City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 4th Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:	
Andrea Suggs **Complainant,** **v.** Montessori Academy Infant-Toddler Center, Inc. **Respondent.**	**Case No.:** 13-E-56 **Date of Ruling:** August 13, 2015 **Date Mailed:** September 9, 2015

TO:

Elizabeth Hubbard
Elizabeth Hubbard Law Firm LLC
900 W. Jackson Blvd., Suite 6
Chicago, IL 60607

Florence Foster Montessori
P.O. Box 4860
Chicago, IL 60680

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on August 13, 2015, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondents violated the Chicago Human Rights Ordinance. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, the Commission orders Respondents:

1. To pay Complainant back pay in the amount of $5,993.75, $1,000 in emotional distress damages and punitive damages of $9,000, for total damages in the amount of $15,993.75, plus interest on that amount from June 4, 2013, in accordance with Commission Regulation 240.700.

2. To pay a fine to the City of Chicago in the amount of $1,000.[1]

3. To pay Complainant's reasonable attorney fees and associated costs as determined pursuant to the procedure described below.

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[1] **COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. See Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

Payments of damages and interest are to be made directly to Complainant. **Payments of fines** are to be made by check or money order payable to City of Chicago, delivered to the Commission at the above address, to the attention of the Docket Clerk for Adjudication and including a reference to this case name and number.

Interest on damages is calculated pursuant to Reg. 240.700, at the bank prime loan rate, as published by the Board of Governors of the Federal Reserve System in its publication entitled "Federal Reserve Statistical Release H.15 (519) Selected Interest Rates." The interest rate used shall be adjusted quarterly from the date of violation based on the rates in the Federal Reserve Statistical Release. Interest shall be calculated on a daily basis starting from the date of the violation and shall be compounded annually.

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law. Respondent must comply with this Final Order shall occur no later than 28 days from the date of mailing of the order. Reg. 250.210.

Attorney Fee Procedure

Pursuant to Reg. 240.630, Complainant may now file with the Commission and serve on all other parties and the hearing officer a petition for attorney fees and/or costs as specified in Reg. 240.630(a). Any petition must be served and filed on or before **October 7, 2015**. Any response to such petition must be filed and served on or before **October 21, 2015**. Replies will be permitted only on leave of the hearing officer. A party may move for an extension of time to file and serve any of the above items pursuant to the provisions of Reg. 210.320. The Commission will rule according to the procedure in Reg. 240.630(b) and (c).

CHICAGO COMMISSION ON HUMAN RELATIONS

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740 N. Sedgwick, 4th Floor, Chicago, IL 60654
(312) 744-4111 [Voice], (312) 744-1081 [Facsimile], (312) 744-1088 [TTY]

IN THE MATTER OF: Andrea Suggs **Complainant,** **v.** Montessori Academy Infant-Toddler Center, Inc. **Respondent.**	**Case No.:** 13-E-56 **Date of Ruling:** August 13, 2015

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On July 29, 2013, Complainant Andrea Suggs filed a complaint with the Chicago Commission on Human Relations alleging that Respondent terminated her from her job as a Teacher's Assistant after one day of work because of her pregnancy status. On September 17, 2013, Respondent filed a Response to the complaint, denying the allegations and asserting that the Complainant had simply abandoned her job. After completing its investigation, on September 5, 2014, the Commission entered a substantial evidence finding. By Order dated February 2, 2015, the Montessori Academy Infant-Toddler Center was substituted as the proper name of the Respondent.

The administrative hearing was held on February 17 and 18, 2015, and post-hearing briefs were submitted on behalf of each of the parties. On April 23, 2015, the hearing officer issued his recommended ruling. Both Complainant and Respondent filed objections to the recommended ruling, which have been considered in reaching this final ruling.

II. FINDINGS OF FACT

1. Complainant Andrea Suggs is a 2003 graduate of Percy L. Julian High School in Chicago. She briefly attended Olive Harvey College, though she was less than candid on her resume about her success or lack of success while there. Relevant to this case, Complainant did take a course in Child Development and in Child Psychology while at Olive Harvey. Complainant eventually obtained an Associate Degree from Kaplan University On-Line. [TR. 2:16][1]

2. Prior to seeking employment with Respondent, Complainant obtained experience caring for infants and young children while briefly working at Bright Horizons and at The Children's House.

[1] References to the transcript will be first to the day of the hearing, then to the page of the transcript from that day.

3. In May of 2013, Complainant was looking for employment in the child care area and had posted her resume on several on-line sites for job seekers, including Indeed.com, Monster.com and CareerBuilders.com. Those resumes were fraught with misrepresentations.

4. Respondent is one of three Montessori day care facilities that are or were owned and run by Ms. Ardelia J. Irvin. In the middle of May, 2013, Ms. Irvin had an immediate need to hire a teacher's assistant at the Montessori Academy Infant-Toddler Center. The reason for this is that Respondent obtains most of its revenue from State of Illinois programs that pay for the day care fees for Ms. Irvin's clients. State regulations mandate strict ratios of teachers to students, depending upon the age of the child. When there are too few teachers, Respondent must immediately hire an additional teacher or assign an administrator to the classroom so that Respondent's license and funding is not jeopardized. [Tr. 2:117]

5. Ms. Irvin is responsible for teacher recruitment and, ultimately, hiring.

6. Ms. Irvin found Complainant's resume on an on-line jobs bulletin board, Indeed.com, where Complainant had posted it. On May 23, 2013, at 10:05 AM, Ms. Irvin sent Complainant an email with the Subject Line, "Preschool Teacher – Director job opening." The email informed Complainant as follows: "PLEASE CALL 312-339-1988 for an interview as soon as possible. We need a preschool teacher immediately." (Complainant's Ex. #1)

7. That same afternoon[2], Complainant responded, informing Ms. Irvin that she had tried to call the number but was unsuccessful. Complainant left her cell phone number and wrote "Please feel free to contact me at your earliest convenience."

