

STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DOCKET NO. PB70HB-67094

B.M., parent/guardian, on behalf of S.B.,)  
a minor, and B.M., individually, )  
 )  
Complainants, )  
 )  
v. )  
 )  
Diva’s Healthy Kitchen, )  
 )  
Respondent. )

Administrative Action

**FINDING OF  
PROBABLE CAUSE**

On September 7, 2018, Bergen County resident B.M. (Complainant) filed a complaint with the New Jersey Division on Civil Rights (DCR) on behalf of her minor daughter, S.B., alleging that Diva’s Healthy Kitchen (Respondent), a place of public accommodation, denied her daughter access to its week-long cooking camp because of her disability and denied her daughter a reasonable accommodation for her disability, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The DCR investigation found as follows.

**Summary of Investigation**

Founded in February 2018 by Maude Subrahmanyam, and located in Wyckoff, New Jersey, Respondent provides weeklong culinary camps to children during the summer. Each camp session is taught by Subrahmanyam and one assistant, and can hold up to ten campers. Subrahmanyam charges a registration fee of \$240.00 per camper and requires that each camper’s parent or legal guardian sign a waiver releasing Respondent from liability in the event the camper sustains an injury during the session.

On or about May 29, 2018, Complainant registered her daughter, S.B., who has limited vision but is considered legally blind, for a camp session beginning June 25, 2018. On June 11, 2018, Respondent allowed Complainant to switch S.B. to a session beginning July 30, 2018.

On July 24, 2018, Complainant e-mailed Subrahmanyam and informed her for the first time that S.B. is legally blind. The e-mail states:

I don’t know if I told you but [S] is legally blind so she does need to be up close and look at things closely. If she is told to pick up a spoon, for example, she will probably need to be told, “on your right is the spoon,” or, “the measuring cup is on your left.”

On July 25, 2018, Subrahmanyam replied, stating:

No you did not inform us that [S] is legally blind. We would have loved to have her participate in our camp but unfortunately we don't have the required staff nor expertise to accommodate your child's special needs.

Three minutes later, Complainant responded, stating:

I do not understand??? There is no required staff nor expertise. She has low vision in ONE eye! All she may need is specific directions! She doesn't even require a use of a cane and is a print reader! She just has to read things close to her face!

One minute after that, Subrahmanyam replied, stating:

We are not comfortable with the potential risk of injury to a legally blind student while performing tasks required around the kitchen. We will refund your registration fee in full as soon as possible.

In a DCR interview, Subrahmanyam admitted that she denied S.B. access to Respondent's camp due solely to Complainant's disclosure of S.B.'s disability. Further, Subrahmanyam stated that her interpretation of legal blindness is that the individual with the condition "mostly cannot see." She stated that had Complainant not used the term "legally blind" in her e-mail and had instead simply advised her that S.B. had "poor vision" that required somebody to occasionally point out items for her, there would have been no issue, and S.B. could have attended the camp. She stated that the term "legally blind" was the "elephant in the room," and that those particular words "threw [her] off" and motivated her to rescind S.B.'s acceptance to the camp.

Subrahmanyam also stated that when she received Complainant's July 24, 2018 e-mail advising that S.B. is legally blind, she was immediately concerned with respect to S.B.'s use of sharp knives, the stove, and the oven. She stated that she spoke to her husband and they decided that it would be best to refund Complainant's registration fee due to their safety concerns.

Respondent's position statement argued that because campers handle cooking tools such as knives and other sharp objects, as well as appliances including hot stoves and ovens, even the slightest lack of awareness of one's surroundings could lead to serious injury. Respondent further argued that because Complainant only advised it of her daughter's disability less than a week before the start of the July 30, 2018 camp session, it did not have sufficient time or resources to obtain additional personnel experienced in working with legally blind children that would have mitigated its safety concerns and enabled it to accommodate S.B. Subrahmanyam also argued that hiring additional staff would have created an undue burden on her business in that it would have caused Respondent to operate at a net loss.

