**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**
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**Bob Wise**
**Governor**

**Ivin B. Lee**
**Executive Director**

**VIA CERTIFIED MAIL-**
**RETURN RECEIPT REQUESTED**

August 26, 2003

Beverly L. Wattie on behalf
of Krystal Wattie
229 Morris Dr.
Montgomery, WV 25136

Barbara Cobb
1125 Lyndale Dr.
Charleston, WV 25314

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Paul R. Sheridan
Deputy Attorney General
Civil Rights Division
L & S Bldg., 2nd Floor
812 Quarrier St.
PO Box 1789
Charleston, WV 25326-1789

Re: Wattie v. Barbara Cobb
PAR-282-01

Dear Parties:

Enclosed please find the final decision of the undersigned administrative law judge in the above-captioned matter. Rule 77-2-10, of the recently promulgated Rules of Practice and Procedure Before the West Virginia Human Rights Commission, effective January 1, 1999, sets forth the appeal procedure governing a final decision as follows:

"§77-2-10. Appeal to the commission.

10.1. Within thirty (30) days of receipt of the administrative law judge's final decision, any party aggrieved shall file with the executive director of the commission, and serve upon all parties or their counsel, a notice of appeal, and in its discretion, a petition setting forth such facts showing the appellant to be aggrieved, all matters alleged to have been erroneously decided by the administrative law judge, the relief to which the appellant believes she/he is entitled, and any argument in support of the appeal.

10.2. The filing of an appeal to the commission from the administrative law judge shall not operate as a stay of the decision of the administrative law judge unless a stay is specifically requested by the appellant in a separate application for the same and approved by the commission or its executive director.

10.3. The notice and petition of appeal shall be confined to the record.

10.4. The appellant shall submit the original and nine (9) copies of the notice of appeal and the accompanying petition, if any.

10.5. Within twenty (20) days after receipt of appellant's petition, all other parties to the matter may file such response as is warranted, including pointing out any alleged omissions or inaccuracies of the appellant's statement of the case or errors of law in the appellant's argument. The original and nine (9) copies of the response shall be served upon the executive director.

10.6. Within sixty (60) days after the date on which the notice of appeal was filed, the commission shall render a final order affirming the decision of the administrative law judge, or an order remanding the matter for further proceedings before an administrative law judge, or a final order modifying or setting aside the decision. Absent unusual circumstances duly noted by the commission, neither the parties nor their counsel may appear before the commission in support of their position regarding the appeal.

10.7. When remanding a matter for further proceedings before an administrative law judge, the commission shall specify the reason(s) for the remand and the specific issue(s) to be developed and decided by the administrative law judge on remand.

10.8. In considering a notice of appeal, the commission shall limit its review to whether the administrative law judge's decision is:

10.8.a. In conformity with the Constitution and laws of the state and the United States;

10.8.b. Within the commission's statutory jurisdiction or authority;

10.8.c. Made in accordance with procedures required by law or established by appropriate rules or regulations of the commission;

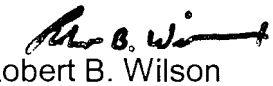
10.8.d. Supported by substantial evidence on the whole record; or

10.8.e. Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10.9. In the event that a notice of appeal from an administrative law judge's final decision is not filed within thirty (30) days of receipt of the same, the commission shall issue a final order affirming the judge's final decision; provided, that the commission, on its own, may modify or set aside the decision insofar as it clearly exceeds the statutory authority or jurisdiction of the commission. The final order of the commission shall be served in accordance with Rule 9.5."

If you have any questions, you are advised to contact Ivin B. Lee, Executive Director of the commission at the above address.

Yours truly,



Robert B. Wilson
Administrative Law Judge

RBW/mst

Enclosure

cc: Ivin B. Lee, Executive Director
Lew Tyree, Chairperson

**BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**BEVERLY L. WATTIE, on behalf of KRYSTAL WATTIE, a minor,,**

**Complainant,**

**v.** **DOCKET NUMBER: PAR-282-01**

**BARBARA COBB,**

**Respondent.**

## FINAL DECISION

A public hearing, in the above-captioned matter, was convened on January 14, 2003, in Kanawha County, in Conference Room B at the office of the West Virginia Human Rights Commission, 1321 Plaza East, Charleston, West Virginia, before Robert B. Wilson, Administrative Law Judge.

