STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NO. PC22MB-65242

P.M. and R.M., parents o/b/o M.M., a minor, and P.M. and R.M., individually, and the Director of the New Jersey Division on Civil Rights,	)	Administrative Action
Complainants,	)	**FINDING OF PROBABLE CAUSE**
v.	)	
Nobel Learning Communities, Inc., d/b/a Chesterbrook Academy,	)	
Respondent.	)	

On April 24, 2015, Moorestown residents P.M. and R.M. (Complainants)[1] filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Nobel Learning Communities, Inc. d/b/a Chesterbrook Academy (Respondent) discriminated against their three-year-old daughter in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, by refusing to reasonably accommodate her disability so that she could remain enrolled in the school. Respondent denied the allegations of disability discrimination in their entirety. DCR's investigation found as follows.

Nobel Learning Communities, Inc. (Nobel) describes itself as "a network of more than 180 private schools in 19 states and the District of Columbia" that "provide[s] the developmentally appropriate balance of learning and play to prepare children for kindergarten and beyond." See http://www.nobellearning.com/about-us.

Nobel operates six Chesterbrook Academies in New Jersey that admit children from the age of six weeks through kindergarten, and offer "before & after care," and summer camp. One such facility is located at 130 Borton Landing Road, Moorestown (Chesterbrook), and offers the following programs:

- Infant (6 weeks to 12 months)
- Toddler A (12 months to 18 months)

[1] The verified complaint is hereby amended to add the Director of the Division on Civil Rights as an additional complainant pursuant to N.J.A.C. 13:4-2.2(e). However, for purposes of this disposition, the term "Complainants" shall refer only to P.M. and R.M., parents on behalf of M.M., and individually.

- Toddler B (18 months to 24 months)
- Beginner A (2 years to 2 ½ years)
- Beginner B (2 ½ years to 3 years)
- Intermediate (3 years to 4 years)
- Pre-K (4 years to 5 years)
- Kindergarten

Complainants have four children. Their two older children graduated from Chesterbrook and attend elementary school. Their two younger children—three-year-old M.M. (who has Down syndrome) and her nine month old sibling—were enrolled in Chesterbrook.

M.M. began in the Infant program and progressed through the programs according to M.M.'s age milestones to Beginner B. At all relevant times, she received special educational services from the Moorestown Township School District (the District). Each morning, R.M. dropped M.M. off at Chesterbrook at 7:25 a.m. At 8 a.m., the District picked up M.M. and took her to a public school, South Valley Elementary School. At 11:45 a.m., the District returned M.M. to Chesterbrook where she and the other children ate lunch and napped for two hours. R.M. picked up M.M. from Chesterbrook between 4:15 and 4:30 p.m.[2]

On July 11, 2014, M.M. turned three years old. Chesterbrook stated that its policy is to move students up to the next room/level in the months of January, June, or September.

Complainants stated that in January 2015, Chesterbrook's newly appointed Acting Principal, Kelly Honer, told R.M. that Respondent was moving M.M. into the Intermediate program. They discussed the fact that M.M. was not toilet-trained. Complainants stated that there was a discussion of goals, not deadlines, in terms of toilet-training. R.M. alleges that she told Honer that she was content simply leaving M.M. in the Beginner B class, and understood that Respondent would return M.M. to the Beginner B class if the toilet-training was unsuccessful. After the discussion, Honer sent the following email to R.M.:

> I just wanted to follow up to our conversation about [M.M.]'s potty training. We are really going to work on getting her potty trained here at school! We need to partner with you on this. Is there anything in particular that you do at home? Any info would be great so I can share it with her teachers. Since she is in a non-diapering classroom we need to set a time frame for her potty training. I was thinking about April 1st? Since it is a corporate policy I have to set a time frame to get her potty trained. I'm confident that if we all work together we can get her potty trained. Please let me know if you have any questions.

See Email from Honer to R.M., Jan. 21, 2015 8:40 am. Respondent reassigned M.M. to the Intermediate class that month.

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2 Complainants paid full tuition.

