



STATE OF NEW JERSEY  
 OFFICE OF THE ATTORNEY GENERAL  
 DEPARTMENT OF LAW & PUBLIC SAFETY  
 DIVISION ON CIVIL RIGHTS  
 DCR DOCKET NO.: PB14IE-02996  
 REFERRAL NO.:

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 J.C., JR., A MINOR, BY HIS PARENT AND  
 GUARDIAN, J.C., SR., AND J.C., SR.,  
 INDIVIDUALLY, AND CHINH Q. LE,  
 DIRECTOR, NEW JERSEY DIVISION  
 ON CIVIL RIGHTS,

Complainants,

v.

EMERSON BOARD OF EDUCATION,

Respondent.  
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**FINDING OF  
 PROBABLE CAUSE**

Consistent with a Verified Complaint filed on March 15, 2007, 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), on the basis of J.C.'s perceived sexual orientation.

Chinh Q. Le, Esq. (Director) 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 J.C., Sr. alleged that his minor son, J.C., Jr., was subjected to bias-based harassment based on perceived sexual orientation.<sup>1</sup> To support his claim, Complainant alleged that beginning in September 2002 and continuing through the date he filed the instant complaint, J.C. was subjected to repeated harassment by students while attending Respondent's school. Specifically, Complainant alleged that students regularly called J.C. names such as "homo," "gay," "faggot," and "homo priest," teased and taunted him, and subjected him to verbal threats and even physical assault. Complainant further alleged that he and J.C. complained to Respondent's administrators numerous times, but that Respondent failed to take sufficient corrective action to end the harassment.

<sup>1</sup> Unless otherwise specified, J.C., Sr. shall be referred to as "Complainant," and his son as "J.C."

### **SUMMARY OF RESPONSE**

Respondent denied that J.C. was discriminated against for any unlawful reason, including bias-based harassment. Respondent stated that any instance of harassment or bullying reported was investigated and any action that warranted discipline was carried out. Respondent asserted that it had a zero tolerance policy, and that it also conducted anti-bullying harassment seminars and self-image presentations.

### **BACKGROUND**

Respondent is a Board of Education that oversees the Emerson Public Schools and maintains an administrative facility located at 131 Main Street, Emerson, New Jersey. Respondent's school system includes three schools: Memorial Elementary School (Pre-K to grade 2), Villano Elementary School (grades 3 to 6), and Emerson Junior/Senior High School (grades 7 to 12).

Between September 2002 and May 2008, J.C. attended Emerson Junior/Senior High School. J.C. was home-schooled for two separate periods between April 9, 2007 and the end of that school year. In September 2007, he returned to Emerson High School part-time while also participating in a half-day program at Bergen Community College in Paramus, New Jersey. J.C. graduated from high school in May 2008. Complainant is J.C.'s father.

Chinh Q. Le 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 INVESTIGATION**

The present investigation revealed sufficient evidence to support a reasonable suspicion that while attending schools in Respondent's school system, J.C. was subjected to unlawful student-on-student harassment because of his perceived sexual orientation, that J.C.'s parents complained about the harassing incidents to school administrators on multiple occasions, and that Respondent failed to take sufficient corrective action.

According to a policy formalized by Respondent in 2002 and revised in 2004, any incident of hazing or bullying must be reported to the school principal, who then conducts an investigation to collect evidence and determine the appropriate corrective action based on the severity of offense. Respondent explained that in 2002-2003 the bullying policy was part of the code of conduct, which stated in part that "harassing, belittling, or demeaning a peer is inappropriate." Respondent further explained that the calendars sent home prior to September 2005 included information on bullying in a section dealing with sexual harassment. Since then, the school year calendars contain a separate section entitled "Bullying Policy."

The investigation revealed that for large portions of J.C.'s middle school years (2002, 2003 and 2004) and high school years (2005, 2006 and 2007), he was called "gay," "faggot," "clueless," "homo," and other derogatory names by students. Complainant spoke to several administrators, including Dean of Students Robert E. Carcich and Principal Israel Bordainick, on multiple occasions about the incidents, but the name-calling continued. In an interview conducted with the Division's investigator, Carcich confirmed that he had received many complaints from J.C.'s parents about various incidents of name-calling and bullying. He stated that all complaints of harassment or bullying were handled immediately, and that according to procedure, once the parents complained, the investigation would involve questioning the person who allegedly made the comment as well as any other witnesses. Carcich stated that although he was aware of the alleged name-calling, he never personally heard the comments. He added that he conducted full investigations of the incidents brought to his attention, but the witnesses never corroborated J.C.'s allegations. Respondent did not provide investigative reports or other documents to support this claim.

