Maine Human Rights Commission
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INVESTIGATOR'S REPORT
E13-0620

May 1, 2015

[redacted] (Vassalboro)

v.

[redacted] (Ipswich, MA)

I. Complainant's Complaint:

Complainant [redacted] alleged that Respondent subjected her to a hostile work environment on the basis of sex[2] and retaliated against her because she complained about the hostile work environment in the workplace.

II. Respondent's Answer:

[redacted] asserted that Ms. [redacted] was never treated differently than any other employee due to her sex, nor was she ever subjected to any kind of sexual harassment. [redacted] has no knowledge or information regarding any kind of retaliatory actions against her. [redacted] asserted that the decision to terminate Complainant's employment was made because of her violation of school standards, poor customer/student service, and antagonistic relationships with the school's management.

III. Jurisdictional Data:

1) Date of alleged discrimination: July 31, 2013.

2) Date complaint filed with the Maine Human Rights Commission ("Commission"): October 29, 2013.

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[1] Complainant's charge of discrimination names [redacted] as the Respondent; Respondent has provided that its legal name is Headhunter II School of Hair Design, Inc., d/b/a [redacted] Since Complainant's charge has not been amended, the original caption will be used, and Respondent will be referred to as "Respondent" or "[redacted] in this report.

[2] Complainant's charge of discrimination form checked the box for "sex" as well as "other", with "sexual harassment" written next to the "other" box. Complainant has since clarified that her "sex" claim is based on sexual harassment/hostile work environment, and it is therefore considered a part of her hostile work environment claim in this report.

3) Respondent employs 79 employees and is subject to the Maine Human Rights Act ("MHRA"), Title VII of the Civil Rights Act of 1964, as amended, the Maine Whistleblowers' Protection Act ("WPA") and state and federal employment regulations.

4) Complainant is represented by [redacted] Respondent is represented by [redacted]

5) Investigative methods used: A thorough review of the written materials provided by the parties and an Issues and Resolution Conference. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

6) [redacted] runs a school of massage, aesthetics, and cosmetology. Complainant was employed by [redacted] as an Aesthetics Instructor.

7) Third parties: On-site Director; Director of Education; Co-Owner 1; President; HR Manager; Head of Admissions; Aesthetics Instructor 2; Assistant Education Director; Cosmetology Teacher; Administrative Assistant; Aesthetics Student 1; Former Director of Education; Boyfriend.

IV. Development of Facts:

1) Complainant provided the following in support of her complaint:

   a) Complainant was employed by [redacted] as an Aesthetics Instructor at the Westbrook, Maine location from 2004 until July 13, 2013, when her employment was terminated. She believed that she accomplished her job duties satisfactorily.

   b) On-site Director and Complainant had been in a consensual sexual relationship for 13 years. In 2004, On-site Director encouraged Complainant to write an aesthetics program and direct it for [redacted] Complainant did so, and began her employment with [redacted] in 2004, teaching 20 hours per week. Over time, the Aesthetics Program at [redacted] grew from one class to five classes per year, and Complainant became a full-time employee there.

   c) For a period of time in 2012 - 2013, On-site Director spoke inappropriately at work about wanting to engage in a sexual relationship with a male [redacted] client, "Boyfriend". On-site Director discussed this with President and Co-Owner 1, explaining that she wanted to have a relationship with Boyfriend, but Complainant did not. She described this situation as an issue which was creating a strain on her domestic partnership with Complainant. Complainant was displeased with On-site Director's decision to discuss this private matter with President and Co-Owner 1, believing that On-site Director "had just handed them their walking papers".

   d) At the end of March, 2013, On-site Director engaged in a sexual relationship with Boyfriend. Complainant severed her personal relationship with On-site Director as a result.

   e) On-site Director struggled at work after the break-up, such that she left several times each day.

   f) On-site Director made it clear to Complainant that she wished to resume their prior intimate relationship, but Complainant wanted nothing more to do with On-site Director. It was at this point that Complainant's work environment changed.

g) From that point on, Complainant's work conditions quickly deteriorated. For example, Director of Education, under the direction of On-site Director, wrote Complainant up four times between March 27, 2013, and April 2, 2013. Complainant did not believe that the write-ups were valid.

