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BURLINGTON COUNTY

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BURLINGTON COUNTY
DOCKET NO.: _____

CRAIG SASHIHARA, Director of the New Jersey
Division on Civil Rights,

Plaintiff,

v.

NOBEL LEARNING COMMUNITIES, INC.,
D/B/A CHESTERBROOK ACADEMY,

Defendant.

CIVIL ACTION

COMPLAINT

Plaintiff Craig Sashihara, Director of the New Jersey Division on Civil Rights (“Director”), with offices located at 31 Clinton Street, Third Floor, Newark, New Jersey 08625; 140 East Front Street, Sixth Floor, Trenton, New Jersey; 5 Executive Campus, Suite 107, Cherry Hill, New Jersey; and 1325 Boardwalk, First Floor, Atlantic City, New Jersey, by way of this Complaint against Defendant, Nobel Learning Communities, Inc., d/b/a Chesterbrook Academy (“Defendant” or “Chesterbrook”), alleges as follows:

JURISDICTION AND THE PARTIES

1. The Director is charged with the responsibility of administering the LAD on behalf of the Attorney General. The New Jersey Division on Civil Rights (“DCR”) is charged, inter alia, with the responsibility of preventing and eliminating discrimination in employment, housing and access to public accommodations, as well as preventing the interference with rights protected under the LAD. N.J.S.A. 10:5-4, 10:5-6 & 10:5-12. This action is brought by the Director in his official capacity pursuant to his authority under N.J.S.A. 10:5-13.

2. Defendant is a private, for-profit Delaware corporation headquartered in West Chester, Pennsylvania, which describes itself as “a network of more than 180 private schools in 19 states and the District of Columbia.” It owns and operates facilities in four different locations in the State of New Jersey under the trade name of Chesterbrook Academy. These facilities admit children from age of six weeks through six years in a day program, “before & after care,” and summer camp.

3. At all times relevant to this complaint, Defendant maintained a location that offered daycare services to children from age of six weeks through six years at 130 Borton Landing Road in Moorestown, New Jersey.

4. Defendant is a “place of public accommodation” as an entity that offers goods and services to the general public as defined under the LAD, and specifically, N.J.S.A. 10:5-5(l) and N.J.A.C. 13:13-4.2.

5. Back in 2006, DCR received a complaint against a Chesterbrook location in Glassboro, New Jersey. The complaint alleged that Chesterbrook failed to enroll a minor child based on disability since this child’s disability (spina bifida) required assistance with diapering in a non-diapering classroom. After an investigation, DCR issued a finding of probable cause. The

parties subsequently settled the matter, which included, among other things, Chesterbrook's agreement to provide training to its staff on disability discrimination and the interactive process involved in responding to requests for accommodations under the LAD, and Chesterbrook's assurances that it would implement such practices and not discriminate against children with disabilities going forward.

6. In April 2009, the U.S. Department of Justice ("DOJ") filed a lawsuit against Defendant for excluding children with disabilities, including Down syndrome, from its programs based in fifteen states (Arizona, California, Florida, Illinois, Maryland, Nevada, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia, and Washington). The parties settled in 2011 and Defendant agreed, among other things, to: a disability non-discrimination policy; policy to address reasonable modification requests; an appointment of an Americans with Disabilities Act (ADA), 42 U.S.C. § 12181, et seq. compliance officer; and training.

7. On April 24, 2015, P.M. and R.M., individually and on behalf of their three-year old daughter, "Jane" (fictitious name), filed a verified complaint with DCR alleging that Chesterbrook discriminated against Jane based on her disability by refusing to reasonably accommodate her disability so she could remain enrolled in its programs.

8. After an investigation, DCR found sufficient evidence to credit P.M. and R.M.'s allegations against Chesterbrook. Following a finding of probable cause, the parties participated in conciliation, which was unsuccessful in resolving the matter.

9. Despite DCR's and DOJ's prior investigations and settlements, Defendant's conduct and practices continue to raise concerns that it discriminates against children with

disabilities by failing to provide reasonable accommodations to children with disabilities enrolled in its programs.

10. The Director brings this action, among other things, to prohibit Defendant's discriminatory practices against children with disabilities who are enrolled in its daycare programs.

11. The Director seeks equitable relief and remedies for the State of New Jersey in the form of penalties, costs, and equitable relief for Jane, P.M., and R.M. as aggrieved parties and injunctive relief on behalf of other children with disabilities who are enrolled or who may become enrolled in one of Defendant's four New Jersey facilities.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

12. Chesterbrook located at 130 Borton Landing Road in Moorestown, New Jersey offers daycare services in accordance with the following programs: Infant (6 weeks to 12 months); Toddler A (12 months to 18 months); 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); and Kindergarten. Each program has its own classroom.

13. Chesterbrook's staff provides diaper-changing services to children enrolled in five out of its eight programs: Infant, Toddler A, Toddler B, Beginner A, and Beginner B. It does not offer diaper-changing services in the Intermediate, Pre-K, or Kindergarten classrooms.

14. P.M. and R.M. have four children. P.M. and R.M. sent their first two children to Chesterbrook. They both progressed through the program and completed Chesterbrook's program before enrolling in public elementary school.

15. P.M. and R.M. enrolled their third child, Jane and fourth child, Mary (fictitious name), in the program at Chesterbrook. Both Jane and Mary were progressing through the program at Chesterbrook.

16. P.M. and R.M. entered into two separate "Preschool Tuition Agreements" with Chesterbrook for Jane and Mary.

17. At all times, P.M. and R.M. paid all fees required under these contracts and otherwise, complied with these agreements.

18. Jane was born with Down syndrome.

19. P.M. and R.M. notified Chesterbrook that Jane was born with Down syndrome.

20. Jane began in the Infant program and progressed through Chesterbrook's programs according to Jane's age milestones to the Beginner B program.

21. During the relevant time period, Jane received special education services from the Moorestown Township School District ("District").

22. When Jane was three years-old, she attended Chesterbrook from 11:45AM to 4:15PM. During this time period, R.M. would drop Jane off each morning at Chesterbrook at approximately 7:25AM. At 8:00AM, the District would pick up Jane and take her to the public school to receive special education services. At 11:45AM, the District returned Jane to Chesterbrook where she would eat lunch with the other children and nap for approximately two hours. R.M. would pick up Jane between 4:15-4:30 PM.

23. In July 2014, Jane was in the Beginner B classroom for children from 2 ½ years to 3 years old. Chesterbrook provided diapering services to children in this classroom.

24. On July 11, 2014, Jane turned three years old.

25. Sometime in January 2015, Chesterbrook's newly appointed Acting Principal, Kelly Horner, told R.M. that Chesterbrook would be moving Jane from Beginner B (diapering classroom) to Intermediate (non-diapering classroom).

26. Chesterbrook stated that children in the Intermediate classroom must be toilet-trained.

27. R.M. did not agree with Chesterbrook's decision to transfer Jane to the Intermediate classroom.

28. In an email from Horner to R.M. dated January 21, 2015 at 8:40AM, Horner stated, "I just wanted to follow up to our conversation about [Jane]'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 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."

29. P.M. and R.M. understood the April 1, 2015 date to be a goal but not necessarily a deadline for Jane to become toilet trained.

30. Despite its policy that all children in the Intermediate classroom are toilet-trained, Chesterbrook recognized that accidents still occurred in that classroom and the teachers in this classroom were prepared to change students who had accidents. Teachers in the Intermediate classroom requested that parents provide their children with extra sets of clothing in case of accidents.

31. Although Chesterbrook had been aware of Jane's disability since her initial enrollment, R.M. provided Chesterbrook with a note dated March 23, 2015 from Jane's doctor at the Children's Hospital of Philadelphia (CHOP) stating, "Due to her Down Syndrome, [Jane] is developmentally delayed and will not be able to fully potty train until age 5 or older."

32. Notwithstanding the note from Jane's CHOP physician, Chesterbrook's new principal, Ann Nimberg, told R.M. on March 25, 2015 that Jane would be disenrolled if not toilet-trained by April 1, 2015 or in other words, within seven days.

33. Chesterbrook stated that due to Jane's diapering needs, she effectively needed a personal attendant. However, from January 26, 2015 to March 26, 2015, over the course of 35 days Jane attended Chesterbrook, her teachers changed her diaper only 22 times.

34. P.M. and R.M. requested that Jane be transferred back to the Beginner B classroom where Chesterbrook staff provided diapering services to children.

35. Chesterbrook refused to transfer Jane back to the Beginner B classroom and refused to extend the April 1, 2015 deadline for Jane to become toilet-trained.

36. Chesterbrook failed to engage in any discussion regarding Jane's ability to remain enrolled and did not engage in any interactive process with R.M. or P.M. to discuss reasonable accommodations for Jane.