On March 11, 2015, the lead teacher in the Intermediate program sent an email to classroom parents that appears to address toilet-training issues:

> Time continues to fly by!! Please check your child's cubby for weather appropriate and out grown clothes, please have available: a shirt, pants, 2 pairs of underwear, a pair of socks, and extra shoes (crocs). Most of our accidents happen in the standing position. We look forward to spring and should be returning outdoors by Friday, weather permitting. Enjoy the rest of your day. Intermediates
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> [See Email from Wenona Jackson, "Extra Clothes," Mar 11, 2015.]

Complainants provided a doctor's note to Chesterbrook that stated, "Due to her Down Syndrome, [M.M.] is developmentally delayed and will not be able to fully potty train until age 5 or older." See Letter from Chun Hui Yin, M.D., The Children's Hospital of Philadelphia, to "To Whom It May Concern," Mar. 23, 2015.

Complainants allege that on March 25, 2015, the new principal, Ann Nimberg, told them that M.M. would be disenrolled if not toilet-trained by April 1, 2015.

The next day, dissatisfied with the response from the local school officials, R.M. sent an email to Respondent's corporate headquarters seeking to have the toilet-training policy relaxed in light of M.M.'s disability. She wrote:

> I am writing to express my concern over a situation we are having with my daughter at the Moorestown location. My daughter, [M.M.], is 3 years old and has Down Syndrome. She has been in Chesterbrook since she was 6 months old and is [*sic*] has been extremely positive experience for her. The staff has been wonderful and extremely accommodating with her therapist from Early Intervention who worked with her. She moved up to the intermediate room in January with the expectation that she would be potty trained by April. However, she is physically and cognitively delayed and it takes kids with Down Syndrome much longer to be potty trained.
>
> The new principal, Ann Nimberg, is telling me [M.M.] can no longer attend Chesterbrook as of April 1, if she is not potty trained. I find this rather alarming and discriminatory as the federal law, the Americans with Disabilities Act (ADA), protects her right to attend there.
>
> I have 4 kids who have all attended Chesterbrook and it has been a very positive experience. My youngest daughter is currently in the infant room now. I look forward to a bright future with Chesterbrook and hope you can help in resolving this situation.
>
> [See Email from R.M. to Daisy Anetor, Executive Director, Nobel Learning Communities, Mar. 26, 2015. 7:45 pm.]

Executive Director Anetor denied the request by way of an email that stated as follows:

> Thank you for reaching out to me. I would like to clarify that although Ann is on the front line in terms of confirming [M.M.]'s last day she did not make that decision.
>
> I've attached the previous email communication from Kelly Honer, Interim Principal who partnered with me and our ADA Compliance Officer, Mike Foley to agree to a conditional transition into the intermediates classroom for [M.M.] with a clear understanding that she would need to be toilet trained by April 1, 2015 given that no one else in the classroom is provided diaper changing services. Kelly communicated this to you both in person and in email as well as to the classroom teachers. It was in fact the classroom teachers that recently brought this to Ann's attention to inquire about the upcoming April 1st deadline.
>
> Ann immediately brought it to my attention which I confirmed as Kelly had previously forwarded me her communication and I had requested that both Kelly and Ann partner to speak with you and confirm [M.M.]'s last day as April 1st.
>
> Please know this was an informed decision and it was not made lightly and consideration was made back in January to allow reasonable time for [M.M.] to become toilet trained or for you to confirm alternate arrangements.
>
> Our decision is final and as Ann provided earlier you are welcome to speak directly with our ADA Compliance Officer, Mike Foley who can be reached at (773) 881-[****] and is copied on this email. I did want to respond to your email to clarify Ann's role in this but will have to refer further communication to Mr. Foley.
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> [See Email from Anetor to Complainants, Mar. 27, 2015, 12:37 pm.]

Complainants stated that when their older son, who does not have a disability, was transitioned into the Intermediate program, he was not fully toilet-trained. They contend that M.M. was treated differently based on her disability.

Respondent argues that Complainants were told in December 2014, not January 2015, that M.M. would be moved to the Intermediate class. It notes that in January 2015, the Complainants were given a deadline to have M.M. toilet-trained by April 1, 2015, and because they did not meet that deadline, M.M. was disenrolled effective April 1, 2015.

