



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO.: PQ11WE-02944

DANIEL JACOBSON
and J. FRANK VESPA-PAPALEO,
DIRECTOR, NEW JERSEY
DIVISION ON CIVIL RIGHTS,

Complainants,

v.

JACKSON SCHOOL DISTRICT,

Respondent.

FINDING OF PROBABLE CAUSE

Consistent with a Verified Complaint filed on May 26, 2006, and Amendment to the Verified Complaint, the above-named respondent has been charged with unlawful discrimination within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1, *et seq.*) and specifically within the meaning of N.J.S.A. 10:5-4 and 10:5-12 (f) because of unlawful public accommodation discrimination.

J. Frank Vespa-Papaleo, is the Director of the Division on Civil Rights and, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2(e).

SUMMARY OF COMPLAINT

Complainant alleged that he was subjected to an unlawfully discriminatory hostile environment due to his national origin and sexual orientation. Complainant alleged that he complained to Respondent of repeated bullying yet the harassment continued.

SUMMARY OF RESPONSE:

Respondent acknowledged that Complainant complained on various occasions that students were teasing and calling him names. Respondent denied that Complainant's complaints were ignored and contended that great effort was made investigating Complainant's complaints. Respondent contended that appropriate action was taken when possible.

Jacobson vs. Jackson School District
Docket No. PQ11WE-02944

BACKGROUND:

Respondent is a public school district located in Jackson Township, Ocean county, New Jersey. Complainant, who was born in Honduras and describes himself as bi-sexual, attended Respondent's Jackson Memorial High School from September 2002 until his graduation from high school in June 2006.

SUMMARY OF INVESTIGATION:

The investigation disclosed sufficient evidence to support a reasonable suspicion that Complainant was subjected to an unlawfully discriminatory hostile environment based upon his national origin and sexual orientation. The investigation revealed that Complainant was assaulted and harassed by other students on the basis of his sexual orientation and national origin. The investigation also revealed that although Respondent, at times, intervened, its measures were ineffective as the hostility and harassment toward Complainant continued.

Documentation revealed that Respondent was aware that Complainant was subjected to harassment due to his national origin and sexual orientation. The investigation revealed that in January 2003, Complainant complained to Respondent of harassment at his home and at school by fellow students. Complainant complained that fellow student, G. S., had made harassing telephone calls to his home and other students at school were yelling slurs and attempting to strike him because of his national origin and sexual orientation.

Respondent acknowledged that it met with G.S. who agreed not to telephone Complainant at his home any longer. G.S. was instructed to stop harassing Complainant at school and G.S. also agreed to discourage his friends from harassing Complainant, as well.

Nonetheless, the investigation revealed that slurs and threats of violence toward Complainant continued and escalated. At school, Complainant was called: "gay, faggot, little fag", and "foreign import" by other students. Further, Complainant was assaulted at school on March 20, 2003, by R. H. The investigation revealed that Complainant's parents brought charges against R.H. He was arrested and charged by the local police with assault and suspended by Respondent for 10 days.

Documentation revealed that students continued to harass Complainant without consequence. Complainant and his parents met with school administrators, but no corrective action was taken, except to isolate Complainant from the school population during lunch. In or around November 2005, Complainant requested a class transfer due to derogatory comments and jokes made by A. E., D. R. and N. G. about his national origin and sexual orientation. Complainant asserted that when walking through the halls, students yelled, "This is a White school." Complainant also asserted, and the investigation confirmed, that while walking in the hall, two students yelled "faggot" in the presence of a guidance counselor who took no action whatsoever.

Jacobson vs. Jackson School District
Docket No. PQ11WE-02944

Although Respondent asserted that it was unable to take corrective action due to Complainant's inability to correctly identify offending students, the investigation did not support this claim. Documentation revealed that Complainant identified three students by name in January 2006 for making derogatory comments to him about his sexuality. Documentation revealed that Respondent provided those students with some brief sensitivity training. Notwithstanding this isolated training episode, the investigation revealed that Respondent did not attempt to provide sensitivity training or other types of pro-active measures to any larger segment of the school population designed to address the harassment that was occurring.

Further, on May 12, 2006, Complainant complained that J. P. and three of J. P.'s friends had followed him to class and threatened to kill him. The investigation revealed that although notified of this event, no action was taken by Respondent.

Additionally, the investigation revealed that Complainant repeatedly complained of harassment and named R. H. for threats and assault, and J. P. for touching his chest while yelling "second base" and following Complainant to class while threatening to beat him up after school. Complainant also identified for Respondent, G.S., J. P., C. A. and J.M., as students who had threatened Complainant and subjected him to slurs due to his sexual orientation and national origin. Once again, Respondent did not address these claims.

Instead, even though the investigation substantiated that Respondent was aware of the hostile environment, it alleged that the incidents cited as harassment by Complainant were provoked by Complainant due to his comments of wanting to date or kiss students.

ANALYSIS:

At the conclusion of an investigation, the Division is required to make a determination as to whether "probable cause" exists to credit a complainant's allegations of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. 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. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978); see also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

In the instant case, the investigation disclosed that Complainant was exposed to an harassing environment based upon his sexual orientation and national origin that was sufficiently severe and pervasive such that a reasonable person of Complainant's sexual orientation and national origin would find such environment to be hostile and offense. Further, although

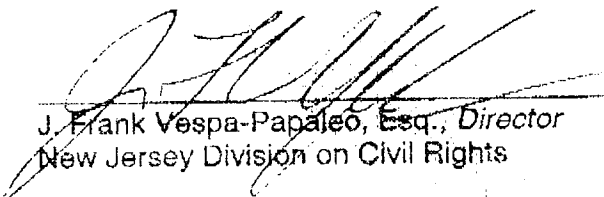
Jacobson vs. Jackson School District
Docket No. PQ11WE-02944

Complainant was harassed, threatened and assaulted by other students, and although the investigation disclosed that Complainant repeatedly complained to Respondent about the hostile environment to which he was exposed, Respondent failed to take sufficiently prompt, effective remedial action reasonably intended to ensure that the conduct to which Complainant was exposed would cease.

FINDING OF PROBABLE CAUSE:

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

4/23/07
Date


J. Frank Vespa-Papaleo, Esq., Director
New Jersey Division on Civil Rights



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