In addition to general name-calling, Complainant alleged that Respondent was aware of numerous specific incidents in which J.C. endured other forms of bullying as well. For instance, Complainant alleged that on February 1, 2004, J.C. was physically assaulted by another student, D.P., who hit J.C. in the stomach and called him a "pussy." J.C. told the Division's investigator that he was afraid of D.P., who is older, so he did not report this incident to school officials. Instead, Complainant spoke to D.P.'s mother and thought that the matter had been resolved. On March 18, 2004, however, D.P. allegedly approached J.C. in school and threatened to slit J.C.'s throat if he talked about him behind his back again. Complainant alleged that D.P. and other students continued to taunt and harass J.C. By letter dated March 19, 2004, Complainant informed Superintendent Charles Montesano that he was concerned for his son's welfare because of D.P.'s alleged history of violence and because he was dissatisfied with the school's handling of D.P. According to an e-mail sent to Assistant Principal Richard Orso on April 7, 2004, Complainant had been told that if D.P. were let back into school,<sup>2</sup> provisions would be made to ensure that he would not have any contact with J.C. Nevertheless, Complainant alleged that on April 7, 2004, D.P. managed to come into J.C.'s "study skills" class. (The Division did not find any evidence that D.P. interacted with J.C. or bullied him on that occasion.)

According to J.C., on September 14, 2005, he was physically assaulted and called a "faggot" by another classmate, B.D., in wood shop class. Complainant believed that school administrators had been aware of other related incidents of bullying of J.C. but had done nothing. Complainant complained to Orso and Bordainick via e-mail and, as a result, J.C.'s class schedule was changed, but there is no evidence that B.D. was disciplined, or that his schedule was changed in any way. In an e-mail reply to Complainant obtained by the Division, Bordainick stated that it was J.C. who had instigated the incident. He further stated that J.C.'s schedule was not changed as punishment for his

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<sup>2</sup> It is unclear from the information gathered during the investigation, but it appears that D.P. was suspended after he threatened to hurt J.C.

involvement in the incident, but was done at J.C.'s request. When interviewed by the Division's investigator, Bordainick stated that he believed J.C. created situations that alienated him from the rest of the students, and as a result, the students responded negatively.

On November 17, 2005, Complainant sent an e-mail, a copy of which he provided to the Division, complaining to Principal Bordainick that J.C. had been assaulted and threatened by another student, M.N., on at least two occasions. In his e-mail, Complainant explained that M.N. and group of boys (names not known) attacked J.C. after a school function. In an e-mail reply provided by Complainant, Bordainick advised Complainant that he did not see a safety concern. In response, Complainant reminded Bordainick that previously J.C. had come to tell him about having been threatened by M.N., and the school did nothing. Complainant alleges he had complained to Bordainick that time as well. (J.C. informed the Division's investigator that he had grown reluctant to report any further incidents of bullying to school officials because he felt there was never any effective action taken against the perpetrators.) When questioned by the Division's investigator, Mr. Bordainick stated that he did not recall any specific e-mails and, that in reference to the incident with M.N., he believed M.N. had been suspended. However, discipline records submitted by Respondent do not reflect that this incident was documented or that M.N. had been suspended.

On January 26, 2006, Complainant sent an e-mail to Superintendent Vincent Taffaro (who had replaced Montesano sometime in 2005) and Principal Bordainick advising them that M.N. had allegedly called J.C. a "retard" and a "faggot." He further reported that this student had threatened to kill J.C. Documents submitted by Respondent, specifically e-mails from Bordainick in response to Complainant's January 26, 2006 e-mail, stated that all allegations made by J.C. had been investigated, and that when students were questioned, they did not substantiate J.C.'s version of events. The other students said it was J.C. who would initiate trouble. In an interview conducted by the Division's investigator, Bordainick stated that he encouraged J.C. to contact him when any situations of bullying arose. In another e-mail dated March 1, 2006, a copy of which Complainant provided to the Division, Complainant advised Bordainick and Orso of his concerns over welts that were on J.C.'s back.

On April 10, 2006, Complainant informed Orso and Bordainick via e-mail of an internet page that had been created on the social networking website, [www.myspace.com](http://www.myspace.com), by students B.P. and L.B. The site allegedly contained pictures of J.C., depicting him as a female, and saying that his sexual orientation was unknown and that he had only two friends. The Division's investigator asked Orso and Bordainick about this incident, and they stated that they did not recall it specifically. However, they stated that the students involved must have been suspended. Respondent provided no documentation to support this assertion; however, in an e-mail dated April 17, 2006 to Principal Bordainick, Complainant stated that he spoke to L.B.'s mother, and that she was very upset about her son having been suspended. Complainant felt that the school was blaming him for the suspension rather making clear that it was a consequence of L.B.'s actions.

On May 2, 2006, another student, M.F., allegedly told J.C. that he was going to bring a gun to school. J.C. kept a journal of conversations that he had with M.F. The Emerson Police Department was notified and searched the home of M.F., at which time guns and knives belonging to M.F. and his father were found. M.F. was placed in a psychiatric facility for evaluation. He was detained for weapons possession but later released and allowed to go back to school. On June 1, 2006, Complainant sent an e-mail to Superintendent Taffaro, a copy of which is in the Division's possession, expressing concern for his son's safety. In an interview conducted by the Division's investigator, Taffaro stated that he remembered the incident; however, he did not remember what he wrote when he responded to Complainant's e-mail.

In another e-mail dated September 2006, a copy of which Complainant provided to the Division, Complainant advised Superintendent Taffaro that he was concerned for his son's safety because he learned that M.F. would be in three classes with J.C. for the coming year, despite Taffaro's previous assurance that M.F. would not be allowed near J.C. Taffaro responded by stating that the Emerson School District was acting within school district guidelines, and that Respondent considered expert opinions of a psychiatrist and the Emerson Police Department when it allowed M.F. to return to school. Taffaro further advised Complainant that he could seek a restraining order if he felt he needed to.

On October 1, 2006, Complainant sent an e-mail, a copy of which he provided to the Division, to Principal Paula Valenti, who had succeeded Bordainick, regarding an incident in which J.C. was allegedly struck in the ear during gym class. At the Division's Fact Finding Conference, Valenti responded that she did not remember this e-mail. Respondent provided no evidence that any action was taken in response to this allegation.

Complainant contacted Valenti by phone regarding an incident that occurred on November 14, 2006, when students accused J.C. of molesting little boys. Principal Valenti, when questioned at the Fact Finding Conference, said that the substitute teacher covering the class that day had reported no problems. Respondent provided no evidence that any action was taken in response to this allegation.

On January 20, 2007, Complainant and J.C.'s mother sent e-mails to Valenti to report that J.C. had been called "homo priest" at school.<sup>3</sup> J.C. was afraid to identify the other student at that time, but he revealed at the Fact Finding Conference that the alleged name-caller was B.D. Valenti responded in an e-mail to Complainant stating that she had encouraged J.C. to stop by the office to discuss the incident with her, but that he never did. Also, she indicated that when she observed J.C. in the cafeteria, he appeared to be communicating effectively with his peers. Robert Carcich, Dean of Students, advised Principal Valenti by e-mail that he had confronted B.D., who admitted calling J.C. "a homo priest." At the Fact Finding Conference, Valenti stated that she had advised B.D. to

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<sup>3</sup> At school, J.C. apparently expressed an interest in becoming a priest.

refrain from calling J.C. those names. She further stated that the student apologized to her and was advised if he were to commit another offense he would be disciplined. Valenti further stated that she and J.C. had discussed the possibility that he join a religious group.

In a February 6, 2007 e-mail, provided by Complainant to the Division, Complainant explained to Valenti that after the incident with B.D. on January 20, 2007, J.C. attempted to befriend B.D. and shake his hand. B.D. allegedly again called him a "homo."<sup>4</sup> Complainant further explained that his son was very upset by the comment. In a letter dated February 7, 2007, Valenti told Complainant that she had attempted to talk to J.C. but he was not available. She again mentioned that J.C. might join a Bible group. She added that since he had not stopped in to talk to her, she considered it a closed issue.

On March 23, 2007, Rosemarie Alfarano, an algebra teacher, sent an e-mail (a copy of which was provided by Complainant to the Division) to Principal Valenti in which she advised that she had spoken to Complainant, and that he stated how upset his son was because of the continued harassing remarks about being gay. In a separate e-mail dated March 23, 2007, Complainant wrote to Superintendent Taffaro and Principals Paula Valenti and Richard Orso requesting home schooling for J.C. because his son could no longer take the bias-based bullying. On April 2, 2007, Dr. Ann M. DeAngelo, a physician treating J.C., wrote to the school and advised that J.C. had been suffering from stress due to severe bullying situations and that she recommended he be home schooled. As a result, J.C. was home schooled from April 9, 2007 to April 20, 2007.

On April 12, 2007, Complainant sent an e-mail, a copy of which he provided to the Division, to Superintendent Taffaro regarding drawings that J.C. had brought to his attention. According to J.C., there were other drawings that were being circulated when he was in 9th grade. He threw most of them out, however, because he was embarrassed, but kept one and he gave it to his father. According to Complainant, one of the pictures shows J.C. performing oral sex on another boy. In the e-mail, Complainant advised Taffaro that J.C. told him he had complained of these drawings to the school administrators before, but that nothing had been done. When questioned by the Division's investigator, Taffaro stated that he did not recall any complaints of graphic pictures and, again, reiterated that he trusted the building principal to take care of any complaints.

On April 20, 2007, J.C. resumed his studies at school. As part of the re-entry program, he was assigned an aide to help him avoid the bullying situations. However, on May 17, 2007, J.C.'s mother called the school to report an incident in which B.D. referred to J.C. as a "gay motherfucker" and gave him the finger. The incident was investigated by Principal Valenti, who stated at the Fact Finding Conference that she had spoken to three of the students involved, including the perpetrator. Two of the students denied that B.D. had stuck his middle finger out at J.C. while the third student confirmed that B.D. did in fact give J.C. the finger behind the back of his chair. This student also

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<sup>4</sup> This comment was witnessed by J.C.'s sister.

confirmed that B.D. used the word “faggot.” Soon after this incident, J.C. was taken to the emergency room because he was having trouble breathing. At the Fact Finding Conference, Valenti stated that she spoke to B.D. and concluded that he was at fault and as a result was suspended for two days. This statement is contrary to the discipline records submitted by Respondent, however, in that the latter does not show any record of B.D. being suspended for this incident. Furthermore, B.D.’s extensive discipline records have no mention of any warnings, suspensions, or any reported problems with J.C.

Finally, on May 17, 2007, Complainant sent an e-mail to Superintendent Taffaro and Principal Valenti, a copy of which is in the Division’s possession, informing them that J.C. had experienced chest pains from the stress and bullying at school. He further advised them that J.C. had been threatened by B.D. a couple of weeks back; however, he did not report it at that time because he felt that nothing would be done. On May 18, 2007, Principal Valenti responded to this e-mail by stating that she would look into the matter. Robert Carcich, Dean of Students, conducted an investigation, but none of the students in the Physics class confirmed that B.D. threatened J.C. Superintendent Taffaro did not recall this incident when questioned by the Division’s investigator. After this incident, J.C. was afforded home schooling through June 2007, the end of the school year.

### ANALYSIS

At the conclusion of the investigation, the Division is required to make a determination whether “probable cause” exists to credit a complainant’s allegation 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 minor J.C. endured several instances of bias-based bullying based on his perceived sexual orientation. There is sufficient evidence to support a reasonable suspicion that these incidents of bullying were either ignored or improperly handled by Respondent. The Division’s investigation revealed that although Respondent does have anti-bullying policies and that it did conduct informal investigations after incidents were reported, it failed to take the steps necessary to stop circumstances that led to the bullying of J.C., despite having had substantial notice of the harassment as an ongoing, systemic concern.

The New Jersey Supreme Court has held that

a cause of action against a school district alleging student-on-student affectional or sexual orientation harassment that is not reasonably addressed by the school district is cognizable under the LAD. When assessing a school district's liability, the fact-finder must determine whether the district, with actual or constructive knowledge of the maltreatment, took actions reasonably calculated to end the harassment.

L.W. v. Toms River Regional Schools, 189 N.J. 381, 411-12 (2007).

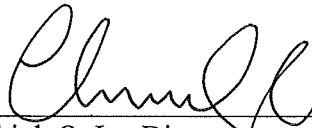
Here, there is a reasonable basis to conclude that Respondent failed to take sufficient action to bring an end to the bullying despite having been repeatedly and regularly notified by Complainant that his son, J.C., suffered discriminatory harassment at the hands of others students. Regarding discipline, during the investigation, witnesses reported that B.D., for instance, was warned by school officials at least two times to stop calling J.C. names, but his discipline record does not reflect that he was punished for any incident of bullying involving J.C. The same can be said of other students who were alleged to have engaged in similar behavior against J.C. J.C.'s parents reported at least seventeen instances of bullying and harassment. Yet, it appears the perpetrators' parents were never called, nor is there evidence in records maintained by Respondent that any meaningful disciplinary actions were taken. Respondent affirmed that it was aware J.C. was subjected to name-calling but claimed that school personnel never witnessed any incidents nor found corroborating witnesses. It did not, however, deny being notified of each incident.

Respondent purported to have taken appropriate corrective actions to bring an end to the harassment, such as providing a shadow monitor for J.C. (i.e., someone to follow him throughout the school day), and affording J.C. the option to be home schooled. However, the Division's investigation revealed that the shadow monitoring proved ineffective to end the bullying, and that it was Complainant and J.C.'s doctor who recommended home schooling due to the stress and bullying that J.C. had endured; not Respondent.

**FINDING OF PROBABLE CAUSE**

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

11/15/2010  
Date

  
Chinh Q. Le, Director  
New Jersey Division on Civil Rights