Respondent acknowledges that Complainants' older son was placed in the Intermediate program before he was toilet-trained. In particular, Respondent notes:

> Complainant's older son (and M.M.'s brother), was a student at Chesterbrook Academy No. 7 who, several years ago, was also moved from the beginner program to the intermediate program before he was toilet trained. As with M.M.,

her brother was given a deadline by which he needed to be toilet trained, but unlike M.M., he met that deadline.

[See Respondent's Verified Answer & Affirmative Defenses, Jun. 11, 2015, p. 2 ¶4.]

Respondent maintains a "potty log" that lists the date, time, whether the children were wet or dry, whether they went to the bathroom or tried, and the initials of the staff member who checked. M.M's log for the period January 26, 2015 through March 26, 2015 (i.e., while in the Intermediate program), shows that M.M. was checked 73 times and that she needed to be changed 21 times. Respondent claims that "R.M. initially refused to cooperate with the school's plan to toilet train M.M." and that "Chesterbrook personnel dedicated considerable energy to attempting to teach M.M. to toilet without assistance from her parents." See Respondent's Answer, supra, at p. 5, ¶10.

Respondent states that in addition to the toilet-training issue, there were other factors that led to her expulsion. Respondent notes:

> From January, 2015, to April, 2015, M.M.'s toilet training did not progress as hoped . . . Moreover, M.M.'s behavioral problems escalated. One day during winter 2015, M.M. repeatedly punched her classmates, including punching one classmate in the face, further necessitating the full-time attention of a dedicated teacher to attend to M.M.'s needs and watch her at all times. Because one to one assistance could not be reasonably provided nor safely eliminated, Respondent dis-enrolled M.M.

See Respondent's Answer, supra, at p. 6, ¶11. In support of its characterization of M.M. as disruptive and physically aggressive, Respondent produced incident reports dated March 2, 19, and 20, 2015, which memorialized what it claimed to be M.M.'s inappropriate conduct toward other classmates and a teacher.

Respondent argues that the requested accommodation would have meant hiring a new teacher to essentially serve as a personal attendant to M.M. Respondent notes:

> Respondents must comply with state-mandated teacher to student ratios, so when M.M. was transferred to the intermediate program in January, 2015, Respondent managed M.M.'s needs by assigning a third teacher to the intermediate classroom to attend to M.M. when she was in the classroom. However, the addition of this third teacher imposed a significant economic loss on Chesterbrook Academy No. 7, as that teacher effectively served as a personal attendant to M.M., and because the cost of tuition for M.M. was significantly less than the cost to the school to employ the third teacher.

[See Respondent's Answer, supra, at p. 5, ¶7.]

Respondent argues that hiring an additional teacher would have imposed an undue hardship because the school would be "losing money on M.M.'s enrollment because the cost to hire that personal attendant exceeded M.M.'s tuition." Id. at p. 6, ¶13. Respondent also argues that the requested accommodation would require a "fundamental alteration in Respondent's programs and services, as Respondent provides group education programs, and not one-on-one childcare . . . Respondent is not required to provide personal services, including but not limited to feeding, dressing, diapering and toileting services, under applicable anti-discrimination laws." Id. at p. 6, ¶13 & p. 7, ¶3. Respondent notes:

> As of January, 2015, all students in the intermediate program other than M.M. were toilet trained. The intermediate program classrooms do not contain diaper-changing tables and instructors in the intermediate program do not, as a general rule, accompany students in the intermediate program to the bathroom. Without the aid of a changing table, changing students' diapers in the bathroom is challenging and unhygienic. It requires a teacher to leave the classroom for extended periods of time and, in the case of M.M., to undress and re-dress her. It also requires extensive cleanup, during which one teacher is charged with caring for M.M. cleanses and sanitizes the floor facilities, and sometimes the bathrooms walls.
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> [See Respondent's Answer, supra, at p. 5, ¶7.]

M.M.'s teacher, Elizabeth Ibarrondo, the lead teacher in the Beginner B room, said that M.M. was a "sweet loving" child but would sometimes take toys away from the younger children and push them down. She said that their toilet-training included, among other things, keeping a "potty log," setting "potty times" for children, encouraging them by saying, "Let's go potty," and then having them sit on the potties.