8. Complainant and Ms. Irvin had a telephone conversation that day. Ms. Irvin told Complainant that she needed a teacher immediately, and asked if Complainant could come in for an interview as soon as possible. When Complainant said, "Yes", Ms. Irvin set up an interview at the Infant and Toddler Center. Complainant appeared at the Center on May 30, 2013, and met with Neva Granderson, the Director of the three facilities owned by Ms. Irvin. Granderson and Irvin each testified that Ms. Granderson had hiring and firing authority for Respondent. [Tr. 1:36,]

9. Complainant completed a written application on May 30, 2013. She also signed an Authorization for Background Check, which appears to be an Illinois Department of Children and Family Services (DCFS) form. Though the written application (Cp. Ex. #12) has a section for listing an applicant's "Last ten years of employment," Complainant listed only her previous employment with Bright Horizons from April 20, 2012 through June 2012. It indicates that Complainant had an AAS Degree from Everest University (an on-line college). This was not true. [Tr. 2:16] The Application contains a Certification of Employment, signed by Ms. Granderson as Director, indicating that Complainant was employed by Respondent and to the best of her knowledge, qualified in accordance with minimum standards prescribed by DCFS. This is consistent with the testimony Complainant, who testified that she was hired on the spot.

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[2] Ms. Irvin testified that after she e-mailed Complainant, she did not hear back from Complainant for several days. (Tr. 1:89-90) In fact, Complainant responded the same day to Respondent's correspondence.

10. On May 31, 2013, Complainant sent Ms. Irvin by e-mail, three letters of recommendation, her unofficial transcript, and apparently, a copy of a medical examination she had performed on her a year earlier.

11. Complainant was told by Ms. Granderson to report for work the following Monday, June 3, 2013.

12. Complainant's first day of work was uneventful. She was assigned to assist the head teacher with food, meal set up, activities, bathroom breaks and the overall care of the children. She worked until 5:00 pm that day.

13. Contrary to Ms. Granderson's testimony [Tr. 2:67][3] and Ms. Irvin's initial sworn testimony [Tr. 2:151:1], the hearing officer found that Complainant was never presented with the Personnel Policy Manual found at Respondent's Ex. 7, and entitled "Montessori Academy Infant/Toddler Center Inc." This document was fabricated, after the fact, and then inserted into Complainant's allegedly lost and then found personnel file. Under questioning toward the end of the administrative hearing, Ms. Irvin conceded that this document was not developed until the start of the 2013-2014 Academic Year – well after Complainant's one-day employment. This Personnel Policy Manual excluded from the version in existence when Complainant was hired, a pregnancy policy that required employees to leave employment after their eighth month of pregnancy.[4] Such a policy which would force a woman to take a pregnancy leave at the end of her eighth month regardless of her physical ability to continue her employment unquestionably violates the Chicago Human Rights Ordinance and CCHR Reg. 335.100.

14. In addition, inserted into Section 3.3 of the altered Personnel Policy Manual is a provision that did not exist in the original Personnel Policy Manual, entitled "Job Abandonment." The hearing officer found that the creation of this document was an after-the-act attempt to justify Complainant's discharge.

15. Complainant testified that she enjoyed her first day of work. It was close to her home. The staff was nice and she liked the children. Her salary was to be $12.50 per hour for a 40 hour week. [Tr. 1:140:12]

16. Between 6:00 pm and 6:30 pm on the night of June 3, 2013, Complainant began to experience a bad headache and feel feverish. She was concerned because a week or two previously she had taken a home pregnancy test which indicated that she was pregnant. Complainant, who after work had picked up her own five-year old daughter from her day care, decided to seek medical attention at Advocate Trinity Hospital. She and her

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[3] Granderson was asked, "Was this the handbook that was in effect at the time that you interviewed Ms. Suggs? A. Yes. And do you know whether you gave her a copy of this document when you interviewed her? A. Yes I did. "[Tr. 2:67:16].

[4] The Pregnancy/Maternity Leave policy contained in the Personnel Policy Manual in effect at the time that Complainant applied to work for the Respondent read as follows:

> 5.2 Pregnancy/Maternity Leave.
>
> Employees who are expecting the birth of a child will be granted full-time employment during the duration of their pregnancy up until their 8 month of the term unless otherwise specified by their physician. Employee may return to work with authorization from physician only.

daughter arrived there between 7:15 pm and 7:30 pm. When Complainant had not seen a doctor by 10:53 pm and with her toddler tired, she left the hospital and went home. Complainant's Emergency Room medical records fully support her testimony. She informed the triage nurse of her symptoms. The records reflect that Complainant was or may be pregnant and that the reason for her visit was "pt sts head, abdominal pain, pregnancy complications." (Complainant's Ex. #24)

17. Respondent claims that it did not hear from Complainant again until well after it terminated her employment because she was a "no call, no show." Ms. Irvin testified that Complainant did not call nor did she leave a message at the school. Ms. Granderson denied having any conversation with Complainant on June 4, 2013. This testimony was false. The veracity of Respondent's witnesses was seriously undermined by the documentary evidence introduced, its inherent implausibility, and the manner in which the testimony was presented along with Respondent's post-occurrence conduct. Complainant's testimony, which credited by the hearing officer, directly contradicted Respondent's version of the facts and constitutes direct evidence of discrimination.[5]

18. On June 4, 2013, Complainant began her day by making three telephone calls to Respondent's main phone number, 773-233-1100. Complainant's cellular phone records show that two calls were made for less than a minute each at 7:01 am. The third call, clocking in at two minutes, was made 7:04 am. A fourth call to this number was made at 7:56 am; a fifth call was made at 8:03 am and finally a sixth call, this time also for two minutes, was made at 8:15 am.

19. In addition to calling the 773-233-1100 number that morning, Complainant's phone records also reveal that she called the direct number to the Infant and Toddler Center, 773-468-0033, in an effort to reach someone with whom she could leave a message. That number was called at 7:06 am for 2 minutes, and at 7:56 am, and 8:03 am for 1 minute each.

20. Complainant testified that, knowing she was supposed to report for work at 8:00 am, she woke up at 6:30 am on June 4, 2013, and she immediately began calling the school to let them know she had to see her doctor that morning. [Tr. 1:152] She left at least two voicemail messages to that effect. The hearing officer found that it is more likely true than not that the two telephone calls of two minutes duration were the calls in which Complainant left a message. Ms. Irvin testified that there is always someone at each of the schools every morning at 7:00 am. Irvin further testified that she listens to all voicemail messages every day [Tr. 1:98] and that Complainant never left a message. That testimony was false. Complainant credibly testified about the number of telephone calls that she made to the school. The phone records bear that out and at least two of the calls to numbers (admittedly numbers for Respondent) were of two minutes duration. That suggests that the calls could not have been "hang-ups," as Respondent suggests.

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[5] Respondent argues in its brief that the hearing officer should discredit the entirety of Complainant's testimony because some of her testimony was found to be not credible. The hearing officer determined that like many witnesses, Complainant's testimony was a combination of truthful narrative laced with some exaggeration and some out-and-out lies. The hearing officer found that unlike Respondent's witnesses; the falsehoods in Complainant's testimony were mostly collateral to the central issues of the case. The hearing officer reasoned that just because a person lied on his or her tax returns does not mean that nothing he or she says should be *believed*. Much of Complainant's testimony was corroborated by documentary evidence, while much of Ms. Irvin's and Ms. Granderson's testimony was directly contradicted by the documentary evidence.

21. Complainant went to see her primary care physician the morning of June 4, 2013, since she had not seen a doctor the night before. Dr. Nepomucena's records (Complainant's Ex. #25) show that Complainant presented on an urgent basis and that she had been complaining of a throbbing headache, bi-frontal not associated with nausea/vomiting/visual symptoms; that she was working now but still very stressed out and that she did a pregnancy test at home which was positive. After her examination proved mostly negative, Complainant wanted to return to work that day.

22. The parties have extremely divergent versions of what happened next. According to Respondent, it did not hear from Complainant at all on June 4, 2013 or thereafter, until she called to obtain her paycheck for having worked June 3, 2013. Ms. Granderson specifically denies having spoken to Complainant on June 4, 2013. [Tr. 1:37] Indeed, Ms. Irvin testified falsely that she was not informed that Complainant was pregnant until she received a copy of the complaint filed by Complainant with the Chicago Commission on Human Relations. [Tr. 1:97] The fact that Complainant did not "confirm" in an e-mail to Ms. Irvin the fact that she had informed Ms. Granderson and another teacher that she was pregnant is of no consequence.

23. The hearing officer correctly found that after making nine (9) telephone calls on June 4, 2013, between 7:00 am and 8:15 am, in an effort to get a message to Respondent, Complainant received a return call at 9:06 am from phone number 773-707-0069. The call appears on Complainant's phone records. The caller said, "Good morning. This is Ms. Granderson. I was told you had a situation... What seems to be the problem?" [Tr. 1:157]

24. Complainant told Granderson that she was pregnant and having headaches and problems with her blood pressure. [Tr. 1:158] She told Ms. Granderson that she had to go to the doctor that morning. Ms. Granderson told Complaint that she would talk with Ms. Irvin and that Complainant should give Ms. Granderson a call after Complainant saw the doctor.

25. After leaving the doctor's office late that morning, Complainant called the cell phone number 773-707-0069 and spoke with the same person who had called her from the school.[6] She recognized Ms. Granderson's voice. [Tr. 1:166] The call was made at 2:01 pm and according to Complainant's Exhibit # 13, the call lasted five (5) minutes. Complainant told Ms. Granderson that her doctor had cleared her and asked if she could finish out the end of her shift. [Tr. 1:161]

26. Ms. Granderson told Complainant that she had spoken with Ms. Irvin and that "It was not a good look for her to return back to work." Complainant asked Ms. Granderson why and she said, "Well, we want you to get your situation under control and it's not in the

[6] Though there is a slight possibility that the call came from Respondent's employee, Theresa Wright, the owner of the cell phone number, the hearing officer believed that in fact it was Ms. Granderson who made the call using Ms. Wright's cell phone. Ms. Granderson's testimony denying that she spoke with Complainant on June 4, 2013, was not believable. Throughout her questioning about this alleged conversation, Ms. Granderson held her head down, refusing to look anyone in the eye and engaged in over reactive wringing of her hands in contrast to her more believable testimony. If by some chance Ms. Wright called Complainant, then it is probable that Ms. Granderson authorized Wright to make the statements testified to by Complainant. Respondent argues that when Complainant called 773-707-0069 (Ms. Wright's phone), Ms. Granderson answered, not Ms. Wright. Respondent's Brief at p. 8. All this proves is that Ms. Granderson had the use of that telephone throughout the day.

best interest of the company that you return." [Tr. 1:161] Complainant told Ms. Granderson that she was only four to six weeks pregnant and that her pregnancy would not hinder her or her job duties. She explained to Ms. Granderson that she had a five-year old daughter and could care for her even though pregnant.

27. Ms. Granderson then told Complainant, that she was not being fired; just being "laid off." [Tr. 1:162] Complainant asked her if she could at least work until she was four months pregnant. Granderson said, "No." Finally, Complainant told Ms. Granderson that she had passed on another job offer to take this position. The conversation ended abruptly, with Ms. Granderson telling Complainant that it just was not in the best interest of the company that she returns to work and that Granderson and Ms. Irvin had come to that conclusion so there was not anything else to discuss. [Tr. 1:163]

28. The next day, Complainant called the school at 9:17 am. She was not able to speak with Ms. Irvin. It was not until June 17, 2013, that Complainant made arrangements to pick up her one-day paycheck from Respondent. That day, when she appeared at the school, no one was present to give Complainant her paycheck. Ms. Irvin testified at the hearing that she mailed the paycheck to Complainant but it was returned un-opened. Then, mysteriously, she turned it over to her accountant who lost it. Complainant has never been paid for her day of work. The hearing officer found that the paycheck was never mailed to Complainant.

29. Complainant testified, but not very convincingly, that she was "emotionally devastated" by losing her one-day job. She elaborated that, "It made me feel like I was disabled because I was pregnant and that I wasn't able to work." [Tr. 1:169]

30. Tragically, Complainant lost her pregnancy the next month; though for medical reasons she was forced to carry the lifeless fetus until she spontaneously aborted in August 2013. [Tr. 1:170] According to her testimony, Complainant thereafter took 2-4 weeks before she began looking for work. She then became pregnant again in November 2013. The baby was born on July 29, 2014. Complainant did not begin to seek employment thereafter until October of 2014. She also testified that she did not seek employment during the holiday seasons of 2013 or 2014 (Nov – Dec).

31. The hearing officer determined that Complainant was not a paradigm of honesty, either in her actions that lead up to her employment or in her sworn testimony. Most all of her on-line resumes were less than truthful. She misrepresented her grade point average (GPA) while at Olive Harvey Junior College, stating that it was 2.5 when, in fact, it was 1.5 and she was actually dismissed from the school. [Tr. 1:187,188] On one resume she falsely claimed that she had received an Associate's Degree in Management. She implied on her resume that she received a Bachelor of Arts Degree from Everest between 2012 and 2014 when, if fact, she had withdrawn from school in October of 2013. The hearing officer did not believe that these misstatements were accidental, as Complainant's brief suggested.

32. Complainant's tax returns, which were introduced into evidence without objection, were rife with intentional misrepresentations about both the amounts of her earned income, the years the income was earned, and her authorized deductions.[Tr. 1:210-218] The hearing officer determined that Complainant dug herself deeper and deeper into disbelief given the questionable entries of earnings and fuel credit which she claimed resulted from her hair braiding business, and then suggesting that the entries were innocent mistakes. The

tax returns were, without a doubt, falsely filled out in order to unlawfully realize a substantial tax rebate.

33. Complainant was able to obtain full-time employment at the beginning of September 2013, at another day care facility called Tiny Tots. [Tr. 1:282] Complainant voluntarily left that job after two months, testifying that the environment there was unprofessional and overwhelming. She earned $11.25 per hour while employed at Tiny Tots. [Tr.1:283]

III. CONCLUSIONS OF LAW AND ANALYSIS

Section 2-160-030 of the Chicago Human Rights Ordinance (CHRO) makes it unlawful for any person to "directly or indirectly discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation or other term or condition of employment because of the individual's...sex." Commission Regulations interpreting the Human Rights Ordinance include specific provisions relating to pregnancy and childbirth. CCHR Reg. 335.100 provides as follows:

> A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy, childbirth or related medical conditions is a *prima facie* violation of the CHRO. It shall also be a *prima facie* violation of the CHRO for an employer to discharge an employee because she becomes pregnant.

Complainant may prove discrimination by producing direct or circumstantial evidence of an intent to discriminate. Direct evidence may consist of statements by a manager or other supervisory personnel which, if believed, demonstrate that the adverse employment decision was taken because of the complainant's protected status – in this case, her status of being pregnant. *Griffiths and DePaul University*, CCHR Case No. 95-E-224 (Apr. 25, 2000). See also, *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998); *Buckner v. Verbon*, CCHR No. 94-H-82 (May 21, 1997); and *Richardson v. Chicago Area Council of Boy Scouts of America*, CCHR No 92-E-80 (Feb. 21, 1996).

As to whether Respondent violated the CHRO, the central issue in this case was whether Neva Granderson (or someone at her direction who claimed to be Neva) had a conversation with Complainant on June 4, 2013, and told Complainant that she was being laid off because of her pregnancy. The hearing officer determined that Complainant was told that she was being laid off because of her pregnancy.

It is well established that the hearing officer and the Board of Commissioners must determine the credibility of witnesses, choose among conflicting factual inferences, and weigh the evidence. See, *e.g., Jones v. Lagniappe-A Creole Cajun Joynt*, CCHR No. 10-E-40 (Dec. 19, 2012); *Johnson v. Anthony Gowder Designs, Inc.*, CCHR No. 05-E-17 (June 16, 2010); *Ramirez v. Mexicana Airlines et al.*, CCHR No. 04-E-159 (Mar. 17, 2010); *Guy v. First Chicago Futures*, CCHR No. 97-E-92 (Nov. 17, 2004); *Bray v. Sandpiper Too, Inc. et al.*, CCHR No. 94-E-43 (Jan. 10, 1996). Moreover, the Commission can disregard the testimony of any witness if it is determined that the witness was not telling the truth. *Johnson, supra* at 12, *Ramirez, supra* at 13, *Guy, supra* at 8, *Bray, supra* at 4.

A variety of factors may be considered in assessing witness credibility, including the individual's interest in the outcome, bias, and demeanor (*Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006); *McGee v. Cichon*, CCHR No. 96-H-26 (Dec. 30, 1997)); the plausibility of the story (*Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996)); inconsistencies and contradictions in the testimony of the witness (*Anderson v. Stavropoulos*, CCHR No. 98-H-14 (Feb. 16, 2000); *Doxy v. Chicago Public Library*, CCHR No. 99-PA-31 (Apr. 18, 2001); *Little v. Tommy Gun's Garage, Inc.*, 99-E-11 (Jan. 23, 2002)); whether the testimony is corroborated by another witness or contemporaneous documents (*Doxy, supra*; *Edwards v. Larkin*, CCHR No. 01-H-35 (Feb. 16, 2005)); whether the testimony is detailed and unprompted (*Chimpoulis & Richardson v. J & O Corp. et al.*, CCHR No. 97-E-123/127 (Sept. 20, 2000)); and whether the witness has previously engaged in fraud or dishonesty (*Belcastro v. 860 N. Lake Shore Drive Trust*, CCHR No. 95-H-160 (Feb. 20, 2002)). Credibility is not only about whether a witness has deliberately lied but also about the reliability of the recollections and observations of a witness. Based on the above authority and review of all of the evidence presented in this case, the hearing officer relied upon the following factors to resolve the conflicting testimony.

Common sense: Complainant was unemployed in May 2013, and in financial hardship. Within hours of being solicited by Ms. Irvin to apply for a teaching assistant job with Respondent, Complainant reached out by both telephone and e-mail, and set up an interview. Complainant was hired on the spot by Ms. Granderson and reported for work on June 3, 2013. By all accounts, Complainant enjoyed her first day of work and performed admirably. Faced with a medical emergency, Complainant telephoned Respondent nine times the morning of June 4, 2013, before going to see her doctor and then called the school immediately afterwards. The hearing officer determined that given these facts, Complainant was not likely to abandon her newly found job.

Documentation: Complainant's cell phone records document nine telephone calls to Respondent's schools on June 4, 2013. Though for some reason the recorded times do not correlate, Respondent's telephone records also document nine telephone calls from Complainant's cell phone number to one of the school's numbers. Yet Ms. Irvin testified that no calls were made and no messages left by Complainant on June 4, 2013.[7] Similarly, Ms. Granderson denied that she spoke to Complainant on June 4, while Complainant detailed two conversations. Complainant's telephone records show that a four minute call at 9:06 am on June 4, 2013, originated from a telephone number of a teacher employed by Respondent. A second call was received from the same number at 2:01 pm, lasting five minutes. Yet Respondent insists that no one from the school spoke to Complainant on June 4, 2013, and no testimony was presented by Respondent that would explain these telephone entries. Therefore, Respondent's testimony is simply unbelievable.

Fabrication: The hearing officer found that Respondent fabricated a modified Personnel Policy manual that it then falsely claimed had been given to Complainant on her first day of employment. This was done in an attempt to conceal Respondent's written and illegal pregnancy leave policy. Evidence of deceptive actions on the part of the Respondent may be considered with regard to the credibility of the Respondent. See e.g., *Shaffer v. Am. Med. Ass'n*, 662 F.3d 439, 444 (7th Cir. 2011) (backdated document relevant to issue of pretext); accord *Brunker v. Schwan's Home Serv., Inc.*, 583 F.3d 1004, 1008-09 (7th Cir. 2009).

[7] It was suggested that perhaps Complainant called the school and immediately hung up. It is highly unlikely that this would have occurred nine times. In addition, several of the calls were recorded as having lasted for two minutes each, suggesting that a voice mail message was left.

Discriminatory Policy: At the time that Complainant was hired, Respondent had a written policy that required pregnant employees to leave employment after their eighth month of pregnancy in the absence of a medical opinion. This policy suggests that Respondent had some level of paternalism towards pregnant women. Respondent makes the point that its Personnel Policies Handbooks are not the subject of Complainant's Complaint. That is true; however, the initial policy toward pregnant employees reflects a state of mind on the part of the drafters (Ms. Irvin and Ms. Granderson) which makes it more likely that they would discriminate in other ways against a pregnant employee or applicant.

Observations: Finally, the hearing officer based his credibility determination in part upon his observations of the testimony of the witnesses. Ms. Granderson was found to be evasive when she was questioned about the existence of Complainant's personnel file. She testified, contrary to the testimony of Ms. Irvin, that the original personnel file had been given to Complainant and only a copy retained. She was in obvious distress on the stand when she was asked why there was no documentation indicating that Complainant was a "No call, No show." When Ms. Granderson was questioned about the telephone conversations that Complainant said she had with her (and which Granderson denied having), her body language spoke volumes. She wrung her hands, bit her lips, and refused to look anyone in the eye, in contrast to her otherwise confident testimony on less important subjects.

In its objections to the hearing officer's recommendations, Respondent contends that the remarks of Ms. Granderson, even if made, do not constitute direct evidence of discrimination because Complainant did not report to work on June 4, 2013. Respondent cites to several federal cases where statements regarding pregnancy were held not to be direct evidence of discriminatory conduct. Unlike the instant case, none of the statements referenced in those cases were made in the context of telling an employee why they were being discharged or "laid off."

Rico v. Davis Bancorp, Inc., No. 08 C 2721, 2009 WL 5064807, at *3 (N.D. Ill. Dec. 16, 2009), cited by Respondent, explains that "direct evidence of discrimination is evidence that would show a clear acknowledgment of discriminatory intent by the employer." *See Troupe v. May Dep't Stores Co.*, 20 F.3d 734, 736 (7th Cir.1994). "Direct evidence essentially requires an admission by the decision maker that his actions were based upon the prohibited animus."*Radue v. Kimberly–Clark Corp.*, 219 F.3d 612, 616 (7th Cir.2000). "A remark can raise an inference of discrimination when it was (1) made by the decision maker, (2) around the time of the decision, and (3) in reference to the adverse employment action." *Rico*, *supra*. Unlike the instant case, in *Rico*, the remark about the plaintiff's pregnancy was made by someone other than the decision maker, two months before she was terminated, and the complainant could not show a link between the person who made the remark and the termination decision.

In *Weng v. DCI Mktg.*, No. 05-71404, 2006 WL 3469631, at *4 (E.D. Mich. Nov. 30, 2006), a remark of the decision maker that she could not live with the plaintiff while she was pregnant (after having employed the plaintiff through two previous pregnancies), was held not to be sufficiently unambiguous to constitute direct evidence of discrimination. However, the court held that the timing of the discharge, in conjunction with the comments by the decision maker about not being able to live with the plaintiff being pregnant, constituted sufficient circumstantial evidence to establish a *prima facie* case of pregnancy discrimination.

In *Williams v. Steven D. Bell & Co.*, No. 3:06-0359, 2007 WL 1296026, at *4 (M.D. Tenn. May 1, 2007), it was determined that the statement, "I know you're leaving, I don't want you to be pregnant. You're not going to be here," could equally be viewed as suggesting that the employer did not want to lose an admittedly good employee, and thus, did not require the

conclusion that the employer decided to terminate the plaintiff's employment because she became pregnant. Finally, in *Kennedy v. Schoenberg, Fisher & Newman, Ltd.*, 140 F.3d 716, 724 (7th Cir. 1998), none of the statements attributed to the employer were found to be discriminatory because they were made five months before the plaintiff's discharge.

The hearing officer found that the statements by Neva Granderson were unambiguous. They were made in the context of Complainant informing Respondent that she was pregnant and the discussion focused upon whether Complainant would be allowed to work at least until she was four months pregnant.

Respondent, in its objections, argues that Complainant did not "look" pregnant and that there were no medical records proving that she was in fact pregnant. This argument verges on being frivolous. Complainant had taken a home pregnancy test and informed Respondent, as she had informed her doctors, that she was pregnant. The medical records of her emergency room visit corroborate those facts.

The Commission finds that the hearing officer's findings in this case are not against the manifest weight of the evidence, and the hearing officer's conclusions are consistent with applicable law. Complainant has proved that Respondent violated the Chicago Human Rights Ordinance by terminating Complainant's employment solely because she informed Respondent that she was pregnant.

IV. REMEDIES

Under Section 2-120-510(l) of the Chicago Municipal Code, the Commission may award a prevailing complainant in an employment discrimination case the following forms of relief:

> Relief may include but is not limited to an order: to cease the illegal conduct complained of; to pay actual damages, as reasonably determined by the commission, for injury or loss suffered by the complainant; to hire, reinstate or upgrade the complainant with or without back pay or provide such fringe benefits as the complainant may have been denied;...to pay the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees and duplicating costs, incurred in pursuing the complaint before the commission or at any stage of judicial review; to take such action as may be necessary to make the individual complainant whole, including, but not limited to, awards of interest on the complainant's actual damages and back pay from the date of the civil rights violation. These remedies shall be cumulative, and in addition to any fines imposed for violations of provisions of Chapter 2-160 and Chapter 5-8.

A. Damages

A victim of employment discrimination is "presumptively entitled to full relief." *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998), quoting *Hutchison v. Amateur Electronic Supply Inc.*, 42 F.3d 1037, 1044 (7th Cir. 1994), citing *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 421 (1975). See also *Griffiths v. DePaul University*, CCHR No.95-E-224 (Apr. 19, 2000); *Carroll v. Riley*, CCHR No. 03-E-172 (Nov. 17, 2004). The purpose of economic damages is to make the victim "whole," meaning that a complainant should be in as good a position as he would have been in terms of salary and any fringe benefits if he had not

been discriminated against. *Carroll, supra* at 8. Once a complainant has established the amount of damages he claims resulted from the respondent's discriminatory act, the burden shifts to the respondent to show that the complainant failed to mitigate damages or that the damages complainant asserts are not justified. *Carroll, supra at 9.*

1. Economic Loss

Complainant is seeking $52,000 in alleged lost wages, less amounts for periods in which she was unable to work, or did not seek employment, and less amounts earned. This was calculated at the rate of $12.50 per hour which Complainant would have earned working for Respondent from June 3, 2013, through June 15, 2015. Respondent has asserted an affirmative defense of failure to mitigate damages.

A complainant fails to mitigate adequately and therefore is entitled to neither back pay or front pay to the extent that [s]he fails to remain in the labor market, fails to accept substantially similar employment, fails diligently to search for alternative work or voluntarily quits alternative work without good reason. *Blacher v. Eugene Washington Youth and Family Services,* CCHR No. 95-E-261 (Aug. 19, 1998); *Griffiths, supra.*

Complainant has adequately shown that she reasonably looked for work prior to locating alternative employment at Tiny Tots. The testimony shows that Complainant regularly searched for work and submitted at least 39 applications. In its objections, Respondent argues that by only submitting 32 job applications between July 2013 and September 2013, Complainant did not adequately satisfy her obligation to mitigate damages. Respondent also argues that there was insufficient evidence to show that Complainant sought employment during June 2013. However, Complainant testified at the hearing that she regularly looked online for employment after she was discharged by Respondent. That testimony was supported by Group Exhibit 14 showing many of the emails Complainant sent in response to job advertisements. Therefore, the hearing officer found that Complainant did not fail to mitigate her damages.[8]

It is undisputed that the Complainant was able to find comparable employment at Tiny Tots around the first of September 2013, and that she voluntarily left that employment after two months. Complainant earned $11.25 per hour during that time period. Complainant did not present any evidence showing that she left Tiny Tots with good reason and made scant reference in her post-hearing brief regarding her decision to leave Tiny Tots. Respondent contends that Complainant failed to prove lost wages because, among other things, she voluntarily left her position at Tiny Tots. The hearing officer found that the voluntary cessation of employment at Tiny Tots should end the accrual of lost wages and constitutes a failure to mitigate damages.

The hearing officer recommended that Complainant be awarded back pay at a daily rate of $87.50 (according to her calculations) for 64 work days, for a total of $5,600. In her objections, Complainant claims that she is entitled to back wages for 65 days of work between June 3, 2013, through the end of August. However, the hearing officer found that the wages that Complainant was not paid on June 3, 2013, are not attributable to the discrimination based upon her pregnancy. In addition, it is not clear that but for the discriminatory conduct, Complainant

[8] Respondent's argument that there should be a set-off for income earned by Complainant from braiding hair for her friends, relatives, and referrals is without merit. There was no evidence presented regarding the amount of money earned from hair braiding, the time period it was earned or whether the self-employment work would have interfered with the ability to work in other full-time employment. Respondent has not met its burden to prove failure to mitigate. *Griffiths v. DePaul University,* CCHR No.95-E-224 (Apr. 19, 2000).

would have been allowed to report to work late on June 4, 2013, and been paid for an entire day. Thus, the hearing officer's recommendation to award 64 full days of wages is supported by the evidence.

Complainant also argues in her objections to the hearing officer's recommended decision that she is entitled to be compensated for the pay differential of $8.75 per day for the nine weeks that she was employed by Tiny Tots, which results in an additional $393.75. The Commission awards additional back pay in that amount, for a total of $5,993.75.

2. Emotional Distress Damages

It is well established that the compensatory damages which may be awarded by the Commission are not limited to out-of-pocket losses but may also include damages for the embarrassment, humiliation, and emotional distress caused by the discrimination. *Nash & Demby v. Sallas Realty et al.,* CCHR No. 92-H-128, (May 17, 1995), citing *Gould v. Rozdilsky,* CCHR No. 92-FHO-25-5610 (May 4, 1992). Such damages may be inferred from the circumstances of the case as well as proved by testimony. *Id.*; see also *Campbell v. Brown and Dearborn Parkway,* CCHR No. 92-FHO-18-5630 (Dec. 16, 1992); *Hoskins v. Campbell,* CCHR No. 01-H-101 (Apr. 16, 2003); *Marable v. Walker,* 704 F.2d 1219, 1220 (11 Cir. 1983); and *Gore v. Turner,* 563 F. 2d 159, 164 (5 Cir. 1977).

In general, the size of an emotional distress damages award is determined by (1) the egregiousness of the respondent's behavior and (2) the complainant's reaction to the discriminatory conduct. The Commission considers factors such as the length of time the complainant has experienced emotional distress, the severity of the distress and whether it was accompanied by physical manifestations, and the vulnerability of the complainant. *Houck v. Inner City Horticultural Foundation,* CCHR N. 97-E-93 (Oct. 21, 1998) at 13-4; *Nash and Demby, supra;* and *Steward v. Campbell's Cleaning Svcs. et al.,* CCHR No. 96-E-170 (June 18, 1997). See also *Burford v. Complete Roofing and Tuck Pointing et al.*, CCHR No. 09-P-109 (Nov. 7, 2011).

Complainant's testimony regarding her emotional distress was sparse. She testified that she was "emotionally devastated" because she had never been fired from a job. She further stated that she "felt like she was disabled because she was pregnant." That was the bulk of her testimony regarding her alleged emotional injury damages. While the hearing officer found Complainant's testimony regarding her encounters with Respondent to be credible, much of the balance of her testimony was less than credible, including her damages testimony. The hearing officer also found that Complainant's testimony lacked specificity and, when given, was devoid of emotion. Complainant was able to find re-employment within two months. Though on June 4, 2013, Complainant's medical records state that she is "still very stressed out," that stress can have nothing to do with the termination of Complainant's employment with Respondent since she had not yet been discharged.

Respondent argues in its objections that there are no medical records that support Complainant's claim for emotional injury damages and therefore none may be awarded. However, "the Commission does not require 'precise' proof of damages for emotional distress. A complainant's testimony standing alone may be sufficient to establish that he or she suffered compensable distress." *Diaz v. Wykurz et al.,* CCHR No. 07-H-28 (Dec. 16, 2009); *Craig v. New Crystal Restaurant,* CCHR No. 92-PA-40 (Oct. 18, 1995). A complainant need not provide medical evidence to support a claim of emotional distress. *Sellers v. Outland,* CCHR No. 02-H-73 (Oct. 15, 2003), aff'd in part and vacated in part on other grounds, Cir. Ct. Cook Co. No. 04 106429 (Sept. 22, 2004) and Ill.App.Ct. No. 1-04-3599 (Sept. 15, 2008). Medical documentation

or testimony may add weight to a claim of emotional distress but is not strictly required to sustain a damages award.