The complainant, Krystal Wattie, a minor at the time the complaint was filed, appeared in person and by Beverly L. Wattie on her behalf, and by counsel for the Commission, Paul R. Sheridan, Deputy Attorney General, for the Office of the West Virginia Attorney General, Civil Rights Division. The respondent, Barbara Cobb, appeared in person and by her representative, James M. Haviland, Esquire with the law firm of Crandall, Pyles, Haviland & Turner, LLP. The Public Hearing was reconvened from time to time through February 12, 2003, and briefs were submitted by the parties through July 9, 2003.

All proposed findings submitted by the parties have been considered and reviewed in relation to the adjudicatory record developed in this matter. All proposed conclusions of law

and argument of counsel have been considered and reviewed in relation to the aforementioned record, proposed findings of fact as well as to applicable law. To the extent that the proposed findings, conclusions and argument advanced by the parties are in accordance with the findings, conclusions and legal analysis of the administrative law judge and are supported by substantial evidence, they have been adopted in their entirety. To the extent that the proposed findings, conclusions and argument are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or necessary to a proper decision. To the extent that the testimony of the various witnesses is not in accord with the findings stated herein, it is not credited.

**A.**

## FINDINGS OF FACT

1. Respondent, Barbara Cobb, is being sued in her individual capacity as a teacher at Riverside High School in Kanawha County, where Complainant alleges Respondent engaged in racial harassment of, as well as retaliation against, her minor child KW while she attended Riverside High as a student . Tr. Vol. I, pages 11-13; Complaint.

2. Complainant, BW, is the mother of KW, a minor student at the time the complaint was filed, on whose behalf the complaint was instituted.

3. Complainant KW is an African American eighteen year old resident of Montgomery, West Virginia, at the time of the Public Hearing, attending Riverside High

School in Kanawha County, West Virginia from ninth grade through her senior year. Tr. Vol. I, pages 9-10.

4. PB testified credibly that anytime the Complainant KW asked a question or talked like other students, there would be a big argument with Respondent teacher and KW would be sent to the office. PB and RT two other African American students would be fussed at but were not sent to the office. When Complainant missed class, Respondent refused to give her the make up work until another teacher or administrator would get it from Respondent to give to Complainant. Once when PB an African American student asked Respondent if she had a Post it Note, Respondent took a pad out from her desk and said, "yes, I have some, but you'll have to ask someone else for it", and placed it back in her desk. Tr. Vol. I, pages 203, 204 and 206-209.

5. Principal Clendenin admitted that Respondent was in conflict with the African American students in her second semester 9th Grade English Class, and that his suggestion to ease the conflict was to remove the African American students from Respondent's class. Complainant's mother refused to have KW removed from the class; however, AW, elected to be removed from the Respondent's class. Tr. Vol. II, pages 95 and 96.

6. Assistant Principal Potter testified credibly that Respondent sent discipline slips for Complainant KW for being part of a group of African American students who were too loud and disruptive in the hallways. Ms. Potter had many conversations concerning this problem with Respondent. Ms. Potter stated that Complainant was a top notch student but

engaged in typical 9th grade behavior . Worse than other students? No. Stand up strongly for what she believes? Yes. Complainant KW admitted that the noise in the hallways was brought to her attention by other teachers and administrators, and that these warnings did not illicit the strong reactions that she had toward Respondent, but noted that none of the others continually sent her to the office, rather simply warned her and the other students concerning the noise level in the hallways. Tr. Vol. I, pages 61, 62, 163-165 and 173.

7. Complainant KW testified credibly that Respondent posted a grade sheet with grades missing for assignments that she had turned in which were graded and returned to her. When KW attempted to correct the problem, Respondent repeatedly told her that it was "not the time to bring that up". During the first nine weeks that Respondent taught, according to Principal Clendenin KW had a B in the Respondent's 9th, Grade 2nd Semester English Class, even though she was number one in the class as far as the graded assignments that were posted. Complainant KW earned an A from the teachers that completed teaching the course when Respondent had to undergo medical treatment for a very serious health matter. Tr. Vol. I, pages 16, 20 and 21.

