

STATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION

FANTA LEWIS,

Complainant,

vs.

CREATIVE HAIRSTYLING ACADEMY, n/k/a TRICOCI  
UNIVERSITY OF BEAUTY CULTURE,  
Respondent.

) Docket No.: EDsh11110786

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

On February 16, 2015, Hon. Noell F. Allen Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") entered her Proposed Findings of Fact, Conclusions of Law, And Order ("the proposed decision").

The Complainant and Respondent did not file objections to the ICRC's adoption of the proposed decision.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby 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.

Any party aggrieved by the ICRC's decision may seek judicial review with the Indiana Court of Appeals within thirty (30) days following the date of notification of such decision.



COMMISSIONER



COMMISSIONER



COMMISSIONER



COMMISSIONER

March 27, 2015

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FILE DATED

FEB 16 2015

INDIANA STATE  
CIVIL RIGHTS COMMISSION

STATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION

FANTA LEWIS,

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vs.

CREATIVE HAIRSTYLING ACADEMY, n/k/a TRICOCI

UNIVERSITY OF BEAUTY CULTURE,

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) Docket No.: EDsh11110786

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

The undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") conducted a hearing on this matter on September 25 and 26, 2014 in Crown Point, IN, and October 3, 2014 in Indianapolis, IN. Counsel, Douglas Grimes, Esq., represented Complainant, Fanta Lewis ("Lewis"). Counsel, Jennifer Kunze, Esq. represented Respondent, Creative Hairstyling Academy, n/k/a Tricoci University of Beauty Culture ("Tricoci"). Lewis testified on her behalf along with Sarah Evans, former student. Lisa Chambers, Human Resources Director, LaShann Williams, former student instructor, and Debbie Marias, General Manager, testified on behalf of Tricoci.

Complainant offered, and the ALJ admitted, into evidence Complainant's Exhibits 1-33. Respondent offered, and the ALJ admitted, into evidence Respondent's Exhibits 1-6.

Upon the conclusion of the hearing, the ALJ ordered the parties to submit what they suggest be the proposed findings of fact, conclusions of law and order by October 31, 2014. Complainant requested additional time to submit suggested proposed orders. The ALJ granted the request and extended the deadline to December 15, 2014. Respondent tendered its suggested proposed order on December 15, 2014. The Complainant tendered her suggested proposed order on December 18, 2014.

Having carefully considered all of the foregoing and being duly advised in the premises, the ALJ now proposes that the ICRC enter the following findings of fact, conclusions of law, and order.

### **FINDINGS OF FACT**

1. Ms. Lewis filed a complaint of discrimination with the ICRC against Tricoci because she alleged LaShann Williams, Instructor for Tricoci, sexually harassed her.

2. For all times relevant to Ms. Lewis' complaint, Ms. Lewis was a resident in the State of Indiana.

3. Tricoci is a cosmetology and beauty school located in Indiana and Illinois. The location subject to this matter is located in Highland, IN.

4. Ms. Lewis was enrolled as a full time student in the 13-month cosmetology program. Ms. Lewis successfully completed the program and graduated in February 2007. Thereafter, Ms. Lewis received a license from the State of Indiana to practice cosmetology.

5. Upon receiving her license, Ms. Lewis worked as a cosmetologist. Thereafter, she decided to further her career and become an instructor at a cosmetology school, ideally at Tricoci.

6. Therefore, Ms. Lewis enrolled in Tricoci's Cosmetology Student Instructor Training Program in January 2011. Tuition for the program typically costs \$3,900.00 but was offered to Ms. Lewis at no cost since she was a cosmetology student at the institution. Ms. Lewis was responsible for nominal fees such as administrative and book fees that totaled \$260.50. (See Complainant's Exhibit #17). The training program required 1000 hours of credit time to complete.

7. As a Student Instructor, Ms. Lewis trained cosmetology students under supervision and instruction by a Master Instructor, Mary Sabodor. Additionally, Ms. Lewis was required to work with other instructors in the building, including LaShann Williams. Ms. Williams did not have supervisory authority over Ms. Lewis, but Ms. Williams provided feedback and instruction to Ms. Lewis to facilitate the educational experience.

8. Ms. Lewis began the program with a positive outlook. She enjoyed arriving to class, wearing her smock, making up her face, and being a role model for the students.