To support this claim, in correspondence to DCR, Respondent stated that its revenue earned from the 2018 summer camp was \$8,724.00 and its expenses were \$6,437.00 – i.e., a profit of \$2,287. It further stated that according to the website ZipRecruiter.com, an "Orientation and Mobility Specialist" would cost up to \$2,923.00 per week. Thus, it contended that hiring such personnel for S.B.'s weeklong session would have created a net operating loss of \$636.00.

Respondent did not provide any records to support these figures, nor did Respondent discuss them with Complainant.

Complainant told DCR that she did not advise Subrahmanyam of S.B.'s disability until six days prior to the beginning of camp because S.B.'s disability does not preclude her from partaking in everyday activities, including cooking and baking, and because S.B. has attended culinary camps previously. To support this assertion, Complainant produced records demonstrating that since 2017, S.B. has attended multiple culinary camps without incident. Complainant also produced medical records from the New Jersey Commission for the Blind and Visually Impaired, none of which appear to indicate that S.B. should avoid using sharp objects, the oven, or the stove.

In her interview, Subrahmanyam acknowledged that had she engaged in further dialogue with Complainant, her concerns with respect to safety might have been alleviated. However, Subrahmanyam stated that she did not reach out to Complainant in this regard because she felt that Complainant's tone in her e-mails signaled that Complainant was not open to seeking a resolution.

Subrahmanyam also acknowledged that she did not rely on any objective medical evidence or knowledge to inform her position that S.B.'s participation in the camp, and/or granting Complainant's requested accommodation of being told "on your right is the spoon" or "the measuring cup is on your left" would have created a reasonable probability of serious harm to S.B. and others.

### **Analysis**

At the conclusion of an investigation, DCR is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief" that the statute has been violated. Ibid.

The LAD makes it unlawful for a place of public accommodation, such as a camp, to "directly or indirectly refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities or privileges thereof" based on disability. N.J.S.A. 10:5-12(f). "[A] place of public accommodation shall, to the extent reasonable, afford goods, services, facilities, privileges, advantages, and accommodations to a person with a disability in the most integrated setting appropriate to the needs of that person." N.J.A.C. 13:13-4.4(a). Additionally, places of public accommodation "shall make reasonable accommodations to the limitations of a patron or prospective patron who is a person with a disability, including making such reasonable modifications in policies, practices, or procedures, as may be required to afford goods, services, facilities, privileges, advantages, or accommodations to a person with a disability, unless the agent or employee of the place of public accommodation demonstrates that making the accommodations would impose an undue burden on its operation." N.J.A.C. 13:13-4.11(a).

To state a denial of access claim under the LAD, a complainant must show that he or she (i) has a disability as defined by the LAD; (ii) was otherwise qualified to participate in the activity or program at issue; and (iii) was denied the benefits of the program or otherwise discriminated

against because of his or her disability. Wojtkowiak v. New Jersey Motor Vehicle Com'n, 439 N.J. Super. 1, 14 (App. Div. 2015), citing J.T. v. Dumont Pub. Schs., 438 N.J. Super. 241 264 (App. Div. 2014). When the matter involves a requested accommodation, the complainant must also show “whether the requested accommodation was reasonable.” Wojtkowiak, 439 N.J. Super. at 14.

Here, as a business that solicits public patronage, Respondent qualifies as a place of public accommodation under the LAD. There also does not appear to be any dispute that S.B.’s visual impairment qualifies as a disability under the LAD. And S.B. was otherwise qualified to participate in the camp, as indicated by her initial acceptance as a camper. S.B. was only denied participation in the camp after Complainant advised Respondent of S.B.’s disability on July 24, 2018, at which point Respondent immediately said S.B. could not attend and that it would refund Complainant’s registration fee. DCR’s investigation found that S.B.’s disability was at the very least a motivating factor in Respondent’s decision to rescind her admission to the camp.

In addition, Complainant’s July 24, 2018 e-mail to Subrahmanyam constitutes a request for a reasonable accommodation – i.e., that S.B. be “told, ‘on your right is the spoon,’ or, ‘the measuring cup is on your left.’”

Respondent argued that granting Complainant’s request for accommodation would have created an undue fiscal burden on its operations – specifically, because obtaining specialized personnel experienced in working with legally blind children would have caused it to operate at a net loss of \$636.00. However, Respondent appears to have unilaterally determined that S.B. required such specialized personnel – an “Orientation and Mobility Specialist” – that allegedly would have cost almost \$3,000 per week to procure. Complainant never requested that Respondent hire additional personnel, let alone specialized personnel to assist S.B. Further, it does not appear that any specialized personnel were necessary to provide the instructions to S.B. requested by Complainant, and the requested accommodation could have been provided with no cost and minimal burden. Moreover, while alleging an undue financial burden, Respondent did not share any of its purported monetary concerns with Complainant before it denied her request, or explore any alternative accommodations with Complainant.

The root cause of Respondent’s denial of access and denial of a reasonable accommodation seemed to be its fear that S.B.’s disability would cause harm. The LAD does not require that places of public accommodation grant a person with a disability access to its services if doing so creates “a reasonable probability of serious harm to the person with a disability, or to others. . .” N.J.A.C. 13:13-4.8(a), and Respondent argued that S.B.’s disability created a reasonable probability of serious harm because campers were required to use sharp knives and appliances such as hot stoves and ovens.

But in determining whether providing a person with a disability access to a public accommodation poses a reasonable probability of serious harm to that individual or to others that cannot be mitigated with a reasonable accommodation, “places of public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain the probability that the serious

harm will actually occur and whether reasonable modifications of policies, practices, or procedures will mitigate the probability of serious harm.” N.J.A.C. 13:13-4.8(b) (emphasis added).

Moreover, places of public accommodation “may impose legitimate safety requirements that are necessary for the safe operation of the facility.” N.J.A.C. 13:13-4.8(c). However, “such safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about people with disabilities.” N.J.A.C. 13:13-4.8(c) (emphasis added).

Here, Respondent offered no evidence that it conducted the required individualized assessment to determine whether granting S.B. access to the program would have created a reasonable probability of serious harm. It did not seek any evidence, medical or otherwise, as to S.B.’s specific limitations. Rather, Respondent appeared to rely on its own generalized fears and assumptions about how S.B.’s condition would affect her ability to safely participate in the camp. Nor did Respondent take any steps to assess whether any reasonable modifications existed that would mitigate the probability of such harm.

Had Respondent made the required inquiry, it may have learned that S.B. had participated in multiple culinary camps since 2017, and did so without any safety issues. It also may have learned that medical professionals who examined S.B. have not expressed any limitation in her use of sharp and/or hot objects.

Respondent stated that it did not continue a dialogue with Complainant with respect to possible accommodations due to what it perceived to be Complainant’s unwillingness to find a solution. It bases this purported unwillingness on the “tone” of Complainant’s e-mails, which it found to be combative. Further, in correspondence to DCR, Respondent argued that Complainant’s assertion in her July 25, 2018 e-mail that S.B. did not require additional staff to assist S.B. “eliminated the concept of engagement in an interactive dialogue.” The Director does not find that the tone and/or substance of Complainant’s emails justify Respondent’s decision to cut off further discussion of accommodations for S.B. to attend the camp.

Based on the investigative findings, the Director is satisfied at this preliminary stage of the process that there is **PROBABLE CAUSE** to support Complainant’s allegations of denial of access and failure to provide a reasonable accommodation, and finds that the matter should “proceed to the next step on the road to an adjudication on the merits.” Frank, supra, 228 N.J. Super. at 56.



Rachel Wainer Apter, Director  
NJ Division on Civil Rights

Date: June 27, 2019