The hearing officer found that the emotional damages proved in this case are similar to those of *Burford, supra*. Accordingly, like that case, the hearing officer recommended an award of $1,000 for emotional distress damages. The Commission agrees that this recommended amount is appropriate.

3. Punitive Damages

Punitive damages are appropriate when a respondent's action is shown to be a product of evil motives or intent or when it involves a reckless or callous indifference to the protected rights of others. *Houck v. Inner City Horticultural Foundation, supra.*, quoting *Smith v. Wade*, 461 U.S. 30, 56 (1983), a case under 42 U.S.C. §1983. See also *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Aug. 19, 1998), stating, "The purpose of an award of punitive damages in these kinds of cases is 'to punish [the respondent] for his outrageous conduct and to deter him and others like him from similar conduct in the future.'" See also Restatement (Second) of Torts §908(1) (1979).

In determining the amount of punitive damages to be awarded, the "size and profitability [of the respondent] are factors that normally should be considered." *Soria v. Kern*, CCHR No. 95-H-13 (July 17, 1996) at 17, quoting *Ordon v. Al-Rahman Animal Hospital,* CCHR No. 92-E-139 (July 21, 1993) at 18. However, "neither Complainants nor the Commission have the burden of proving Respondent's net worth for purposes of...deciding on a specific punitive damages award." *Soria, supra* at 17, quoting *Collins & Ali v. Magdenovski,* CCHR No. 91-H-70 (Sept. 16, 1992) at 13. Further, "If Respondent fails to produce credible evidence mitigating against the assessment of punitive damages, the penalty may be imposed without consideration of his/her financial circumstances." *Soria, supra* at 17.

In considering how much to award in punitive damages where they are appropriate, the Commission also looks to a respondent's history of discrimination, any attempts to cover up the conduct, and the respondent's attitude towards the adjudication process including whether the respondent disregarded the Commission's procedures. *Brennan v. Zeeman,* CCHR No. 00-H-5 (Feb. 19, 2003), quoting *Huff v. American Mgmt. & Rental Svc.,* CCHR No. 97-H-187 (Jan. 20, 1999).

An award of punitive damages is warranted in this case. While the hearing officer did not find that that Respondent's actions were motivated by evil motives toward Complainant because she was pregnant, he did find that Respondent was aware that it was violating the law, recklessly trampled on Complainant's protected rights, and then covered up its unlawful actions. The hearing officer determined that Respondent's conduct cannot go unpunished and recommended an award of punitive damages in the amount of $9,000. In employment discrimination cases where a respondent's actions involved similar reckless indifference to the rights of the complainant, the Commission has awarded similar punitive damages awards. *Ordon, supra.* ($10,000); *McCall v. Cook County Sheriff's Office et al.*, CCHR No. 92-E-122 (Dec. 21, 1994)($9,000 and $6,000 against two respondents); *Feinstein v. Premiere Connections*, LLC et al., CCHR No. 02-E-215 (Jan. 17, 2007)($7,500). Accordingly, the Commission adopts the hearing officer's recommended punitive damages award of $9,000.

B. Interest

Section 2-120-510(l), Chicago Municipal Code, allows an additional award of interest on the damages awarded to remedy Ordinance violations. Pursuant to Reg. 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate, adjusted quarterly from the date of violation, and compounded annually. The hearing officer recommended an award of interest on all damages awarded in this case, starting from the date of the discriminatory act, June 4, 2013. The Commission agrees and adopts the recommendation.

C. Fine

Section 2-160-120 of the Chicago Human Rights Ordinance requires a fine against a party found in violation of the ordinance of not less than $100 and not more than $1,000. The hearing officer recommended the maximum fine against Respondent. Effective December 21, 2013, the maximum fine allowed for violations of the Ordinance is $1,000. In view of the egregiousness of the violation, the Commission agrees with the recommendation to impose the maximum fine against Respondent, and so imposes a fine of $1,000.

D. Attorney Fees

Section 2-120-510(l) of that Chicago Municipal Code allows the Commission to order a respondent to pay all or part of the prevailing complainant's reasonable attorney fees and associated costs; fees are routinely granted to prevailing complainants. *Jones v. Lagniappe – A Creole Cajun Joynt LLC and Mary Madison*, CCHR No. 10-E-40 (Dec. 19, 2012). Accordingly, attorney fees and costs are awarded to Complainants with the amount to be determined by further ruling of the Commission pursuant to the procedures stated in CCHR Reg. 240.630.

V. CONCLUSION

The Commission finds Respondent Montessori Academy Infant-Todler Center, Inc., liable for pregnancy-related sex discrimination in violation of the Chicago Human Rights Ordinance and orders the following relief:

1. Payment to the City of Chicago of a fine of $1,000;

2. Payment to Complainant of back pay damages in the amount of $5,993.75, emotional distress damages in the amount of $1,000, and punitive damages in the amount of $9,000, for total damages of $15, 993.75;

3. Payment of interest on the foregoing damages from the date of violation on June 4, 2013;

4. Payment of Complainant's reasonable attorney fees and costs as determined by further order of the Commission pursuant to the procedures outlined above.

CHICAGO COMMISSION ON HUMAN RELATIONS

Mona Noriega

By: Mona Noriega, Chair and Commissioner
Entered: August 13, 2015