8. Complainant was repeatedly kicked out of classroom for being tardy. Whenever AW, one African American student in the class did something wrong, Respondent would refer to all the African American students in the class. Respondent would constantly send AW and KW to the office, frequently confusing the two, i.e. sending KW to the office when AW had committed the offense for which that discipline was being imposed. KW testified

credibly that the African American students were singled out for harsher treatment by Respondent. Tr. Vol. I, pages 17-20.

9. On one occasion, Respondent locked Complainant KW out of her classroom, for being tardy. Respondent called AW's mother in front of the classroom full of students because AW had attempted to unlock Respondent's classroom door and admit KW. Respondent stated during the conversation that the students could hear, that she (Respondent) "was calling to help her with AW and I'm getting the same thing from you that I'm getting from your child." On another occasion, Respondent made the comment that her boyfriend said "it's just in your all's nature to be loud ", referring to the African American students. Tr. Vol. I, pages 26, 27 and 29.

10. In another incident, Complainant was to go to the library as a class to do some research for a paper. Complainant asked for the syllabus and the rubric for grading the notebook which the students were to hand in for extra credit. This precipitated a big argument between Complainant and Respondent, with the Complainant being taken to the office. Tr. Vol. I, pages 22 and 23.

11. According to KW's mother, these problems caused the Complainant to be miserable and dread going to school. She requested a meeting with Respondent, Principal Clendenin and her child to discuss these situations. During that meeting, Respondent indicated that KW was rude and frequently absent. Her mother indicated that she would stop being tardy and come prepared for class. Neither KW nor her mother indicated they thought

the Respondent was engaged in racially motivated behavior at the initial meeting. However, KW's perception changed over time as she noted that Respondent seemed to have problems with all the African American students and not just KW and her friend. A second parent teacher conference was held within the first nine weeks of the second semester, with all four of KW's teachers, and her academic performance was fine, and KW's mother, BW did not address Respondent's classroom environment with Respondent on that occasion. Tr. Vol. I, pages 69-72, 84, 97 and 98.

12. The following year, Respondent was recovering from her serious health problems to the point that she returned to teaching. KW was not in her class at that point and thereafter, however, problems between the two escalated that year. These problems began with Respondent's duties of hall monitoring and Complainant's being harassed for being in the hallway during jump start or being loud. In one incident, Complainant was being taken to the office by Respondent, and while passing a classroom where KW's mother, BW, was working with Upward Bound students, Respondent commented to BW "are you going to let your daughter talk like this to me?" Respondent apparently attempted to enter the office of the administrators to discuss her discipline of KW, but she was not admitted. When BW was done with her Upward Bound meeting she went down to the office and got her daughter. The two went into Respondent's classroom to attempt to discuss setting up a meeting with her, and a confrontation between the three ensued, with both mother and daughter saying words to the effect that Respondent was behaving like a two year old, or acting like a student.

Respondent felt that they were disrupting her classroom and called the office to have them removed. BW and KW were told by an administrator not to ever enter a teacher's classroom while class was being conducted. Tr. Vol. I, pages 30-37; Vol. II, pages 158-176.

13. When Complainant and her African American friends were attending football games, Respondent complained that they were staring at her and on one occasion, that she saw KW mouth the word "you B****". Principal Clendenin threatened her with expulsion and instructed them to remain by the gate away from Respondent. Tr. Vol. I, pages 38, 39, 210 and 211.

14. At a school play one evening, Complainant entered the bathroom where Respondent was in a stall. She was pacing back and forth talking on the phone and Respondent claims she was blocking her egress. The two got in a heated verbal exchange which drew several people to the scene including one of the administrators. During the course of the confrontation, Complainant, KW evidently shouldered Respondent. Respondent had to be pulled out of the restroom by a fellow teacher. Respondent called the Sheriff's Department and attempted to have Complainant, KW arrested and prosecuted for assault and battery. Tr. Vol. I, pages 40-43; Vol. II, pages 52-58 and 206-218; Vol. III, pages 64-72.

15. In another incident, Respondent claimed that Complainant and her friends were obstructing the hallway she was attempting to go down, and a heated verbal exchange occurred with both Respondent and Complainant in each other's face. Ms. Hopkins, a teacher, separated the two, but Respondent came back and said "it's a good thing this lady

came along when she did, or I don't know what would have happened." Tr. Vol. II, pages 9 and 10.

16. During the course of these events, Respondent had gone to Superintendent Duerring with her complaints concerning KW. As a result of the investigation, the Central Office suggested that Respondent not have contact with KW. Principal Clendenin suggested, but did not order, that Respondent take a break from hallway monitoring duties and that she not have contact with KW. Respondent did not abide by these suggestions. Ultimately, Complainant was assigned an Aide to escort her in the hallways on first floor, to avoid further incidents between Respondent and Complainant. Tr. Vol. I, pages 43 and 44; Vol. II, page 92.

17. The only other incident where KW was sent to the office for being in the hallways was by Respondent's friend, teacher, Ms. Cavendar-McNeil. Ms. Cavendar-McNeil told her to move along and when KW did not, Ms. Cavendar-McNeil grabbed her by the arm, resulting in KW yelling ,"don't touch me." Tr. Vol. II, pages 19 and 20.

18. Another incident occurred one day when BW was walking down the hall on a day when she had Upward Bound business at Riverside. Respondent came out of her classroom and confronted BW because she was not wearing her visitor pass. Tr. Vol. I, pages 11-113; Vol. II, pages 201-204.

19. Respondent, throughout her testimony, made repeated reference to the great fear of violence that she faced from both Complainant and her mother. Her fear stemmed from

the "battery" at the play; the "invasion" of her classroom by the two; and a further hearsay threat by Complainant that she would "take care of [her] and the wig on [her] head at the Town Center." Tr. Vol. II, pages 326-328; Vol. III, pages 50-56, 89.

20. Respondent constantly harangues everyone and anyone concerning Complainant KW, and bristles at any honors she receives. In one incident, she intimated that Ms. Qazi, who mentors for the Health Science Technology Academy, should remove KW from that program because she was assaulted by KW at the play. During this confrontation between the two teachers, Respondent got in her face and stated that, "whoever taught [Ms. Qazi] English [had] done [her] a disservice." Ms. Qazi is a Pakastani native. Respondent has since been suspended from teaching duties for insubordination when she challenged the procedures which resulted in KW being honored as participant in College Summit, and bristles at her being named one of the outstanding African American students at Riverside High School. Complainant currently is a 4.0 student and caries a 3.6 cumulative GPA for her high school career as of the date of the hearings in this matter, yet Respondent begrudges KW's academic success. Tr. Vol. I, pages 47, 48, and 195-198; Vol. III, pages 35-39, 174,175, 179 and 180.

21. It is a further revealing comment by Respondent, that certain students were allowed to come later during jump start and be in their lockers, but that this applied only to "good students". The Complainant was continually being sent to the office for being at her locker during the jump start period. Respondent's attitude of resentment toward KW's

mother BW was clearly revealed both by her testimony and demeanor. Tr. Vol. II, pages 299 and 300; Vol. III, pages 28 and 62.

22. The undersigned finds, as a matter of fact, that Complainant was chronically tardy to Respondent's class; and, that she and her group of African American friends, were frequently very loud and disruptive in the hallways at Riverside High School during her 9th grade year. It is further found that Complainant was combative and confrontational with Respondent, and that she took advantage of the situation concerning the administration's suggestions to Respondent that she refrain from contact with Complainant, to goad Respondent. KW would block the hall when Respondent tried to pass. KW muttered things like "just let her say something." She would generally run her mouth about Respondent to her peers so that Respondent would know she was being talked about by KW and her friends. Tr. Vol. II, pages 22-24,198 and 199; Vol. III pages 133-135, 148-150, 192-194 and 203.

23. Notwithstanding the foregoing, it is found, as a matter of fact and of law, that Respondent created a racially hostile environment for Complainant, which interfered in the Complainant's enjoyment of equal access to the public accommodation of public schooling.

24. Complainant was miserable as a result of the racially hostile environment created by Respondent and suffered humiliation, embarrassment, emotional distress and loss of personal dignity. Tr. Vol. I, pages 97 and 98.

