

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. PL10WE-63381

N.B. and E.R., parents/guardians o/b/o)
M.B., a minor, and M.B., individually,)

Complainants,)

v.)

Waldorf School of Princeton,)

Respondent.)

Administrative Action

FINDING OF PROBABLE CAUSE

Parents N.B. and E.R. (Complainants) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging, among other things, that in retaliation for engaging in protected activity on behalf of their minor child with a disability, the Waldorf School of Princeton ("Waldorf") expelled the child from school, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Waldorf denied the allegations of discrimination and retaliation in their entirety. After reviewing his agency's ensuing investigation, the DCR Director finds, for purposes of this disposition only, as follows.

Waldorf is a private institution for children from early childhood through the eighth grade. Waldorf officials told DCR that its curriculum is more artistic--and its method of instruction looks at developmental stages differently--than most traditional public and private schools. For instance, in addition to academic subjects, it provides instruction in knitting, sewing, crocheting, painting, sculpture, music.¹ Waldorf told DCR that unlike most other educational institutions, it does not routinely use text books or technology, and its students usually stay with the same classroom teacher from first through the eighth grade.

¹ The DCR investigator who visited the school was shown art projects including stone sculpture, handmade dolls, paintings, and drawings, and told that vocal and instrumental music instruction and eurythmy, i.e., expressive movement as developed by Waldorf's founder Rudolph Steiner, were staples of the curriculum.

Complainants were attracted to the school's emphasis on practical and fine arts and enrolled their daughter, M.B., as a first grader for the 2005-2006 school year. They moved from Union County to Princeton to be closer to the school. In the third grade, the Somerset County Educational Commission diagnosed M.B. as having a learning disability. Complainant stated that M.B.'s teacher in third, fourth, and fifth grades—Pamela Shafer—followed an Individual Services Plan (ISP) that included a number of accommodations. For example, her fifth grade ISP, dated November 18, 2009, listed the following "modifications:"

Classroom

- Utilize multi-sensory approach to instruction
- Review vocabulary concepts
- Present material incrementally (chunking)
- Use one and two step directions
- Periodically have student repeat back directions to insure understanding
- Allow extended time for assignment and project completion
- Provide frequent positive reinforcement
- Utilize math manipulatives
- Use graph paper for math problems
- Seat student near source of instruction and visual displays

Classroom Testing

- Allow extended time for test completion: up to 50%

Standardized Testing

- Extended time as needed: up to 50%
- Assistance in reading the non-reading sections of the test
- Allow student to dictate answers to a scribe
- Repeating, clarifying and rewording directions
- Providing manipulatives for math items
- Use graph paper for math section
- Allow student to mark answers in the test booklet

E.R. (the mother) stated that she had on-going communication with Shafer and Waldorf's remedial department, and that M.B. received two hours per week of tutoring in school as well as private tutoring outside of school. E.R. noted that Shafer wrote her a note thanking her for "working so hard with me to make her [M.B.] successful."

In sixth grade, Deidre Sciaretta took over as the primary teacher for M.B.'s class. E.R. noted that where Schafer had always been very accessible, Sciaretta was less so and eventually their interactions were reduced primarily to email communications. E.R. told DCR that Sciaretta appeared to be "preoccupied and seemed less interested," but there was no indication from the school that her daughter's education was somehow "deteriorating" or a cause for concern. Sciaretta's annual report for M.B. noted in part:

Overall, [M.B.] had a good year. Her habits improved as did her ability to stay on task, and she took more responsibility for her work. [M.B.] has matured as a student . . . A highlight of the study of Rome was her presentation on beauty and fashion. [M.B.]'s oral report was a bit disorganized but the interactive nature of her presentation was well received. Although her main lesson books had errors, they set the standard for the class in their artistry and beauty. [M.B.] has a developed eye for form and color. She has a sense for composition . . .

[M.B.] did her best work with explicit directions; however, even here she could miss parts of the assignment or turn in only partially completed work. [M.B.] had good ideas but she struggled with their organization. Next year it will be a goal to teach her many pre-writing strategies (graphic organizers) so she can organize her ideas before she begins to write. [M.B.] also struggled with grammar, syntax, and punctuation. Her written work had a more informal tone; it sounded more like spoken language than written language at times. Again with practice this will improve. [M.B.] must read all of her work aloud before turning it in. She should read it to her self and to someone else. This will help [M.B.] see if it flows the way she would like. Careful editing and proofreading are also practices that will be rewarded in time. . . . [M.B.] benefits from hearing terms, names, and new vocabulary several times, and by previewing the history so she won't be hearing things for the first time in class. . . . [M.B.] was an inconsistent math student this year. Some days she would solve problems independently with good accuracy, while others she would not even know where to begin. It was clear [M.B.] needed review, repetition, and practice. . . . When taught a new concept, [M.B.] could often solve a whole sheet of problems; the trouble arose the next day or next week when confronted with the same problems again. . . . Most of her errors were conceptual or not understanding what was being asked (eg; perimeter versus area). Upon review, [M.B.] said, "Oh, that was all I had to do?" Although [M.B.] was able to follow much of the math curriculum this year, she was not at grade level; she required teacher help and guidance to solve many of the problems; she was not yet able to do them consistently, accurately or with independence. Next year will further stretch [M.B.] as algebra (variables) and negative numbers will be introduced.