h) Director of Education and Assistant Education Teacher met with Ms. [redacted] about the write-ups, which included discipline for calling On-site Director names. Complainant told Director of Education that these allegations were untrue. Complainant also inquired about why On-site Director wasn't being reprimanded for her inappropriate behavior and for discussing their personal issues at work.

i) After the meeting, Complainant went into the main office to get the cash for the clinic that evening. The cash was always kept in a box on On-site Director's desk, and the key was inside the desk. Because On-site Director was out, Complainant simply got the cash she needed. While in the office, Complainant asked Director of Education for Co-Owner 1's phone number.

j) Complainant phoned Co-Owner 1, explaining that there was an issue which involved On-site Director and herself which she wanted to discuss. Co-Owner 1 appeared to be sympathetic and told Complainant that she would come up and speak with everyone. Co-Owner 1 came the next day and had a meeting with On-site Director, Director of Education, Assistant Education Director, and Complainant. Co-Owner 1 stated that she wanted both On-site Director and Complainant to continue to work for [redacted] Institute, but that the school and the educational experience could not be compromised in any way. Co-Owner 1 told Complainant that the write-up pertaining to calling On-site Director names would be thrown away and that everyone would begin on a new slate.

k) Complainant also requested that Boyfriend not be allowed at the school anymore, explaining that she had seen On-site Director massaging him there. On-site Director initially denied this, but admitted it after Complainant stated that there was another witness. Co-Owner 1 told On-site Director that Boyfriend could no longer come to the school.

l) When Ms. [redacted] returned to school on April 2, 2013, Complainant met with Director of Education and Assistant Education Director in an interview room where she was handed four advising forms. One of them was the original write-up pertaining to her having allegedly called On-site Director names. Two of the advising forms pertained to going to On-site Director's desk, and the fourth related to maintaining professionalism while at [redacted]

m) Director of Education told her that the advising forms were not up for discussion and that she had until April 9, 2013, to respond. Complainant became emotional because it was obvious to her that On-site Director was furious with her because she had severed their personal relationship and because she had reported the massaging incident with Boyfriend to Co-owner 1.

n) It was clear to Complainant that On-site Director was in a position to make her life miserable at work. Complainant called Assistant Education Director to come to the teachers' room, where Complainant was crying. Complainant asked Assistant Education Director what was going on. Assistant Education Director said that she didn't know, but that she felt that Complainant was definitely being targeted. Assistant Education Director told her to go home instead and take it easy.

o) Complainant called Co-Owner 1 and asked why she was administered four advising forms, and complained that one of them was the one Co-Owner 1 had said would be thrown out. Co-Owner 1 responded by saying that Director of Education had accused Complainant of throwing a book at her

in the advising meeting. Complainant denied this, and told Co-owner 1 that if she spoke to Assistant Education Director, who was present at the time, she would learn that it wasn't true. Co-Owner 1 "said nothing and did nothing".

p) Complainant saw her doctor the next day. The doctor placed Complainant on medical leave from April 3, 2013 to April 19, 2013.

q) During her medical leave, Complainant spoke with HR Manager, who stated that she would investigate the situation. Complainant met with HR Manager during her medical leave and felt that the meeting was positive. HR Manager told Complainant that the four write-ups which had been administered on April 2, 2013, would not be placed in her personnel file. HR Manager had met with staff and administration. HR Manager's conclusion, communicated in an e-mail which she distributed to all involved parties, was that [redacted] was a toxic environment and that there was a separation between administration and staff. HR Manager felt that people were afraid of losing their jobs if they made complaints.

r) After the e-mail was sent, all communication between HR Manager and Complainant stopped. Complainant could no longer reach HR Manager by phone or e-mail.

s) Co-Owner 1 had sent an e-mail to HR Manager telling her alter her e-mail, and made HR Manager personally apologize to On-site Director and Director of Education in a meeting. In this same meeting, Co-Owner 1 also stated that the four write-ups at one time were illegal and that they needed to "start a paper trail" on Complainant. She directed those present to write Complainant up whenever possible. Assistant Education Director was present during that meeting.