37. P.M. and R.M. knew that Jane was being treated differently from other children because their oldest child who attended and completed the program at Chesterbrook and who did not have a disability was not fully toilet-trained when he was placed in the Intermediate classroom but was able to remain enrolled in the program.

38. Despite R.M. and P.M.'s notice to Chesterbrook that Jane's Down syndrome would prevent Jane from being able to be toilet-trained by Chesterbrook's deadline, on April 1, 2015, Chesterbrook disenrolled Jane.

39. As a result of Jane's disenrollment, R.M. and P.M. felt compelled to remove their youngest child, Mary, from Chesterbrook and seek alternative care for both Jane and Mary.

40. Following its investigation, the DCR Director issued a determination finding that probable cause exists to credit the allegations that Chesterbrook discriminated against Jane in violation of the LAD by refusing to reasonably accommodate Jane's disability so that she could remain enrolled.

41. During DCR's investigation, Chesterbrook provided an additional reason for its disenrollment of Jane that was not provided to P.M. or R.M. Chesterbrook claimed that Jane had exhibited aggressive behavior prior to her transition from Beginner B to Intermediate program. However, during the investigation, Chesterbrook only provided two incident reports from when Jane was already in the Intermediate program and reaching the April 1, 2015 deadline.

42. These allegations against Chesterbrook are troubling in light of the fact that Chesterbrook has already been investigated for similar allegations by DCR and by DOJ.

43. Chesterbrook's actions are willful and deliberate, particularly considering its prior involvement with investigations and litigation on this issue.

COUNT ONE

CHESTERBROOK FAILED TO PROVIDE JANE WITH A REASONABLE ACCCOMODATION IN VIOLATION OF N.J.S.A. 10:5-12(f)

44. Plaintiff repeats the allegations of paragraphs 1 to 43 of the Complaint as if they had been set forth at length herein.

45. The LAD, at N.J.S.A. 10:5-12(f), prohibits, among other things, public accommodations from discriminating against individuals on the basis of disability.

46. Chesterbrook is a public accommodation under the LAD and relevant regulations at N.J.A.C. 13:13-4.1 to -4.12.

47. N.J.A.C. 13:13-4.11 requires public accommodations 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, facilities, privileges, advantages, or accommodations to a person with a disability.

48. Jane was enrolled in Chesterbrook's program.

49. Jane has a disability as that term is defined under the LAD.

50. Chesterbrook was provided notice of Jane's disability and that such disability required a reasonable accommodation for Jane to stay enrolled.

51. Providing Jane with a reasonable accommodation would not have resulted in an undue burden on its operation as set forth in N.J.A.C. 13:13-4.11.

52. The LAD violations described herein were committed by Defendant oppressively, willfully and maliciously.

53. As a direct and proximate result of Defendant's LAD violations, Jane, P.M., and R.M. suffered damages.

COUNT TWO

CHESTERBROOK SUBJECTED JANE TO DIFFERENTIAL TREATMENT IN VIOLATION OF N.J.S.A. 10:5-12(f)

54. Plaintiff repeats the allegations of paragraphs 1 to 53 of the Complaint as if they had been set forth at length herein.

55. Chesterbrook would have permitted Jane to stay enrolled in its programs but for Jane's disability.

56. P.M. and R.M.'s two older children enrolled and attended the same Chesterbrook location in Moorestown, New Jersey.

57. Chesterbrook treated Jane differently from other children previously or currently enrolled in its programs by disenrolling Jane when other students requiring diaper changing were not disenrolled.

58. Chesterbrook treated Jane differently from other children previously or currently enrolled in its programs by refusing to permit her to remain in a diapering classroom.

59. As a direct and proximate result of Defendant's LAD violations, Jane, P.M. and R.M. suffered damages.

COUNT THREE

CHESTERBROOK FAILED TO CONTRACT WITH P.M. AND R.M. IN VIOLATION OF N.J.S.A. 10:5-12(1)

60. Plaintiff repeats the allegations of paragraph 1 to 59 of the Complaint as if they had been set forth at length herein.

61. N.J.S.A. 10:5-12(1) prohibits the failure to contract with or otherwise provide services to any other person on the basis of disability.

62. P.M. and R.M. entered into a "Preschool Tuition Agreement" with Chesterbrook to provide daycare services to its children, Jane and Mary.

63. At all times, P.M. and R.M. paid all fees under these contracts and otherwise, complied with these agreements.

64. As a result of Chesterbrook's refusal to continue to contract with P.M. and R.M. because of Jane's disability, the parents felt compelled to disenroll Mary.

65. P.M. and R.M. were abruptly left without childcare for two of their children and expended time, money and other resources to find a day care provider that had two available spots and would provide childcare for two young children.

66. Chesterbrook failed to contract with P.M. and R.M. for day care services on the basis of Jane's disability in violation of N.J.S.A. 10:5-12(1).

67. Under N.J.S.A. 10:5-17, such conduct may permit the award of three-fold damages to the person aggrieved by this violation.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant Nobel Learning Communities, d/b/a Chesterbrook Academy, and that the Court grant the following relief:

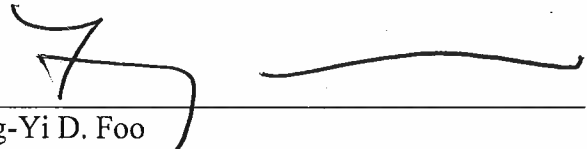
- (a) Ordering Defendant, its officers, agents and employees to cease and desist from engaging in discriminatory policies and practices against individuals based on their disabilities;
- (b) Ordering Defendant to modify its policies, practices, and procedures as necessary to ensure its programs, practices, and procedures do not discriminate against individuals based on their disabilities;
- (c) Ordering Defendant to submit to training and monitoring by DCR for a period of five years;
- (d) Awarding compensatory damages to all aggrieved parties, including but not limited to Jane, P.M., and R.M. for out-of-pocket expenses, humiliation, emotional

distress and mental pain and anguish caused by Defendant's discriminatory conduct;

- (e) Awarding Plaintiff Director, Division on Civil Rights, punitive damages because of the intentional and willful nature of Defendant's conduct, pursuant to N.J.S.A. 10:5-13;
- (f) Awarding penalties;
- (g) Awarding costs, including attorneys' fees, pursuant to N.J.S.A. 10:5-27; and
- (h) Awarding such additional relief as the interests of justice may require.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: _____


Fang-Yi D. Foo
Deputy Attorney General

Dated: Oct. 26, 2016

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of any other action between the parties. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action. There is presently pending an administrative complaint filed with the Division on Civil Rights against Nobel Learning Communities d/b/a Chesterbrook Academy entitled P.M. and R.M., parents o/b/o [Jane], a minor, and P.M. and R.M. individually, and the Director of the New Jersey Division on Civil Rights v. Nobel Learning Communities, Inc., d/b/a Chesterbrook Academy, DCR Docket No. PC22MB-65242. Complainants P.M. and R.M. have indicated that they will expeditiously withdraw their administrative complaint filed with the Division on Civil Rights upon the filing of the instant action.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: _____


Fang-Yi D. Foo
Deputy Attorney General

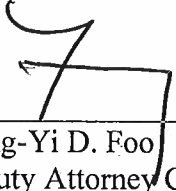
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RULE 4:5-1(b)(3) COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By:



Farn-Yi D. Foo
Deputy Attorney General

Dated: Oct. 26, 2016

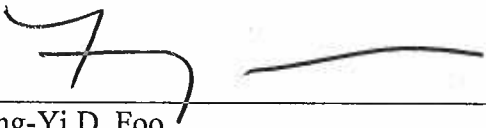
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JURY DEMAND

Pursuant to N.J.S.A. 10:5-13, Plaintiffs demand a jury trial for all claims brought under the LAD and any other issues triable by a jury.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: _____


Farn-Yi D. Foo
Deputy Attorney General

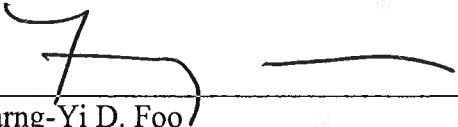
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DESIGNATION OF TRIAL COUNSEL
PURSUANT TO R. 4:5-1(c)

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Deputy Attorney General Farn-Yi D. Foo is hereby designated as trial counsel for this
matter.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: 
Farn-Yi D. Foo
Deputy Attorney General


Dated: Oct. 26, 2016

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to R. 4:10-2(b), demand is made upon each Defendant that it disclose to Plaintiff's counsel whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or indemnify or reimburse such Defendant for payments to satisfy any judgment rendered herein and provide Plaintiff's counsel with those insurance agreements or policies, including, but not limited to all and any declaration sheets. This demand shall include not only primary coverage, but also all and any excess, catastrophe and umbrella policies.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: _____


Fang-Yi D. Foo
Deputy Attorney General

Dated: Oct. 26, 2016

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