Probably the greatest academic highlight of the year was [M.B.]'s participation in the science blocks. [M.B.] was delighted with all the work we did. She joyfully engaged in the physics demonstrations and was often found experimenting with the science equipment on her own or with friends at recess. During review, [M.B.] always volunteered to share her observations or recall a procedure. However, [M.B.]'s

potential really shone when the class had to draw the scientific law from the observed phenomena. [M.B.] was right on the ball! She enjoyed the intellectual challenge of figuring out what the experiment/demonstration revealed about light, heat, or sound. Her comments were insightful and her thinking impressive. Well done!

[M.B.] is a pleasant student to be around. Her artwork set the standard for the class. Her peers were encouraged and inspired by her work. [M.B.] might rush her math or her writing assignments, but she was always careful and thoughtful about her artistic endeavors. [M.B.] is very musical. She was a leader in our classroom singing and appreciated by her orchestra teachers. . . . [M.B.] does have academic challenges and but she has an equal amount of strengths. She is a valued member of her class.

In seventh grade, M.B. received a "7th Grade Mid-Year Transcript Record 2011-2012," which noted that she was receiving the following accommodations: "Supplemental math support—small group work," "Tutoring during school hours," "Modified tests and quizzes, extra time and retakes," "Instructional scaffolding is used; extra time to complete work as needed," and "Foreign language waiver." The midyear report contained the following comments from her various classes:

1. [M.B.] has done quite well even with her challenges because she has studied and worked hard. (Literary Studies & Writing Skills. Grade "Understand/Effort" B/A)
2. Nice poetic voice; grammar improving; benefits from review. (Creative Writing. C+/B+)
3. Nice poetic voice; grammar improving; benefits from review. (Grammar. B/B+)
4. Good progress; still needs to work with greater independence. (Math. B-/A-)
5. Good participation. (Chemistry. B-/A-)
6. Overall very positive work and progress. (Painting *& Drawing. B+/A)
7. Required one-on-one help for most constructions. (Fundamentals of Perceptive. Drawing C+/B-)
8. Participating satisfactorily. (Movement & Games. B/B+)
9. Works very hard and it shows. Note reading is improving; solid player; comes to class prepared. Keep up the good work. (Orchestra. B-/B)

In January 2012, Complainants received re-enrollment paperwork and a financial aid package for M.B.'s eighth grade year, which they completed and returned along with a check for the deposit.

During the seventh grade, Sciarretta issued an undated annual report for the 2011-2012 school year. She wrote, in part:

[M.B.] struggled in most areas of writing. Like many students, [M.B.] had a hard time starting her papers. However, [M.B.] enjoyed the freedom afforded her in poetry. Her work had a nice cadence and rhythm. Many of her images were quite moving and sensitive. [M.B.] is a compassionate person. She was often the first to notice if a classmate was not feeling well or needed support. With very clear outlines and notes, she was able to write adequate papers. Most of her writing was completed at home. Work done in class alone did improve throughout the year but writing is an area that [M.B.] must continue to work on. [M.B.] continued to make grammatical and syntax errors in her work. [M.B.] needs to proofread her work for organization as she would often switch from one topic to the next and back again. A strength for [M.B.] is spelling. She looked forward to her weekly spelling test in skills class where her studying always brought her good result. The vocabulary words did not always make it in to her independent writing but her success here was a source of pride for [M.B.]. [M.B.] was always willing to put in the time to memorize when she could.

* * *

[M.B.] is an incredibly artistic student. She has an innate sense for form and color. Her finished works set the bar for the class. It was not uncommon to see her classmates gathered around her desk complimenting her drawing. They were not mistaken; her work could be exquisite. Art is an area of strength for [M.B.] and something she enjoys to do. Her finished work was always thoughtfully completed. [M.B.]'s degree of care and investment in her assignments was always evident.

[M.B.] struggled with organization and time management. She would lose focus at the end of the day, right when she needed to gather her things for home. . . . [M.B.] was a hard-working, conscientious student. She was always willing to learn new subjects, even though they could be difficult for her. It was a challenge for [M.B.] to separate the essential from the non-essential, and as a result, her time was not always managed well. [M.B.] wrote that she spent a lot of her time researching material covered in main lesson to "get more information" and "make sure she understood it." The lecture style classroom and group lessons were not optimal considering her learning style. [M.B.] benefitted from one-on-one in a quiet environment.

On April 3, 2012, M.B.'s private tutor, Susanne Hodgin, reported the following "observations and recommendations" regarding M.B.'s math skills:

[M.B.] has continued to improve and gain confidence in her math skills over the last several months. The extra support she gets from Mrs. Farnsworth from the county

has been critical in maintaining this steady progression. The additional accommodations of times tables and notes during assessments has also been a significant factor in her advancement.

