
Administrative Law Judge

To be served by first class mail this 20<sup>th</sup> day of October, 2011 on the following parties and attorneys of record:

Elizabeth Bridgewater o/b/o Alyssa Bridgewater  
29516 Leonard Road  
Atlanta, IN 46031

(Fishers Adolescent Catholic Enrichment Society, Inc.)  
c/o Virginia Zender, President  
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and to be personally served this 20<sup>th</sup> day of October, 2011 on the following attorney of record:

Michael C. Healy, Esq.; Staff Counsel  
Indiana Civil Rights Commission  
Attorney for Complainant Elizabeth Bridgewater o/b/o Alysia Bridgewater  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

and to be served by electronic mail this 20<sup>th</sup> day of October, 2011 on the following:

Indiana Civil Rights Commission  
c/o Jamal L. Smith, Executive Director