9. However, things changed for Ms. Lewis in February. Ms. Lewis testified Ms. Williams began touching her inappropriately as early as February 2011. Ms. Lewis alleges

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Ms. Williams greeted her by rubbing her breasts on Ms. Lewis while pulling on Ms. Lewis' jacket. Further, Ms. Lewis alleges Ms. Williams telling Ms. Lewis she looks sexy. Ms. Lewis also alleges Ms. Williams smacked her backside with open hands hard. Ms. Lewis testified Ms. Williams harassed her daily until April 16, 2011.

10. However, Ms. Williams denies making these physical advances toward Ms. Lewis. Further, Ms. Williams was at another Tricoci location in Oak Brook, Illinois for approximately three weeks for training. Ms. Williams did not visit the Highland, IN campus for three weeks in March 2011. Therefore, the ALJ finds Ms. Williams did not harass Ms. Lewis repeatedly until April 16, 2011 as testified by Ms. Lewis.

11. Ms. Williams denied all of the allegations; however, she admitted to grabbing a comb out of Ms. Lewis' back pocket and hit her backside with the comb. Sarah Evans, cosmetology student during the time Ms. Lewis was a student instructor, observed Ms. Williams hit Ms. Lewis' backside.

12. On April 16, 2011, Ms. Lewis complained to Ms. Marias about Ms. Williams smacking her backside, among other incidents. Ms. Marias instructed Ms. Lewis to write a statement regarding what occurred. (Complainant's Exhibit #4).

13. In addition to complaining to Ms. Marias about Ms. Williams, Ms. Lewis filed a complaint with the Highland Police Department. Criminal charges were ultimately filed against Ms. Williams for battery. (See Complaint's Exhibit #1). Ms. Williams failed to appear for the initial hearing in the criminal case. As such, a bench warrant was issued against Ms. Williams. The criminal case was concluded when Ms. Williams paid \$300.00 restitution to Ms. Lewis. (*Id.*)

14. At that time, Ms. Marias, General Manager, counseled Ms. Williams for hitting Ms. Lewis with the comb. (See Complainant's Exhibit #14). Ms. Marias informed Ms. Williams that if the conduct continued, Tricoci would terminate Ms. Williams from her position.

15. Further, Ms. Marias restricted Ms. Williams' contact with Ms. Lewis. Ms. Marias moved Ms. Williams to a different classroom on a different floor in the building that is isolated from other students and teachers. Ms. Williams was restricted to the basic classes on the second floor of the 2-story building.

16. However, Ms. Lewis believed Tricoci treated her unfavorably due to her complaint against Ms. Williams. Ms. Marias prohibited Ms. Lewis from parking in the teacher section of the parking lot. There are roughly one hundred (100) parking spaces for students, teachers, and visitors. However, there are eight (8) parking spaces for faculty and staff. These spaces are located closest to the building. Occasionally, Ms. Lewis parked in the faculty/staff parking spaces. However, Ms. Lewis, as a *student* instructor, was never allowed to park in the faculty/staff section of the parking lot since she was a student. Ms. Lewis was not an employee of Tricoci or staff member. Ms. Marias reminded Ms. Lewis and other students several times of this policy.

17. Ms. Lewis, again, believed she was treated unfavorably by Tricoci when Ms. Marias suggested to Ms. Lewis to eat somewhere other than the teacher lounge to eat her lunch. Ms. Lewis was uncomfortable being around Ms. Williams, and Ms. Williams ate in the teacher lounge. Since Ms. Lewis was a student instructor, Ms. Marias attempted to accommodate Ms. Lewis by providing a classroom for teacher instructors to eat lunch other than the lounge. Ms. Lewis felt isolated since there was only one other student instructor.

18. Tricoci continued to make the environment comfortable for Ms. Lewis. Management at Tricoci instructed Ms. Williams to avoid all contact with Ms. Lewis. Further, Ms. Marias informed staff members at the Highland location to notify Ms. Marias if they noticed problems between Ms. Williams and Ms. Lewis. Ms. Marias was not aware of further incidents between Ms. Lewis and Ms. Williams after the meeting on April 16, 2011.

19. On May 25, 2011, Ms. Lewis was absent from school. The next day, Ms. Marias met with Ms. Lewis to discuss her absence among other concerns. Ms. Marias was concerned with Ms. Lewis discussing the issues regarding Ms. Williams with other students. During this conversation, Ms. Lewis expressed her concerns about the arrangement of student instructors eating in a different area other than the teacher lounge.