t) From March 27, 2013, until July 31, 2013, Complainant was written up nine times, and was taken out of her class at least twice a week to be "advised" on absolutely nothing. Her hours were reduced and she was placed on probation.

u) For five weeks, Complainant was only allowed to work 27 to 28 hours per week, even though contracted schedule was for 35+ hours per week.

v) All parties were instructed to reduce everything to e-mail. The explanation was that if things were not being done efficiently, [redacted] needed to determine where the breakdown in the system was occurring with the goal of getting back on track.

w) On July 30, 2013, Complainant thought that On-site Director was acting very standoffish, and she asked if there was anything she needed to be worried about. That day, On-site Director was at Complainant's home with their son while Complainant was not home. A couple of days later, Complainant noticed that all of her e-mails from November 2012 to July of 2013 were erased, including those with Director of Education, On-site Director, Assistant Education Director, HR Manager, and Co-Owner 1.

x) On July 31, 2013, she was called out of class by Director of Education for a meeting with Director of Education and President, during which her employment was terminated.

y) One of Respondent's contentions was that Complainant engaged in misconduct on June 11, 2013, by allowing her students to take more than the allotted 30-minute lunch break. Complainant points to

the discussion of whether to discipline her for this incident as evidence of discrimination and retaliation.

i. In an e-mail written by President on Wednesday, June 12, 2013, which was distributed to Education Director, HR Manager, and Co-Owner 1 and copied to On-site Director, President stated: "It all depends if we are going to use the complaint or just go with the most recent class incident. If we are going to use their complaint, we need to resolve the issue of the discrepancy between what they stated and what the audit of the time clock showed." Education Director responded that they would use only the most recent incident.

ii. President asked the group whether the time sheets supported the charges and whether the practice that Complainant was being disciplined for was widespread because he wanted to be sure Complainant couldn't claim that others were doing the same thing. Director of Education responded that it was a common practice. President then responded by suggesting that they ask the student who complained to re-submit an altered complaint.

2) Respondent provided the following in response to Complainant's allegations:

a) Complainant worked for [redacted] for approximately nine years as an aesthetics teacher. Throughout her tenure, Complainant reported to the Education Director or Assistant Education Director. Those department directors reported to On-site Director.

b) The teachers work under a contract which identifies their core responsibilities. Among their responsibilities is the ability to engage with one another in a professional and supportive environment. The contract requires communicating all problems up the chain of command rather than across the chain of command or down the chain of command.

c) For the most part, [redacted] was satisfied with Complainant's knowledge and teaching skills, yet there were concerns about potentially condescending and unprofessional behavior on her part. Education Director had addressed these issues in a personal growth plan with Complainant two years prior to the events relevant to this charge. Ms. [redacted] had not been receptive to criticism at that time, leaving Education Director in an awkward position because she reported to On-site Director.

d) In March of 2013, Complainant ended her relationship with On-site Director. This news spread quickly around the school. Both women were emotionally upset about the break-up. The two women dealt with the end of the long-term relationship differently. Complainant attempted to disseminate anger among her colleagues toward On-site Director, while On-site Director did not try to get others to take sides.

e) Throughout the spring of 2013, there were a number of issues with Complainant's employment. These included an incident when she and her class took a very long lunch, which led to the students not having sufficient in-class hours that day; going outside the chain of command; and two written complaints from students about Complainant's teaching and lack of professionalism.

f) President reviewed the two student complaints, and decided – after months of workplace issues, almost all of which focused around Complainant – that the negatives outweighed the positives that Complainant brought to [redacted] Accordingly, he decided to terminate her employment.

g) [redacted] submitted sworn affidavits [redacted] employees and one student:

a) **On-site Director**: On-site Director avoided having to speak with Complainant at work. She was instructed to remove herself entirely from any oversight or review of Complainant's work, and she did so. On-site Director had no input or decision-making role in any discipline or counseling issued to Complainant. She signed a June 4th warning issued to Complainant at the express direction of President, who made the decision to issue the discipline, and requested that On-site Director sign it in lieu of Co-Owner 1, who was unavailable at the time. At no time between their breakup and Complainant's termination from employment did On-site Director make any sexually suggestive remarks or advances, or engage in unwelcomed touching. At no time did she suggest to Complainant that she wanted a sexual relationship with her or that she wanted to get back together. During that time period, she also never encouraged or directed any other representative [redacted] to fabricate reasons to discipline Complainant.

b) **Education Director**: Education Director had supervisory responsibility over Complainant from October of 2010 until the end of July 2013. In the spring of 2013, she was personally involved in the issuance of discipline to Complainant on two occasions. The first instance occurred during the last week of March, when she continued to discuss personal information related to the On-site Director in a derogatory manner in the presence of another employee. Education Director gave her a letter of advisement, the lowest level of discipline, only because Complainant wouldn't stop after Education Director repeatedly asked her to do so. The second event occurred in June of 2013, when she saw Complainant and her students taking a 55-minute lunch when only 30 minutes are allowed, and then misrepresented the class time on the time sheets. Education Director did not consult with On-site Director prior to issuing either of these forms of discipline. For the first one, she consulted with President, and for the second, she consulted with Co-Owner 1, who had Education Director first confirm that the allowing of overly long lunch breaks was not the norm among the school's teachers. No one encouraged her to seek out or fabricate reasons to discipline Complainant, nor did she encourage anyone else to do so.

c) **President**: President was the ultimate decision-maker regarding Complainant's discharge in 2013, and also had final approval over discipline issued to her in June 2013, consisting of a written warning and a notice of probation. President did not request, seek out, or receive guidance, recommendations, or opinions from On-site Director, but rather expressly excluded her from any role in the decision-making process. Complainant's gender played no role in his decisions and he never engaged in sexually suggestive remarks, advances, or unwelcome touching of Complainant.

Aesthetics Student 1: Aesthetics Student 1 was unhappy, uncomfortable, and singled out by Complainant, but she was afraid to come forward to make a complaint because Complainant had been there for a number of years and because she had an attitude. Eventually she brought her complaint to the Director of Education; she signed the complaint on July 30, 2013. No one in management solicited her to register a complaint, or to make up a complaint.

V. Analysis:

1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action. More particularly, "reasonable grounds" exists when there is enough admissible evidence, or there is reason to believe that formal litigation discovery will lead to enough admissible evidence, so that there is at least an even chance of Complainant proving in court that unlawful discrimination

occurred. Complainant must prove unlawful discrimination in a civil action by a "fair preponderance of the evidence." 5 M.R.S. § 4631.

2) In this case, Complainant alleged that she experienced a hostile work environment on the basis of her sex after she refused to continue a sexual relationship with her one of her supervisors, and that when she reported the harassment, she was retaliated against with unfounded discipline and, ultimately, with the termination of her employment. Respondent denied any discrimination or retaliation, and provided that Complainant was disciplined and discharged because of her poor performance and misconduct in the workplace.

Sex Discrimination: Hostile Work Environment/Sexual Harassment

3) The MHRA provides, in part, as follows: It is unlawful employment discrimination, in violation of this Act . . . for any employer to . . . because of . . . sex . . . discriminate with respect to the terms, conditions or privileges of employment or any other matter directly or indirectly related to employment. . . ." 5 M.R.S. § 4572(1)(A).

4) The Commission's Employment Regulations provide, in part, as follows:

> Harassment on the basis of sex is a violation of Section 4572 of the Maine Human Rights Act. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature constitute sexual harassment when:
>
> i. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; [or]
>
> ii. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual. . . .

Me. Hum. Rights Comm'n Reg., Ch. 3, § 3.06(I) (1) (July 17, 1999).

5) "Hostile environment claims involve repeated or intense harassment sufficiently severe or pervasive to create an abusive working environment." *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57. In determining whether an actionable hostile work environment claim exists, it is necessary to view "all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Id.* (citations omitted). It is not necessary that the inappropriate conduct occur more than once so long as it is severe enough to cause the workplace to become hostile or abusive. *Id*; *Nadeau v. Rainbow Rugs*, 675 A.2d 973, 976 (Me. 1996). "The standard requires an objectively hostile or abusive environment--one that a reasonable person would find hostile or abusive--as well as the victim's subjective perception that the environment is abusive." *Nadeau*, 675 A.2d at 976.

6) Accordingly, to succeed on such a claim, Complainant must demonstrate the following: (1) that she is a member of a protected class; (2) that she was subject to unwelcome sexual harassment; (3) that the harassment was based upon sex; (4) that the harassment was sufficiently severe or pervasive so as to alter the conditions of plaintiff's employment and create an abusive work environment; (5) that sexually objectionable conduct was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so; and (6) that some basis for

employer liability has been established. *Watt v. UniFirst Corp.*, 2009 ME 47, ¶ 22, 969 A.2d 897, 902-03.

7) The Commission's Regulations provide the following standard for determining employer liability for sexual harassment committed by a supervisor:

> An employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to physical or mental disability harassment. When the supervisor's harassment culminates in a tangible employment action, such as, but not limited to, discharge, demotion, or undesirable reassignment, liability attaches to the employer regardless of whether the employer knew or should have known of the harassment, and regardless of whether the specific acts complained of were authorized or even forbidden by the employer. When the supervisor's harassment does not culminate in a tangible employment action, the employer may raise an affirmative defense to liability or damages by proving by a preponderance of the evidence:
>
> a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and
>
> b) that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Me. Hum. Rights Comm'n Reg., Ch. 3, § 3.06(I) (2) (July 17, 1999).

8) The Law Court has held as follows: "The immediate and appropriate corrective action standard does not lend itself to any fixed requirements regarding the quantity or quality of the corrective responses required of an employer in any given case. Accordingly, the rule of reason must prevail and an employer's responses should be evaluated as a whole, from a macro perspective." *Watt v. UniFirst Corp.*, 2009 ME 47, ¶ 28, 969 A.2d 897, 905.

9) Complainant has established that she was subjected to a hostile work environment on the basis of sex, with reasoning as follows:

a. Here, shortly after On-site Director's infidelity was revealed, Complainant severed their long-term sexual relationship. Complainant credibly established that On-site Director made it clear that she wanted to resume the relationship, but Complainant refused.

b. After Complainant made it clear that she no longer wanted the sexual relationship with On-site Director, Complainant credibly established that the workplace dynamics changed significantly. Complainant's workplace became hostile and intolerable to the extent that she sought medical treatment. She was taken out of work and prescribed medication.

c. In early April, 2013, Complainant was presented with four advising forms; she never had received even a single such form in her entire tenure at [redacted] until then. Complainant credibly established that these repeated adverse employment actions by Respondent were the direct result of Complainant's refusal to resume her sexual relationship with her supervisor, On-site Director.

d. Complainant was reprimanded for calling On-site Director names, yet On-site Director talked for months about Boyfriend and her desire to have sex with him. This double standard supports Complainant's position that she was treated differently because she refused to resume her relationship with On-site Director.

e. HR Manager noted that the work environment was "toxic", supporting a finding that the work environment was both subjectively and objectively offensive. After HR Manager expressed this opinion in an e-mail, Co-Owner required her to revise her e-mail to eliminate parts of her conclusions about the work atmosphere.

f. After Complainant refused to reconcile with On-site Director, Co-Owner 1 directed management to "start a paper trail" about Complainant, and to write her up whenever possible. Management also conferred about how best to make student complaints against Complainant sustainable.

g. Complainant suffered tangible adverse employment actions as a result of the harassment. Her hours were reduced, and she was disciplined unfairly; ultimately, she was discharged. As a result, the affirmative defense of prompt and effective action is unavailable to Respondent. Even if it were, however, the record would not support the application of the defense. Complainant did report harassment to Respondent, but her supervisors, up to and including Co-Owner 1 and President, participated in the plan to find a way to discharge Complainant. Respondent did not take any action to stop the harassment Complainant experienced.

10) The claim of hostile work environment based upon sexual harassment is founded.