Although [M.B.]’s ability to focus has significantly increased over the last few months, she still needs prompts and reminders to stay on task. That being said, she continues to struggle with attending to the lesson when she is fatigued. Improvement is seen when information is chunked and short breaks allowed.

[M.B.]’s attitude when learning new material has also improved considerably. She no longer gets anxious when being exposed to new information. She is ready and willing to attempt to acquire the new skill. This is a substantial shift in her mindset and approach to the subject matter. [M.B.] is still learning to use the textbook and her notes from class as resources for further understanding.

[M.B.] works best with very clear directions and frequent repetition of material.

The progress that [M.B.] has made has been possible, in large part, because of the current accommodations and additional support that she receives. These modifications should be continued through her eighth grade curriculum in order to ensure her continued success and progress.

On April 4, 2012, E.R., Waldorf Education Support Coordinator Maureen Gold, and Somerset County Educational Services Commission Child Study Team Coordinator/School Psychologist Christine Monteiro met for the annual ISP review. Monteiro wrote in the report, in part:

Classroom teacher’s reports: [M.B.] has difficulty separating the essential from the non-essential. Organization and Study Skills are areas of weakness for [M.B.]. She is a concrete thinker who improves when reinforcement and repetition is constant. Long term retention is difficult and she needs support for test taking.

Supplemental Education Teacher Comments: [M.B.] receives S.I. 2x’s per week. She also works with a Math tutor outside of school. The teacher notes that she is improving and is becoming more independent in initiating assignments.

Parent Comments/Student Comments: [M.B.] is showing improvement in mathematics. The parent notices her independence growing as well. She can become withdrawn or anxious if she has difficulty with the academics.

Socialization Skills: Age appropriate social skills

Communication Skills: Receives Speech Therapy 1x per week

Health: In good general health.

Behavior: No behavior concerns at this time.

Other: Supplemental instruction to continue 2x's per week to reinforce classroom material. Speech therapy to continue 1x per week.

Request for IDEA funds to be utilized to purchase an extra set of textbooks to work at home with the private tutor and parents.

Discussed with parent difficulty [M.B] is having due to Auditory Processing. The Waldorf School is heavily reliant on auditory learning and as such [M.B] may fall behind faster than can be supported through interventions present at this non public setting.

The ISP listed the following "modifications" for the upcoming year. There were three fewer accommodations than had been listed on the fifth grade IPS.

Classroom

- Utilize multi-sensory approach to instruction
- Review vocabulary concepts
- Present material incrementally (chunking)
- Use one and two step directions
- Provide frequent positive reinforcement
- Utilize math manipulatives
- Seat student near source of instruction and visual displays

Classroom Testing

- Allow extended time for test completion: up to 50%

Standardized Testing

- Testing in an alternative environment
- Extended time as needed: up to 50%
- Providing frequent breaks
- Repeating, clarifying and rewording directions
- Providing manipulatives for math items
- Use graph paper for math section
- Allow student to mark answers in the test booklet

On May 4, 2012, the College of Teachers² wrote to Complainants and stated that M.B. would not be invited back to Waldorf for the eighth grade. It said that the decision was based on the follow factors:

² Waldorf's College of Teachers, which is made up of full-time faculty, oversees all matters that directly affect students such as the hiring/firing of teachers, admissions, curriculum, programs advancing or retaining a child in a certain grade.

A conclusion that, based on the report of outside evaluators, this school is not the appropriate environment for [M.B.]. This is particularly of concern when considering the acceleration of the curriculum in 7th and 8th grade and the need for [M.B.] to be prepared for high school. The eighth grade curriculum at our school requires a great deal of note taking, independence and organization as well as an ability to take in material presented orally. These areas are [M.B.]’s weaknesses as a student.

A concern that [M.B.]’s and your needs are significantly disproportionate, to the extent that it damages the class’s ability to proceed. The second reason follows from your meeting with Nancy Lemmo and Savid Heberlein in January. They made it clear at that time that the school had devoted a considerable amount of time to your concerns, and it would not be long before your demands became damaging to the class as a whole. It is the College’s assessment that the educational support coordinator spends such a disproportionate amount of time attending to your family’s issues, that it seriously impinges on the needs of other students and families.

The history of unproductive relationship with you. The College reflected on the record of meetings between you and other members of the school. There has often been a tone which was unproductive and often undermining of a positive outcome. This tone reflected a lack of respect for those who work with your daughter and a lack of consciousness about appropriate boundaries.

On May 16, 2012, E.R. replied with what she characterized as a “proposal with remedial measures outlined to allow [M.B.] to continue through 8th grade with her class.” The letter stated, in part:

1) My husband and I will remove ourselves from the scene as it relates to educational and class teacher issues by appointing an education guardian for [M.B.] as an intermediary.