M.M.'s teacher, Wenona Jackson, told DCR that when M.M. transitioned into her Intermediate class in January 2015, they attempted to potty train her by taking her to the bathroom at specific times and kept a log of those efforts. She said that M.M. began taking other children's food, pulling classmates' hair, wandering around, and would hit and pinch the assistant teacher. She said that she asked R.M. what her daughter liked to do, so they could find ways to keep her occupied, but the mother did not seem to know. Jackson said that because there was no changing table in the Intermediate room, they would place M.M. on large sheets of parchment paper on the floor to change her diaper. Jackson said that an extra teacher would come in to help, but she got her own classroom and was no longer available. She said there was a particularly messy incident where M.M. had an accident on the floor of the bathroom and tracked the waste everywhere.

Kelly Honer told DCR that she served as Chesterbrook's Acting Principal from December 2014 until February 2015, when she became the principal of another of Respondent's facilities. She said that the school distributed a list in December 2014 noting that M.M. and others would be moving from the Beginner B room to the Intermediate room. She said that she met with R.M. in January 2015 and explained that because all children in the Intermediate room must be potty trained, they needed to set a deadline by which M.M. would be compliant. She

said they set an April 1, 2015, deadline. Honer stated that when she left the school in February for her new position, M.M. was still not potty-trained.

Ann Nimberg told DCR that she was hired on February 7, 2015, and was in training until in or around March 2015. She said that Honer had previously told R.M. that her daughter needed to be potty-trained by April 1 or would be disenrolled. She said that the decision was made by Honer, Executive Director Anetor, and ADA Compliance Officer Michael Foley.

ADA Compliance Officer Foley stated that when M.M. was in the Beginner B class, Honer told him that she was becoming aggressive with the other children. He said it was decided that M.M. should move into the age-appropriate Intermediate class even though they knew that she was not potty-trained yet. Foley stated that M.M. needed a full-time teacher to help her eat, follow and watch her, which sometimes included holding her or carrying her around. He said that he spoke with Honer on January 9 and 21, and told her that she could not assign someone to work exclusively with M.M., and that the school was not required to provide one-on-one care. He said that he told Honer to select a date by which M.M. should be toilet-trained or at least reasonably improved, and Honer selected April 1. He said that after M.M. was placed in the Intermediate class, her toilet issues did not improve and she acted violently toward a number of classmates, attempted to leave the room, distracted the other students, and was still requiring one-on-one attention.

Foley said that they were prepared to extend the deadline if M.M. showed any sign of progress. He said that the parents were resigned to the idea that M.M. could not be potty-trained, so they stopped trying. Foley said there was an incident when M.M. put feces all over the walls and the room had to be sanitized with bleach. He said it was more than the typical problems associated with changing a child's diaper. Foley said that he had a number of discussions with Complainants about M.M.'s aggressive behavior but they seemed disengaged. He said that he spoke with Honer and Anetor about M.M.'s behavioral issues and the sense that the parents did not appear to be making any effort to modify the behavior. He said that by the time Nimberg took over as principal, M.M. was "out of control" so he, Nimberg, and Anetor decided to enforce the April 1 deadline.

On April 3, 2015, M.M. began attending another daycare center, Puddle Jumpers Academy in Moorestown. The facility's director, Lori Cassidy, told DCR that each morning the District picks up M.M. from the daycare center at 8 a.m., and returns her to the daycare center at approximately 11:50 a.m., where she stays until between 4:30 and 5:30 p.m.

Cassidy noted that when determining classroom placement, her facility evaluates the child's developmental stage, rather than simply grouping the children by age. She noted that because M.M. has Down syndrome and is developmentally delayed, they did not place her in the more age-appropriate class where they prefer that the children be potty-trained. M.M., who turned four years old on July 11, 2015, is in the "older toddler room" with children from 2 to 3 1/2 years old.

Cassidy described M.M. as "one of the most loving little children around" who "fits well in the environment" and "gets along well with the other children" and has "no aggression issues at all." She said that there are twelve to eighteen children in the class and that M.M. is "very social" and knows all the other children's names as well as "who their parents are." Cassidy said that M.M. is not potty-trained but does not require a personal assistant or a one-on-one assistant. She said that M.M. sometimes needs to be "pulled back" if she wanders around, but "she requires no additional care."

Dr. Leisa Karanjia, who is the Principal of the South Valley Elementary School, told DCR that M.M. has been attending her school since 2014 and is enrolled in a three-hour program with approximately twelve students. Dr. Karanjia stated that there have been no reports of M.M. exhibiting inappropriate or disruptive behavior. Dr. Karanjia—like Lori Cassidy—specifically denied any reports of M.M. being physically aggressive toward other children.

Analysis

The LAD states, "All persons shall have the opportunity . . . to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation" without discrimination on the basis of disability. N.J.S.A. 10:5-4; N.J.S.A. 10:5-12(f). Thus, a place of public accommodation must make "reasonable accommodations to the limitations of a patron or prospective patron who is a person with a disability, including making such reasonable modifications in policies, practices, or procedures, as may be required to afford goods, services, facilities, privileges, advantages, or accommodations to a person with a disability," unless it can demonstrate that making the accommodation would impose an "undue burden on its operation." N.J.A.C. 13:13-4.11(a).

"If a defendant's response to a reasonable accommodation claim is that that accommodation would be unduly burdensome or an undue hardship, this defense is considered an affirmative defense and the defendant assumes the burden of proof on this issue." See Lasky v. Moorestown Twp., 425 N.J. Super. 530, 545 (App. Div. 2012), certif. denied, 212 N.J. 198 (2012) (quoting Hall v. St. Joseph's Hosp., 343 N.J. Super. 88, 108-09 (App. Div. 2001), certif. denied, 171 N.J. 336 (2002)).

When determining whether a particular accommodation would impose an undue burden, factors to be considered include (a) the overall size of the business that runs the place of public accommodation with respect to the number of employees, number and types of facilities, and size of budget; (b) the nature and cost of the accommodation needed; (c) whether the accommodation sought will result in a fundamental alteration to the goods, services, program, or activity offered. N.J.A.C. 13:13-4.11; Wojtkowiak v. New Jersey Motor Vehicle Comm'n., 439 N.J. Super. 1, 14-15 (App. Div. 2015).

The LAD defines "place of public accommodation" broadly to include entities that offer goods or services to the general public such as day camps and schools. N.J.S.A. 10:5-5(l). Thus, for example, in Ellison v. Creative Learning Ctr., 383 N.J. Super. 581, 587-89 (App. Div. 2006), the Court found that a profit-making private school was a place of public accommodation despite its selective admission process and non-traditional or progressive educational programs, because

it "engaged in broad public solicitation for students" and "treated itself as a place of public accommodation, since on its enrollment form it held itself out as having an open admission policy and as nondiscriminatory." Id. at 588.

Here, Respondent does not dispute that M.M. is a person with a disability, or that Complainants requested a disability accommodation, or that it denied the requests, or that the requested accommodation would have allowed Complainants to enjoy the accommodations, advantages, facilities, and privileges of Chesterbrook, a place of public accommodation. Instead, Respondent argues the requests were unreasonable, and therefore not required, because they would have imposed an undue burden on its operations.

Respondent notes that its long-standing requirement/policy is that children in the Intermediate room must be toilet-trained. It argues that relaxing that requirement would create an undue hardship because it would mean a "fundamental alteration to the goods, services, program, or activity offered." See, e.g., Respondent's Answer, supra, at p. 7.

That position does not appear to be fully supported by the evidence. For example, Respondent acknowledged that it waived the requirement in the case of M.M.'s older brother. Id. at p. 2 ("Complainant's older son . . . was a student at Chesterbrook Academy No. 7 who, several years ago, was also moved from the beginner program to the intermediate program before he was toilet trained."). Likewise, the Intermediate teacher's reference to "2 pairs of underwear" and statement that "[m]ost of our accidents happen in standing position" further suggests that having three and four year-olds in the Intermediate program who are not fully toilet-trained is not a fundamental alteration to the services, program, or activity offered. See Email from Jackson, supra. This might be a different case if, for instance, teachers in a middle school were being asked to attend to toilet-training issues in addition to teaching their regular lessons. But those are not the circumstances of this case. Respondent is a daycare program comprised of children from infant (six weeks) to kindergarten. It is undisputed that diapering occurs in Chesterbrook. And it is undisputed that at least one child who was not toilet-trained was enrolled in the Intermediate class in the past.