Retaliation

11) The MHRA makes it unlawful for "an employer . . . to discriminate in any manner against individuals because they have opposed a practice that would be a violation of [the MHRA] or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under [the MHRA]." 5 M.R.S. § 4572(1)(E).

12) The MHRA further defines unlawful discrimination to include "punishing or penalizing, or attempting to punish or penalize, any person for seeking to exercise any of the civil rights declared by this Act or for complaining of a violation of this Act. . . ." 5 M.R.S. § 4553(10)(D).

13) The MHRA also prohibits adverse employment action because of previous actions that are protected under the WPA. *See* 5 M.R.S. § 4572(1)(A). The WPA protects an employee who "acting in good faith . . . reports orally or in writing to the employer . . . what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States." 26 M.R.S. § 833(1)(A).

14) In order to establish a prima-facie case of retaliation in violation of the WPA, Complainant must show that she engaged in activity protected by the WPA, she was the subject of adverse employment action, and there was a causal link between the protected activity and the adverse employment action. *See DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 509, 514; *Bard v. Bath Iron Works*, 590 A.2d 152, 154 (Me. 1991).

15) In order to establish a prima-facie case of MHRA retaliation, Complainant must show that she engaged in statutorily protected activity, she was the subject of a materially adverse action, and there was a causal link between the protected activity and the adverse action. *See Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 20, 824 A.2d 48, 56; *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006). The term "materially adverse action" covers only those employer actions "that would have been materially adverse to a reasonable employee or job applicant. In the present context that means that the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination." *Burlington Northern*, 126 S. Ct. 2405.

16) One method of proving the causal link is if the adverse action happens in "close proximity" to the protected conduct. *See id.*

17) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in statutorily protected activity. *See Wytrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action. *See Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondent makes that showing, Complainant must carry her overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See id.* Complainant must show that she would not have suffered the adverse action but for her protected activity, although the protected activity need not be the only reason for the decision. *See University of Texas Southwestern Medical Center v. Nassar*, 2013 WL 3155234, *16 (2013) (Title VII); *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979) (MHRA discrimination claim).

18) Complainant has established a prima facie case by showing that she complained to HR Manager about sexual harassment, and was disciplined and discharged shortly thereafter. Comments made about creating a paper trail give rise to an inference of discrimination in this case.

19) Respondent proffered a nondiscriminatory reason for its actions: Complainant's performance merited discipline, and ultimately discharge, based on complaints from students and observed unprofessional behavior.

20) In the final analysis, Complainant has shown that she would not have been disciplined or discharged but for her protected conduct, with reasoning as follows:

a. Complainant was a valued and respected member of the [redacted] staff for more than nine years. Complainant credibly established that she had never been written up for anything prior to March, 2013, the month in which she broke off her relationship with On-site Director, and refused On-site Director's desire to resume their sexual relationship. Soon thereafter, Complainant was harassed, and she reported this harassment to her supervisors, including HR Director.

b. Complainant then was disciplined and finally discharged. Communications among management show that members of management worked together to create a paper trail which would support terminating Complainant's employment.

c. In addition, HR Director was required to amend her e-mail which expressed the opinion that the work atmosphere was toxic, and that staff members were afraid to complain because they believed there would be repercussions for doing so. This supports Complainant's allegation that Respondent retaliated against her for her complaints.

d. [redacted] asserts that the decision to terminate Complainant's employment was made because of her violation of school standards, poor customer/student service and her antagonistic relationships with the school's management. This strains credulity, given the fact that Complainant was employed for 10 years without incident, and without a single disciplinary write-up, then repeatedly disciplined in such close proximity to her complaints about sexual harassment.

21) Complainant has shown that she was disciplined and her employment was terminated in retaliation for her protected activity.

VI. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following findings:

1. There are **Reasonable Grounds** to believe that Respondent [redacted] is liable for subjecting Complainant [redacted] to sexually harassment;

2. There are **Reasonable Grounds** to believe that Respondent [redacted] Institute subjected Complainant [redacted] to retaliation in violation of the WPA and MHRA; and

3. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).

Amy M. Sneirson, Executive Director

Michèle Dion, Investigator