2) Bella Jaikaria has agreed to fill that role, and we feel that due to her background and qualifications she would be perfectly suited: She would oversee [M.B.]’s academic progress at WSP and be an effective and neutral liaison between class teacher, specialty teacher, administration and parent. Bella would have [M.B.]’s best interest at heart and advocate for her, if necessary. She would review, together with [M.B.]’s class teacher, primary tutor and WSP’s educational support coordinator, suitable accommodations and modifications to the 8th grade core curriculum, and agree with the class teacher on clear guidelines and procedures for test preparation, test taking and grading.

3) A primary, remedial tutor will work with [M.B.] on academics to strengthen areas of academic weakness and organizational skills.

These include:

- tutoring in math and sciences
- note taking techniques

- prioritizing of homework
- effective time management
- any areas the class teacher thinks extra help is needed In addition, the tutor will regularly review [M.B.]’s main lesson& homework notes in her assignment book.

4) In the subjects that the class teacher decides are the ones [M.B.] would most benefit from individualized instruction, the following model could be implemented:

*The tutor would work with [M.B.] after main lesson one on one reviewing that day’s lesson, breaking it down in smaller pieces (chunking), finishing any class work, if necessary and making a homework plan for the day. The tutor would spot check previous homework and go over issues that need strengthening using materials that best fit [M.B.]’s learning style as a concrete and visual learner.

*The tutor would also pre-view upcoming lesson material , in coordination with the class teacher, so [M.B.] can familiarize herself with new lesson material in advance.

*Alternatively, [M.B.] would attend small group instruction after main lesson (2-3 students attending; 5 times a week) in a pull out scenario as outlined in the current educational support plan the school already developed for [M.B.] to follow in 8th grade, to which I consented. Additionally, Math tutoring and speech services would be given by the county during French and gardening, as presently given, in small group setting.

*This tutor who will work with [M.B.] over the summer would pre-view 8th grade material, as assigned by the class teacher; concretely, [M.B.]’s math tutor, Ms Hodgins has already inquired what could be previewed in August.

Given [M.B.]’s learning profile, we understand that she might not reach 8 Grade academic levels in all subject matters, however, we anticipate weekly and monthly goals to be clearly defined and educational progress reviewed regularly with her class teacher, primary tutor, educational support coordinator and her educational intermediary.

We are aware of a similar tutoring arrangement at the school for a current 8th grader and are willing to work with those guidelines with a tutor that the school chooses (as informed by Maureen regarding hiring learning specialist for the next academic year) or a qualified individual that we recruit.

[M.B.] is a motivated, enthusiastic student with an impressive work ethic and outstanding social qualities that make her a valued member of her class. She has great emotional intelligence, and artistic and practical talents that should continue to be nurtured in a Waldorf setting. Mrs Shafer has previously described her as someone who “brings love and beauty into the classroom”. Having demonstrated perseverance and resilience in the face of adversity in her academic and athletic pursuits, it is [M.B.]’s wish to have a fair chance proving that she can achieve in a truly supportive and loving environment.

On May 25, 2012, the College of Teachers informed Complainants that it would not change its enrollment decision. It noted, among other things:

We are seriously concerned that she will be less and less able to keep up with the increasingly demanding curriculum. We also concluded that you as parents are unable to cooperate with the school to the degree that we require in order to function as a cohesive community. It was evident from the extensive role of the proposed educational guardian that you do not have confidence in many aspects of [M.B.]’s school experience here.

As we reviewed your request, what once again became central to our consideration was the advice from the county child psychologist that the Waldorf School was not the best educational setting for a child with [M.B.]’s educational profile. The school must acknowledge when it does not have the adequate resources to serve a child’s educational needs appropriately. You proposed a tutoring schedule that might work if the school had a true learning center. Unfortunately, the school does not. We have a program that due to space, staffing and budgetary limitations is more limited in scope. The program you proposed still stretches well beyond the limits of what we feel our program can reasonably sustain.

On May 28, 2012, the College of Teachers sent an email to the parents of M.B.’s classmates, stating in part:

Many of you are aware that [M.B.] will not be returning for the 2012-13 school year. Before arriving at that decision, members of the College of Teachers met with [M.B.]’s parents to talk through many aspects of the situation and to explore different possibilities for how to proceed. The full College carefully considered every alternative and tried hard to find any workable solution. Unfortunately, after much soul searching and careful deliberation the College concluded that the school could not meet the needs of this student, nor could it meet the expectations of this family and the continuing demands they have placed upon the school. The College informed the family . . . that it was our hope that [M.B.] would find a school where her learning challenges could be most fully supported as she prepares for high school. We also felt it was necessary for the parents to seek out a fresh situation where they felt their demands could be met . . . [T]he College has had to take actions that are best for the long-term health of the school and in the long view, best for the students.

That same day, one seventh grade parent replied to the school via email as follows:

. . . The reasoning outlined in the email . . . seems a bit inconclusive to me. If academics were a problem, then expelling a student signifies a profound systemic problem, which school has failed to address. If children can be randomly banned from attending school, I feel there should be more transparency, otherwise I feel really uncomfortable with the system in place. Could you please comment on what you feel is appropriate , so I (and perhaps others) can wrap out thinking around? Because it is starting to sound like USSR . . .