**B.**

**DISCUSSION**

West Virginia Code § 5-11-9(6)(A) of the West Virginia Human Rights Act, makes it an unlawful discriminatory practice for any person to, " . . . Refuse, withhold from, or deny to any individual because of his or her race, . . . either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of the place of accommodations." The term "discriminate" or "discrimination" as defined in W.Va. Code § 5-11-3(h) means to "exclude from, or fail or refuse to extend to, a person equal opportunities because of . . race . ." The West Virginia Supreme Court of Appeals has addressed the issue of discrimination in places of public accommodation in the case of K-Mart v. West Virginia Human Rights Commission, 181 W.Va. 473, 383 S.E.2d 277 (1989).

1. In order to make a prima facia case of discrimination in a place of public accommodation, the complainant must prove the following elements:

(a) that the complainant is a member of a protected class;

(b) that the complainant attempted to avail himself of the "accommodations, advantages, privileges or services" of a place of public accommodation; and,

(c) that the "accommodations, advantages, privileges or services" were withheld, denied, or refused to the complainant.

2. The complainant's prima facia case can be rebutted if the respondent presents a nondiscriminatory reason for the action in question sufficient to overcome the inference of discriminatory intent.

3. The complainant can still prevail if it can be shown that the reason given by the respondent is pretext for a discriminatory motive.

A discrimination case may be proven under a disparate treatment theory which requires that the complainant prove a discriminatory intent on the part of the respondent. The complainant may prove discriminatory intent by a three step inferential proof formula first articulated in McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); and, adopted by the West Virginia Supreme Court in Shepardstown Volunteer Fire Department v. West Virginia Human Rights Commission, 172 W.Va. 627, 309 S.E.2d 342 (1983). Under this formula, the complainant must first establish a prima facie case of discrimination; the respondent has the opportunity to articulate a legitimate nondiscriminatory reason for its action; and finally the complainant must show that the reason proffered by the respondent was not the true reason for the decision, but rather pretext for discrimination.

The term "pretext" has been held to mean an ostensible reason or motive assigned as a color or cover for the real reason; false appearance, or pretense. West Virginia Institute of Technology v. West Virginia Human Rights Commission, 181 W.Va. 525, 383 S.E.2d 490 (1989). A proffered reason is pretext if it is not the true reason for the decision. Conaway

v. Eastern Associated Coal Corp., 358 S.E.2d 423 (W.Va. 1986). Pretext may be shown through direct or circumstantial evidence of falsity or discrimination; and, where pretext is shown, discrimination may be inferred. Barefoot v. Sundale Nursing Home, 193 W.Va. 475, 457 S.E.2d 152 (1995). Although, discrimination need not be found as a matter of law. St. Mary's Honor Society v. Hicks, 509 U.S. ___, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993).

There is also the "mixed motive" analysis under which a complainant may proceed to show pretext, as established by the United States Supreme Court in Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989); and recognized by the West Virginia Supreme Court in West Virginia Institute of Technology, supra. "Mixed motive" applies where the respondent articulates a legitimate nondiscriminatory reason for its decision which is not pretextual, but where a discriminatory motive plays a part in the adverse decision. Under the mixed motive analysis, the complainant need only show that the complainant's protected class played some part in the decision, and the employer can avoid liability only by proving that it would have made the same decision even if the complainant's protected class had not been considered. Barefoot, 457 S.E.2d at 162, n. 16; 457 S.E.2d at 164, n. 18.

In Holstein v. Norandex, Inc., 194 W.Va. 727, 461 S.E.2d 473 (1995), the West Virginia Supreme Court held that a cause of action under the Human Rights Act "may properly be based upon an allegation that the defendant employee aided or abetted an

employer engaging in unlawful discriminatory practices." See also Marshall v. Manville Sales Corp., 6 F.3d 229 (4th Cir. 1993).

The Complainant minor child, KW, is a member of a protected class as she is an African American. The Complainant, KW, attempted to avail herself of the public accommodation of attending public schools. Although she was not denied attending public school at Riverside High School, certain advantages, privileges and services were denied or curtailed in a fashion which created a racially hostile environment for KW. This came in the form of disproportionate imposition of discipline by the Respondent teacher, Barbara Cobb, both while KW was a student in her class and thereafter. Respondent also denied credit for work turned in by KW and gave her a grade of B over the first nine weeks, when her assignments graded out at A level work; which grade she ultimately earned from the teachers who completed teaching the course for Respondent, Ms. Cobb, following her difficult and grave health situation. Respondent has advanced a legitimate explanation for these actions, that KW was being appropriately disciplined for various behavioral shortcomings by Respondent. The Complainant minor child, KW, has demonstrated by a preponderance of the evidence that these explanations are in some instances pretextual for discrimination; and, in other instances, although they played some part in the decisions made and actions taken by Respondent, Respondent has not demonstrated that such actions would have been undertaken absent a discriminatory motive by Respondent, under the mixed motive analysis.

There is no dispute that KW was chronically tardy for class and that she and her African American friends were loud and disruptive in the hallways during jump start and class changes. The undersigned finds that discipline imposed for such instances during KW's first year were to some extent appropriate. There are a number of facts which support the undersigned's finding as a matter of fact that, Respondent acted in a racially disparate fashion in the teaching of her 9th grade English class during the second semester. Respondent's consistent refusal to provide KW with make up assignments and her failure to accurately record and grade KW's work is indicative of racial bias. The Respondent's refusal to give PB a post it note for locker checks is impossible to explain except as racial hostility. Respondent continually was sending both AW and KW to the office for offences which did not result in white students being disciplined similarly. The Respondent further made racially stereotypical comments to the class regarding the propensity for African Americans to be loud. During the course of the public hearing, Respondent made several references to fear of violence from KW and BW which simply had no explanation other than as a stereotype of African Americans generally. Further, Respondent inappropriately called AW's mother from the classroom and humiliated both AW and her mother with disparaging comments. Although, two other African American students in her class were not continually being sent to the office by Respondent during the 1999 2nd Semester 9th Grade English Class, even these students were constantly being "fussed at" for things that white students were not. Whether or not Respondent, Ms. Cobb, consciously believes that she is racially

discriminating, the fact that all four African American students were given the "opportunity" to remove themselves from her class, clearly indicates that a racial issue existed in fact for her students, notwithstanding that only one of the four elected to leave.

The complaint filed in this matter is on behalf of the student, KW and therefore Respondent's acts of discrimination toward her mother, BW are not subject to any relief under this action. Nevertheless, her actions and comments relative to BW are probative of racially motivated bias of Respondent. What is it that bothers Respondent so about BW's presence at Riverside High School for her Upward Bound duties?

This case is very disturbing because of the escalation of hostility between the parties particularly during the 10th Grade year for KW. It is further complicated by the fact that regardless of any racial bias by Respondent, KW herself engaged in inexcusable antagonistic behavior toward Respondent that year as well. KW would block the hall when Respondent tried to pass. KW muttered things like "just let her say something." She would generally run her mouth about Respondent to her peers so that Respondent would know she was being talked about by KW and her friends. KW would not back down when confronted by Respondent and would yell, rant and rave back in Respondent's face. On the other hand, Respondent has gone completely out of reason with her actions toward Complainant, KW. Respondent has no excuse for having called 911 attempting to have KW charged with assault during the school play simply because KW shouldered Respondent. It is noted that Respondent has a propensity to get in peoples faces during such confrontations, as she was

on this occasion and many others, and with Ms. Qazi on another occasion. To the extent being shouldered technically constitutes a battery, Ms. Cavendar-McNeil admitted to grabbing KW by the arm, which is similarly technically a battery. In neither instance is criminal prosecution remotely appropriate. Respondent couldn't leave well enough alone on another occasion when she came back after KW when Ms. Hopper had separated them, to say "it's a good thing she came along when she did or I don't know what would have happened." The efforts of Respondent to discipline KW for being in the halls during jump start, even after being informed that she should not engage in hall monitoring duties or interact with KW by the principal, clearly reeks of retaliation for her filing of the Human Rights complaint. The Respondent's constant attacks on KW and others whenever KW was honored or recognized for her achievements is simply inexcusable, and has resulted in professionally detrimental repercussions for Respondent. Regardless of Respondent's good intentions to enforce discipline and respect for teachers, Respondent's actions toward KW cannot be considered even remotely understandable, let alone appropriate. Respondent needs to seriously reflect on why her reactions are so disproportionate and consider that perhaps it comes from a subconscious fear or resentment of those who are different than she in race, national origin or in other ways. What is so aggravating about this case, is that both Respondent and Complainant want and demand respect from the other but are unwilling to reciprocate that respect. Although the undersigned finds, as a matter of fact, that Complainant, KW has suffered humiliation, embarrassment, emotional distress and loss of

personal dignity as a result of the unlawful racially hostile environment created by Respondent, the award of damages for that suffering is essentially subject to equitable considerations. Normally, the undersigned would consider that where such unlawful discrimination exists, the maximum allowable award for such damages in cases tried without a jury would be appropriate. The undersigned is not convinced that such would be appropriate in this instance, however. This is so, not only due to the relative misconduct of the Complainant, KW, but also because it is clear that the relative misconduct of Complainant KW in her confrontations with Respondent, Ms. Cobb, demonstrates that she did not allow herself to feel too humiliated or embarrassed by the discrimination she encountered. Instead, KW stood up for herself and confronted her situation. In the process KW went overboard herself and did things which were equally impossible to put in any good light.

## C.

## CONCLUSIONS OF LAW

1. The Complainant, BW, on behalf of her then minor daughter, KW, is an individual aggrieved by an unlawful discriminatory practice, and is a proper complainant under the West Virginia Human Rights Act, W. Va. Code §5-11-10.

2. The Respondent, Barbara Cobb, is a "person" as that term is defined under W. Va. Code §5-11-1 et seq., and is subject to the provisions of the West Virginia Human Rights Act.

3. The complaint in this matter was properly and timely filed in accordance with W. Va. Code §5-11-10.

4. The West Virginia Human Rights Commission has proper jurisdiction over the parties and the subject matter of this section pursuant to W. Va. Code §5-11-9 et seq.

5. The Complainant has established a prima facie case of race discrimination. The Respondent has articulated a legitimate non discriminatory motive for the Respondent's action, that the Complainant was subjected to appropriate discipline for various school infractions, which the Complainant, by a preponderance of the evidence, has proven to be pretext for racial harassment of the Complainant resulting in the denial of equal access to a place of public accommodation, and retaliation against the Complainant for filing a Human Rights Act complaint.

6. As a result of the Respondent's unlawful discriminatory conduct, Complainant is entitled to an award of $500.00 for humiliation, embarrassment, emotional distress and loss of personal dignity as Complainant minor child contributed to the problems between Respondent and Complainant by engaging in rude and insubordinate behavior toward Respondent.

7. As a result of the Respondent's unlawful discriminatory conduct, the Commission is entitled to a cease and desist order.

8. The Commission and Civil Rights Division of the West Virginia Office of the Attorney General are entitled to an award of reasonable costs incurred in prosecution of this matter in the amount of $1,426.31.

**D.**

**RELIEF AND ORDER**

Pursuant to the above findings of fact and conclusions of law, it is hereby **ORDERED**, that:

1. The above named Respondent shall cease and desist from engaging in unlawful discriminatory practices.

2. Within 31 days of the receipt of the undersigned's order, the Respondent shall pay the reasonable costs of the Commission and Civil Rights Division of the West Virginia Office of the Attorney General incurred in the prosecution of this matter, in the amount of $1,426.31.

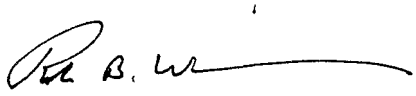
3. Within 31 days of receipt of the undersigned's order, the Respondent shall pay the Complainant incidental damages in the amount of $500.00 for humiliation, embarrassment, emotional distress and loss of personal dignity suffered as a result of Respondent's unlawful discrimination, plus statutory post judgment simple interest of ten percent.

4. In the event of failure of the respondent to perform any of the obligations hereinbefore set forth, Complainant is directed to immediately so advise the West Virginia Human Rights Commission, Ivin B. Lee, Director, 1321 Plaza East, Room 108-A, Charleston, West Virginia 25301-1400, Telephone: (304) 558-2616.

It is so **ORDERED**.

Entered this 26th day of August, 2003.

**WV HUMAN RIGHTS COMMISSION**



**ROBERT B. WILSON**
**ADMINISTRATIVE LAW JUDGE**
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