20. During the same meeting, Ms. Lewis became emotional, lashed out and expressed her anger at the failure of management to protect her from Williams. Ms. Lewis left Ms. Marias' office, slammed the door, and yelled at students while classes were in session. (See Complainant's Exhibits #12, 13)

21. Ms. Lewis left the campus and never returned.

22. The Respondent did not terminate Ms. Lewis from the program. The Respondent did not expel Ms. Lewis from the program.

23. Ms. Lewis did not seek reentry to the school's program.

24. Further, Ms. Lewis did not seek employment with the Respondent. The Respondent did not make an offer of employment to Ms. Lewis.

25. The ALJ finds Ms. Williams' behavior toward Ms. Lewis unprofessional and unbecoming of an instructor towards a student. However, the ALJ finds there is insufficient evidence to conclude the behavior was severe, pervasive, or created a hostile environment.

26. Further, the ALJ finds the Respondent and Ms. Marias responded to Ms. Lewis' concerns in a timely and appropriate manner by counseling Ms. Williams and separating Ms. Williams from Ms. Lewis by excluding Ms. Williams to the classrooms. Further, the Respondent tightened its policy of separating teachers from students by having designated parking and eating locations for each group. Tricoci's actions to Ms. Lewis were not unreasonable in light of the Ms. Lewis' complaint made on April 16, 2011.

### CONCLUSIONS OF LAW

1. The ICRC has jurisdiction over the subject matter and the parties.
2. Tricoci and Ms. Lewis are each a "person" as that term is defined in section 3(a) of the Indiana Civil Rights Law, IC 22-9-1-1 *et. seq.* ("the ICRL"). IC 22-9-1-3(a).
3. The ICRL prohibits discriminatory practice, which means the exclusion of or a system that excludes a person from equal opportunities because of sex. IC 22-9-1-3(l).
4. In this case, Ms. Lewis alleges Tricoci discriminated against her because of her sex. Specifically, Ms. Lewis alleges Tricoci created a hostile environment of sexual harassment from a Tricoci employee, LaShann Williams.
5. Generally, cases decided under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et. seq.* ("Title VII") are entitled to great weight in the interpretation of the ICRL. *Indiana Civil Rights Commission v. Culver Educational Foundation*, 535 N.E.2d 112 (Ind. 1989). The same will apply in Title IX sexual discrimination cases.
6. In sexual discrimination cases involving educational programs, sexual harassment is defined as harassment that is so severe, pervasive, and objectively offensive that it

effectively bars the victim's access to educational opportunity or benefit. *Gabrielle M. v. Park Forest-Chi. Heights*, 315 F.3d 817, 818 (7<sup>th</sup> Cir. 2003).

7. A determination of whether conduct rises to the level of sexual harassment is not measured in isolation, but rather, "whether an environment is sufficiently hostile or abusive" is judged by looking at "all the circumstances," including the frequency, severity, and whether it is physically threatening, humiliating, or a mere offensive utterance. *Fort Wayne Educ. Ass'n v. Fort Wayne Cmty. Sch.*, 753 N.E.2d 672, 678 (Ind. Ct. App. 2001).

8. In this case, Ms. Lewis proved by the preponderance of the evidence that Ms. Williams smacked Ms. Lewis' backside with a comb. There was testimony Ms. Williams also rubbed her breast against Ms. Lewis, pulled Ms. Lewis' jacket, told Ms. Lewis she was sexy and smacked her backside with open hands hard. However, Ms. Lewis presented insufficient evidence to corroborate these assertions.

9. The action of Ms. Williams smacking Ms. Lewis on the backside with a comb does not rise to the level of harassment that is so severe, pervasive and objectively offensive that it effectively bars Ms. Lewis access to educational opportunities.

10. Assuming, *arguendo*, this action is found to be so offensive, the ALJ further concludes Tricoci acted reasonably by counseling Ms. Williams and separating Ms. Williams from Ms. Lewis.

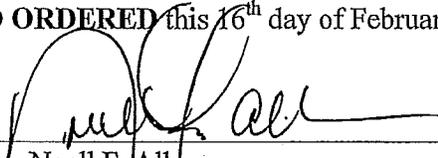
11. For these reasons, the ALJ concludes Ms. Lewis failed to meet her burden of proof, and her claim against Tricoci for gender-based discrimination must be dismissed.

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

**ORDER**

1. Ms. Lewis' complaint of discrimination is DISMISSED, with prejudice.

SO ORDERED this 16<sup>th</sup> day of February, 2015

  
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Hon. Noell F. Allen  
Administrative Law Judge  
Indiana Civil Rights Commission

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