That evening, E.R. responded to the College of Teachers' email by sending an email to the seventh grade parents that said, in part:

Without going into too much detail, I would to say that after our first meeting we acted on a few suggestions given to us by certain college members and with great humility drafted a plan for the College to reconsider their decision. We acted on their proposal to hire a tutor and appoint an advocate/intermediary. They took our implementation of their suggestions as further disrespect to them and to the school and rejected our proposal in the harshest letter that we hope none of you have the misfortune to ever receive.

In the eighth grade, M.B. was enrolled in a public school the in the Princeton area. Her final grades were as follows:

Physical Education 8	A
Science Support 8	P
Civics Support 8	P
Science 8	A-
Language Arts 8	A
Mathematics 8	A-
Choir 8	A
Health 8	A
Civics 8	B+

Waldorf stated that it was aware of M.B.'s learning disability when she first enrolled, and that although she initially required little academic intervention, she had increasing difficulty with the curriculum as she progressed from grade to grade. Waldorf stated that it worked with the Somerset County Educational Commission to develop educational support plans for M.B. following a complete evaluation in late 2007. Waldorf said that M.B. slowly made progress.

Sciaretta told DCR that M.B. exhibited learning difficulties in the sixth grade. She stated that she once went to M.B.'s home to assist her with homework and help her get organized. She stated that Complainants asked the school to email the homework to them, and the school acquiesced but intended it to be only a temporary arrangement. Sciaretta stated, "We work toward independence and we look to move away from accommodations as a goal." Sciaretta stated that there were other students with learning disabilities in her class of thirteen, but they were "more independent." She said that M.B. often scored better on tests than those other students, but that

Sciaretta “would have to prompt [the other students] on two questions and with M.B. it was almost all of them.” Sciaretta stated that M.B. needed to be taken “step by step” with some lessons. Sciaretta stated that despite her best efforts, her relationship with M.B.’s parents became “so damaged and could not be repaired.” For example, she said, “They would ask for text books and we said that we don’t do that. They would come back wanting the same accommodations and we would say ‘we don’t do that’.” She said that Complainants were weak in mathematics and “wanted me to show them how to do every single problem, and I did. I just could not sustain it.” She said that E.R. often waited for her after school, sometimes three days a week, to discuss M.B. Sciaretta recalled meeting with David Heberlein, a member of the College of Teachers, at the end of sixth grade and telling him, “I just don’t see this is a workable situation.” Sciaretta stated that parents should be advocates for their children, but “when [M.B.’s parents] did not get what they asked for they were not satisfied.” She stated, “We could just not work together.”

School Administrator Nancy Lemmo stated that M.B. had become “pedagogically challenging” and had been noticeably falling behind since the sixth grade. Waldorf told DCR that in the seventh grade, M.B. showed increased difficulty with the curriculum, and that after the April 4, 2012 annual ISP review meeting, members of the College of Teachers discussed whether Waldorf was the best academic setting for M.B. and questioned her potential for success in eighth grade.

Interviews with various members of the College of Teachers confirmed that the school’s reliance on a report by “outside evaluators” in reaching its decision was a reference to Monteiro’s comment in the April 4, 2012, ISP report (i.e., “The Waldorf School is heavily reliant on auditory learning and as such [M.B.] may fall behind faster than can be supported through interventions present at this non public setting.”). There were no other reports or evaluators.

During the fact-finding conference, E.R. stated that she understood Monteiro’s comment to be fairly innocuous because every year, other members of the Child Study Team verbally

conveyed the same message to her. She understood that she was simply being reminded that the extra tutoring services for which her family paid, would be free in a public school setting. Complainants argued that the College of Teachers' reliance on Monteiro's single comment as a basis for its professional determination was unreasonable because Monteiro never tested, interviewed, or even met her child, and that Monteiro's input on the ISP was based only on a review of previous ISPs and test results. Monteiro stood by her comment; in a subsequent email to E.R., she wrote, "Though I feel that Waldorf may not be the appropriate setting due to auditory processing issues, I understand there are other factors that you are taking into consideration such as social/emotional well being. It is not my decision to make and I can only give my opinion to you."

Complainants requested a meeting with Waldorf to find a way for M.B. to remain in the school for her final year. E.R. and N.B. were accompanied by parent representative, Stephanie Gray, who had three children who attended Waldorf. They met with Lemma and two members of the College of Teachers, Pam Shafer and Peter Sheen. Gray subsequently told DCR that Waldorf had reacted to Sciaretta's internal complaints about E.R., and that the expulsion was an "injustice." She expected that a solution would be reached at the meeting so that M.B. could return to school. She stated that she knew M.B. because the school community was small and "you get to know one another intimately." She described E.R. as "very passionate, intense mom who wanted to cross her t's and dot her i's and that her daughter got everything she was supposed to in her ISP." Gray devised the idea of an "educational proxy" who could serve as an intermediary between Complainants and school officials and thought that her friend, Bella Jakaria, would be a perfect candidate because Jakaria was well-respected and knew the teachers. Gray thought that the idea of an educational proxy would be hard for E.R. to accept. However, she thought it was necessary. She said, "What was really going on--they did not want to deal with [E.R.]. We needed to take her out of the picture." Gray stated that she thought the idea was well-received and contacted Jakaria after leaving the meeting.

Jakaria worked at Waldorf and had three children who went through Waldorf. She had heard over the years that E.R. could be difficult to work with. Still, she was shocked when she learned that M.B. had been expelled. She knew of no other Waldorf students who had ever been involuntarily disenrolled. She believed the educational proxy plan would work because she knew all the teachers and how the school operated, and because E.R. was desperate that her child not be expelled. Jakaria stated that she reviewed M.B.'s report card and saw that the child had a B average and "was being glorified on many levels" and worked with Complainant on a written proposal for the College of Teachers' consideration. However, the proposal was rejected. Like Gray, she concluded that "[M.B.] was asked to leave because of her mother."

Gray and Jakaria told DCR that there were other students at Waldorf whose learning difficulties were the same or worse than those facing M.B. For example, Jakaria recalled that one student had such difficulty with math that he was allowed to work in the gardens while his classmates were having their math lesson. She indicated that his learning disability was "way worse" than M.B.'s, but that his mother was complacent and said "yes to everything." Asked if M.B. would have been allowed to finish the eighth grade if E.R. had been more complacent, Gray replied, "Oh, yeah. Without a doubt."

DCR interviewed several members of the College of Teachers. None provided a clear description of the internal decision-making process that led to M.B.'s removal from the school. David Heberlein, who has taught at Waldorf since 1987 and has been a member of the college of teachers for six to eight years, stated that other students have been voluntarily removed by their parents when it was mutually agreed that the school was not a "good fit." He expected to "go into the meeting to figure out how to support this situation, a plan of action, a reasonable plan for communication and a reasonable list of things to support the child." He could not recall where or how the discussion of M.B.'s expulsion arose. He stated that he never read M.B.'s ISP and was uncertain if the other members of the College of Teachers ever reviewed the ISP.

Kristen Daily was a member of the College of Teachers for seven years and M.B.'s handwork and crafts teacher. She described M.B. as "very creative, loving whatever was being done," "very social," but "a little scattered in her organization." Daily said, "I just remember hearing through the tutors and teacher Deidre [Sciaretta] that it was not a good fit for her anymore. It was great socially, she had friends in class. But she was not improving and the way she is able to learn was not being served." Daily stated that prior to voting to expel M.B., she never spoke to Educational Support Coordinator Gold, Monteiro, the parents, or anyone with expertise in special education.

Amy Shor, a nursery school teacher, recalled the meeting when the decision was made to expel M.B. She stated that Sciaretta came to the College with her concerns about Complainants' "perception of the child and how the school was being asked to adjust for their individual child, it was a high demand." Shor stated that she was surprised when the parents submitted a counter proposal because "it was clear that we all came to a conclusion that the student's needs were not going to be met." When asked if she was aware of the child's strength in the arts and music, she replied, "Not per se."

Sara Kessler, a kindergarten teacher, stated that M.B. struggled with math and organizational skills but was "artistic and quite talented, had a good ear for violin--all of the arts, eurythmy." She stated that the "comment from [Monteiro]" carried a lot of weight for her. Kessler did not reply when asked if she knew that Monteiro never met M.B. Kessler stated that the College of Teachers discussed the educational proxy idea at length. She said, "We spent quite a bit of time trying to figure how to make it work," but it "was getting complicated." She said, "In the end, we felt it was too difficult."

Shafer told DCR that she taught M.B. in the third, fourth, and fifth grades, and recommended private tutoring to the parents after noting some learning difficulties. Shafer was at the meetings when the College of Teachers voted to expel M.B., and to reject Complainants'

proposal which, she said, they found to be too complex. She said, "We would not even know how to fulfill it." She stated that the "demands of the family became untenable." When asked why the College of Teachers did not respond to the parents' proposal with a letter explaining what accommodations the school would be willing to provide, Shafer suggested that the parents were viewed by many to be unreasonable and difficult. She said, "[W]hen there's a no, it gets amped up."

Analysis

At the conclusion of an investigation, the Director is required to determine whether "probable cause" exists to credit a complainant's allegation of discrimination. 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." N.J.A.C. 13:4-10.2. A finding of probable cause is not an adjudication on the merits but merely an "initial culling-out process" whereby a preliminary determination is made that further action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978). If the Director determines that probable cause exists, the matter will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). If, on the other hand, the Director finds there is no probable cause, that finding is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

a. Disability Discrimination

The LAD makes it illegal for a *place of public accommodation* to "refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof," based on that person's disability. N.J.S.A. 10:5-12(f),

When attempting to determine whether an entity is, or is not, a place of public accommodation for purposes of the LAD, New Jersey courts have found that broad public

solicitation has “consistently been a principal characteristic of public accommodation.” See Ellison v. Creative Learning Center, 383 N.J. Super. 581, 587-89 (App. Div. 2006). The fact that an entity is a profit-making private school that offers non-traditional or progressive educational programs to children and is not overseen by the Department of Education, does not necessarily exempt it from the LAD’s prohibition of discrimination in places of public accommodation. Id. at 588. In Ellison, a private school argued that it was not place of public accommodation for purposes of the LAD because of its selective admission process and unique learning environment. Id. at 587. The Court rejected that argument by noting, among other things, that the school “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.

In this case, Waldorf engages in broad public solicitation and holds itself as nondiscriminatory. For example, the admission page of the school’s website states that it enrolls students from a “wide variety of religious and spiritual interests and backgrounds,” that its population “reflects the different nationalities of a very diverse greater-Princeton community,” and that the school “embraces the unifying human elements across all cultures.”

Thus, the Director finds that Waldorf is a place of public accommodation and, therefore, required to 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, facility, privileges, advantages, or accommodations to a person with a disability,” unless it can demonstrate that making the accommodation would impose an “undue hardship on the operation on its operation.” N.J.A.C. 13:13-4.11(a).

In determining whether an accommodation is reasonable, factors to be considered include (a) the overall size of the business which 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; and (c) whether the accommodation sought will result in a fundamental alteration to the goods, services, program or activity offered, and (d) whether the accommodation sought involves an alteration that will threaten or destroy the historic significance of a building or facility that is eligible for listing the National Register of Historic Places under the National Historic Preservation Act or designated under State or local law. N.J.A.C. 13:13-4.11.

In disability discrimination cases arising in the workplace, an employer must initiate a good faith informal interactive process with its employee to identify a potential reasonable accommodation. Tynan v. Vicinage 13 of the Super. Ct., 351 N.J. Super. 385 400 (App. Div. 2002). The interactive process is crucial because each party normally holds relevant information that the other party does not possess, and the exchange of such information will ensure that the assessment of potential accommodations is complete and reasonable. Taylor v. Phoenixville School Dist., 184 F.3d 296, 317 (3d Cir. 1999). The employer will be deemed to have failed to participate in the interactive process if: (1) it knew about the employee's disability; (2) the employee requested accommodations or assistance for her disability, cf. Victor v. State, 203 N.J. 383, 414 (2010) (noting "neither a specific request nor the use of any 'magic words' is needed in order for an employee to be entitled to an interactive process focused on creating or accessing an accommodation"); (3) the employer did not make a good faith effort to assist the employee in seeking accommodations; and (4) the employee could have been reasonably accommodated but for the employer's lack of good faith. Tynan, supra, 351 N.J. Super. at 400 (citing Jones v. Aluminum Shapes, 339 N.J. Super. at 400-01 (App. Div. 2001)). N.J.A.C. 13:13-2.5(a).

Although this case involves a place of public accommodation rather than a workplace, the school/student relationship is analogous on many levels to an employer/employee relationship. See generally L.W. v. Toms River, 189 N.J. 381, 399 (2007) (noting that school bullying creates a hostile *educational* environment, and that a school's response to a complaint should be evaluated

in a similar manner to an employer's response in an hostile *work* environment case). The notion that the LAD requires a school to engage in good faith interactive process, rather than simply impose a moratorium on accommodations and expel a student, comports with the oft-quoted judicial and Legislative mandates that the statute be broadly interpreted to further its compelling societal goals. See e.g., Alexander v. Seton Hall, 204 N.J. 219, 228 (2010) (noting the "clear public policy of this State is to eradicate invidious discrimination from the workplace."); Hernandez v. Region Nine Housing Corp., 146 N.J. 645, 651-52 (1996) (noting that the LAD was enacted as "remedial legislation" to root out the "cancer of discrimination."); N.J.S.A. 10:5-3 (declaring that the LAD must be "liberally construed" and that "discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and functions of a free democratic State."); L.W., supra, 189 N.J. at 399 (noting "[f]reedom from discrimination is one of the fundamental principles of our society").

Here, it appears that Waldorf engaged in a good faith interactive process with Complainants for six and a half years until May 2012, when it unilaterally determined that a limit had been reached, and that no further accommodations of any sort would be provided to M.B. It appears that Complainants attempted to engage in this process by submitting a proposal. However, Waldorf summarily rejected the proposal without inviting any further discussion. Sciaretta told the DCR investigator, "[W]e look to move away from accommodations as a goal." Sciaretta may have meant that the school hopes to help students overcome their disabilities and thereby reduce the need for accommodations. On the other hand, Sciaretta was, by some accounts, a motivating factor behind Complainants' removal. Her statement could be viewed as supporting the allegation that Waldorf elected to not engage in the interactive process and refused to accommodate a student with a disability because it wanted to further its "goal" of "mov[ing] away from accommodations," which would be contrary to settled discrimination law.

Elsewhere, Waldorf argues that continuing to accommodate V.C. would have resulted in a fundamental alteration to its program and services. However, it does not state with requisite specificity why or how such a supposed fundamental alteration would occur. Perhaps that issue can be explored at an administrative hearing. However, on this record, the Director cannot find that the accommodations listed on the seventh grade ISP report would have somehow resulted in a fundamental alteration to the school's operations, particularly where the vast majority of those accommodations had been in place for years.

b. Retaliation

The LAD makes it illegal to retaliate against anyone who "oppose[s] any practices or acts forbidden under this act," or "file[s] a complaint, testifie[s], or assist[s] in any proceeding under this act," or "aid[s] or encourage[s] any other person in the exercise or enjoyment of any right granted or protected by this act." N.J.S.A. 10:5-12(d).

Here, Complainants allege that because they advocated for the disability rights of their daughter, they and their child were not invited back to Waldorf after a seven year relationship. The Director finds that in a school setting, a parent's request for a reasonable accommodation on behalf of his or her minor child with a disability is an attempt to "exercise or enjoy[] . . . any right granted or protected" by the LAD and, therefore, protected activity for purposes of a retaliation claim. See generally EEOC, Facts About Retaliation, ("A protected activity can also include requesting a reasonable accommodation based on religion or disability.")

The question becomes whether there is "reasonable ground of suspicion" that a causal link exists between the parents' demands for accommodations and the school's decision to not welcome back their daughter for her final year.

A parent's abusiveness when communicating with school staff, even while requesting accommodations (i.e., engaging in protected activity), is a legitimate, non-discriminatory basis for terminating communication with that parent. However, there is a distinction between requesting

accommodations in a demeaning, abusive manner, and simply requesting too many accommodations.

In this case, the evidence suggested that both scenarios were motivating factors. In the school's May 4, 2012, decision letter, it cites a "history of an unproductive relationship with [the parents]" and notes that there "has often been a tone which was unproductive and often undermining of a positive outcome" and which "reflected a lack of respect for those who work with [M.B.] and a lack of consciousness about appropriate boundaries." However, the letter also points to the sheer quantity of requested accommodations. The school told Complainants that the "educational support coordinator spends such as disproportionate amount of time attending to your family's issues," and that the "school had devoted a considerable amount of time to your concerns, and it would not be long before your demands became damaging to the class as a whole." Shafer told DCR that the decision was made because the "demands of the family became untenable." In Waldorf's May 25, 2012, letter, it told Complainants that their proposed accommodations "stretches well beyond the limits of what we feel our program can reasonably sustain."

Moreover, if school officials determine that a parent is abusive and demonstrates a lack of respect for staff members and/or an inability to appreciate boundaries, perhaps a more reasonable response would be to restrict communications with the abusive parent, rather than publicly banish the unsuspecting student--particularly where it is a young child at an impressionable age who has been happily enrolled for seven years without any disciplinary history or record of failed academics and who is, by all accounts, well-supported and well-liked by her teachers, peers, and classmates, and has only one more grade to complete.

Similarly, if school officials determine that parents are requesting too many accommodations, an appropriate response might be to inform the parents why it finds those requests to be unreasonable and engage in meaningful discussion of possible alternatives, rather than simply expel their child without prior notice.

Waldorf appears to argue that it peremptorily removed M.B. from the school rather than expose her to likely failure. It is undisputed that M.B. had troubles with organizational skills, auditory processing, and struggled with some academic classes, particularly mathematics, and required in-school support from the county educational commission as well as additional outside tutoring. It is also undisputed that Monteiro opined that M.B. might “fall behind faster than can be supported through interventions present at this non public setting.” On the other hand, M.B. finished the seventh grade with a B average, would have fewer accommodations in the eighth grade than she had in the fifth grade, was universally praised for her artistic talents in an institution that holds itself out as emphasizing the arts in its curriculum (e.g., Sciaretta noted that M.B. was “incredibly artistic”), roundly praised for her classroom citizenship and work ethic (e.g., Jakaria described M.B. as “the child any teacher would want in class.”), and she completed the eighth grade in a well-regarded public school district with an A average (including an A in Language Arts 8, A- in mathematics 8, and B+ in Civics 8).

Ultimately, DCR lacks the expertise to determine if M.B. would have been successful in the eighth grade at Waldorf. The Director merely finds that to the extent Waldorf expelled the student because school officials grew weary of the parents’ persistent demands for accommodations, there is probable cause to substantiate an allegation of unlawful retaliation. Perhaps a different conclusion would have been reached if the school had refused to provide additional accommodations, explained why those requests were unduly burdensome, and given the parents the option of accepting the status quo or withdrawing their child. But that is not what occurred.

In view of the above, the Director is satisfied that there is “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief,” N.J.A.C. 13:4-10.2, that the LAD has been violated.

WHEREFORE, it is on this 9th day of SEP 2014, determined and found that probable cause exists to believe that Respondent's conduct in this matter violated the LAD.



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS