

**OHIO CIVIL RIGHTS COMMISSION**

IN THE MATTER OF:

**TIFFANY LEMBERG**

Complainant

Complaint #8468

(CIN) K5011298 (26976) 031798

and

**LAW SCHOOL ADMISSIONS COUNCIL  
AND UNIVERSITY OF CINCINNATI**

Respondents

**HEARING EXAMINER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND RECOMMENDATION  
ON RESPONDENTS' MOTIONS TO DISMISS (RE: JURISDICTION)**

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**HEARING EXAMINER'S REPORT BY:**

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## INTRODUCTION AND PROCEDURAL HISTORY

The Ohio Civil Rights Commission (Commission) issued Complaint #8468 on January 7, 1999. The Complaint alleged that Complainant requested an accommodation from the Law School Admissions Council for the Law School Admissions Test (LSAT) which was scheduled to be held at the University of Cincinnati on February 15, 1998. The Complaint alleged that her accommodation request was denied.

Respondent Law School Admissions Council (LSAC) filed an Answer to the Complaint and a Motion to Dismiss on February 9, 1999. In the Motion to Dismiss, LSAC argued that it was an entity that was not covered under Chapter 4112. Therefore, the Commission had no jurisdiction to issue a complaint against it.

Respondent University of Cincinnati (UC) filed a Motion to Dismiss on April 19, 1999. In its Motion to Dismiss, UC argued the Commission did not have jurisdiction to proceed against UC because it was not a proper party. UC argued that it was neither an agent of LSAC nor had any authority to make

any determinations regarding accommodation requests. Further, UC argued that Complainant never directed a request for accommodation to the University. Complainant requested accommodation from LSAC, but it did not involve access to the testing facility.

The Commission did not file a response to either Motion. Instead, the Commission and both Respondents filed Joint Stipulations with the Hearing Examiner on September 16, 1999. Therefore, this matter is now before the Hearing Examiner on Respondents' Motions to Dismiss.

### **FINDINGS OF FACT**

The following Findings of Fact are based on the Joint Stipulations submitted by the Commission and the Respondents. The Findings of Fact are not findings of fact on the merits of the Commission's Complaint. The Findings of Fact are limited to Findings of Fact which relate to the issues raised in the Motions to Dismiss.

## **UC'S MOTION TO DISMISS**

UC entered into an agreement with LSAC on October 8, 1996 to serve as a test site for LSAT during the 1997-98 test year. The agreement between LSAC and UC provided that UC would operate the test center in such a manner as to assure equal access to all persons.

UC did not have any authority under the agreement or otherwise to make any determinations about whether an accommodation should be given to a student who requests an accommodation.

Complainant never made a request for accommodation to UC, nor did the request for an accommodation that she made to LSAC involve access to the testing facility itself.

## **LSAC'S MOTION TO DISMISS**

LSAC is a private Delaware corporation headquartered in Newtown, Pennsylvania.

LSAC is not a place of public accommodation as set out in Ohio Revised Code § 4112.01(A)(9).

LSAC has no employees within the state of Ohio, nor does it operate a place of business in Ohio.

LSAC is not an educational institution, as defined under Revised Code § 4112.022.

## **CONCLUSIONS OF LAW AND DISCUSSION**

### **UNIVERSITY OF CINCINNATI**

Based on the foregoing Findings of Fact, it is clear that UC had no authority to allow Complainant to have extra time to complete the LSAT per her accommodation request. It is also clear that UC was not asked to provide her with any accommodation within its jurisdiction, access to the facilities. The facilities were accessible to the disabled. It is also clear that LSAC was not an agent of UC. If anything, UC was an agent of LSAC for purposes of administering the test. However, LSAC did not give UC the authority to grant the type of accommodation that was requested by Complainant. Even if UC could grant this accommodation, Complainant did not apply to UC for such an accommodation.

I am not aware of any legal theory under which UC could be held liable for a violation of Chapter 4112 committed by LSAC. The Commission did not offer any legal arguments on this issue. Therefore, I am recommending that UC's Motion to Dismiss be granted.

## **LAW SCHOOL ADMISSIONS COUNCIL**

LSAC is not an agent of UC. Therefore, it is difficult to conclude that the Commission has jurisdiction over LSAC, since LSAC does not have four or more employees within the state of Ohio. (See R.C. § 4112.01(A)(2), which defines an employer as a person employing four or more persons within the state)

Nor does LSAC fit the definition of a place of public accommodation. (See R.C. § 4112.01(A)(9)) Likewise, LSAC is not an educational institution as it is defined under R.C. § 4112.022.

Thus, it appears that an organization such as LSAC, which does business in Ohio without actually having a presence in Ohio, is not subject to Ohio's Laws Against Discrimination.

In any event, based on the Joint Stipulations that were submitted, Complainant's request for more time to take the LSAT was denied because she did not submit the appropriate documentation within a reasonable time

prior to the February 1998 LSAT. This would appear to be a legitimate, nondiscriminatory reason for denying her request for accommodation.

## **CONCLUSION**

Having considered the Joint Stipulations and arguments put forth by the Respondents in the Memorandums in Support of their Motions to Dismiss and having heard no counter arguments from the Commission, the Hearing Examiner is recommending that Complaint #8468 be dismissed because the Commission has no jurisdiction over LSAC and UC is not a proper party.

## **RECOMMENDATION**

For all the foregoing reasons, it is recommended that the Commission issue a Dismissal Order in Complaint #8468.

FRANKLIN A. MARTENS  
CHIEF HEARING EXAMINER

October 12, 1999