Respondent argues that allowing M.M. to remain in the Intermediate class would have required it to have a third teacher to serve as a "personal attendant to M.M.," which would have imposed an undue hardship because the "cost of tuition for M.M. was significantly less than the cost to the school to employ the third teacher." See Respondent's Answer, supra, at p. 5.

That argument raises a number of issues. First, there is a question as to whether a personal attendant was truly required. An official from the daycare center where M.M. began attending immediately upon leaving Respondent, reported that although M.M. is still not potty-trained, she does not require her own personal attendant or a one-on-one assistant. Second, the appropriate cost-balancing analysis does not simply weigh the cost of M.M.'s tuition against the cost of employing a teacher. Instead, it considers the "overall size of the business that runs the place of public accommodation with respect to the number of employees, number and types of facilities, and size of budget." N.J.A.C. 13:13-4.11. Thus, the more appropriate question might be whether Respondent, which describes itself as a "network of more than 180 private schools in 19 states and the District of Columbia," could have absorbed the cost of an employee to assist

with a child with a disability. Third, the argument assumes that no reasonable alternative accommodations existed. The investigation uncovered no persuasive evidence—and none was produced by Respondent—that Respondent examined whether there were any alternative accommodations that might have been less burdensome, such as the mother's suggestion that M.M. simply remain in the Beginner B class where there was no toilet-training requirement. The Beginner B class had 2 ½ and 3 year-olds and M.M. was 3 years old at the time. In her current school, M.M. is reportedly thriving socially in what appears to be the equivalent of Respondent's Beginner B class in terms of the children's ages. Moreover, the claim that M.M.'s continued enrollment would have forced Respondent to endure an undue financial and/or operational hardship is further called into question by the fact that Complainants paid full tuition even though M.M. was only at its facility for a half day—which included a two-hour lunch and nap period.

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." Ibid. A finding of probable cause is not an adjudication on the merits, but merely an initial "culling-out process" whereby the Director makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." Ibid.

It appears that in December 2014 or January 2015, Respondent decided to move M.M. into a classroom of older children and require that she be toilet-trained. On January 21, 2015, Respondent sent an email to Complainants stating in part, "I was thinking about April 1? Since it is a corporate policy I have to set a time frame to get her potty trained." Complainants understood "April 1?" to be a goal, not a deadline. They asked that the "corporate policy" be relaxed to accommodate M.M.'s disability and submitted a doctor's note stating that M.M. was "developmentally delayed" because of a medical condition—Down syndrome—and would "not be able to fully potty trained until age 5 years or older." Respondent denied the request and used the arbitrary deadline as the basis for expelling the three-year-old. After it was served with a verified complaint alleging disability discrimination, Respondent asserted for the first time that it also considered the fact that M.M. acted aggressively toward her classmates and argued that Complainants were not committed to modifying their child's behavioral issues. A daycare center or pre-school may be within its rights to expel a child for aggressive conduct that is unrelated to a disability. However, when the school causally links the expulsion to the child's medical condition and fails to engage in a good faith interactive process with the parents in an attempt to find an effective accommodation, then it implicates the LAD's prohibition against denying "accommodations, advantages, facilities, or privileges" based on disability. N.J.S.A. 10:5-12(f).

Similarly, where, as here, a daycare program allows a non-potty-trained child without a disability to remain in a class, but expels the non-potty-trained child with a disability, such conduct suggests disparate treatment in the "accommodations, advantages, facilities, or privileges" based on disability. N.J.S.A. 10:5-12(f).

In view of the above, the Director is satisfied that the circumstances of this case support a "reasonable ground of suspicion . . . to warrant a cautious person in the belief" that probable cause exists to support the allegations of disability discrimination. N.J.A.C. 13:4-10.2. The Director recognizes that Respondent may ultimately present sufficient evidence to demonstrate that relaxing its toilet-training deadline or allowing M.M. to return to the Beginner B class or any other alternative accommodation would have imposed an undue burden on its operations. Because the burden of proof on that issue clearly rests with Respondent, and given the legal presumption in favor of disability accommodations, the Director finds at this preliminary stage in the process that Respondent has failed to establish that its affirmative defense of undue burden is meritorious.

DATE: 2-23-16

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS