

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC
SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NO.: P2023-900004

MATTHEW J. PLATKIN, Attorney General
of New Jersey, and SUNDEEP IYER,
Director of the New Jersey Division on Civil
Rights,

Complainants,

v.

MANALAPAN-ENGLISHTOWN
REGIONAL BOARD OF EDUCATION, and
MANALAPAN-ENGLISHTOWN
REGIONAL SCHOOLS,

Respondents.

:
ADMINISTRATIVE ACTION

:
VERIFIED COMPLAINT

:
Received and Recorded By:

:
Date: June 21, 2023

Charge

Complainants Matthew J. Platkin, Attorney General of New Jersey, and Sundeep Iyer, Director of the New Jersey Division on Civil Rights (together “Complainants”), charge Respondents Manalapan-Englishtown Regional Board of Education and Manalapan-Englishtown Regional Schools with unlawful discrimination in violation of N.J.S.A. 10:5-12(f) of the New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10:5-1 to -50.

The Parties

1. Complainant Matthew J. Platkin is the Attorney General of New Jersey. The Attorney General, having offices at 25 Market Street, Trenton, New Jersey, 08611 and 124 Halsey Street, Newark, New Jersey, 07102, is charged with enforcing the Law Against Discrimination

(LAD). The Attorney General is authorized to proceed against any person to compel compliance with any provisions of the LAD or to prevent violations or attempts to violate any such provisions. N.J.S.A. 10:5-8.2 and 13.

2. Complainant Sundeep Iyer is the Director of the New Jersey Division on Civil Rights (“DCR”), the agency charged with enforcing the LAD on behalf of the Attorney General, and maintains a primary office at 31 Clinton Street, Newark, New Jersey. Complainant Iyer brings this action in his official capacity pursuant to the authority of the Director of the Division on Civil Rights, pursuant to N.J.S.A. 10:5-8.2 and 13 and N.J.A.C. 13:4-2.2(d).

3. Respondent Manalapan-Englishtown Regional Schools (“District”) is a public school district that serves students in kindergarten through grade 8 who reside in Englishtown Borough and Manalapan Township, New Jersey. The District maintains its principal office at 54 Main Street, Englishtown, NJ 07726.

4. Respondent Manalapan-Englishtown Regional Schools Board of Education (“Board” or “BOE”) is a board authorized to set policy and oversee the fiscal and educational operation of the District. The BOE’s principal office is located at 54 Main Street, Englishtown, NJ 07726.

INTRODUCTION

5. This case seeks to remedy unlawful discrimination by the Manalapan-Englishtown Regional Schools and Manalapan-Englishtown Regional Schools Board of Education (collectively, the “Manalapan-Englishtown Respondents”). The Manalapan-Englishtown Respondents have unlawfully discriminated against students on the basis of gender identity or expression in violation of the New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10:5-1 to -50.

6. On June 20, 2023, the Board passed a revised version of its Policy 5756, entitled “Transgender Students” (the “Revised Policy”) that discriminates against transgender students and certain gender non-conforming, non-binary, genderqueer, and other gender-expansive students on the basis of gender identity or expression in clear violation of New Jersey law and policy.

7. Revised Policy 5756 will irreparably harm transgender, gender non-conforming, non-binary, genderqueer, and other gender-expansive students by requiring parental disclosure of their gender identity or expression without their consent. “Outing” these students against their will poses serious mental health risks; threatens physical harm to students, including risking increased suicides; decreases the likelihood students will seek support; and shirks the District’s obligation to create a safe and supportive learning environment for all. Indeed, LGBTQ+¹ students in New Jersey and elsewhere have died by suicide after being outed.

8. Revised Policy 5756 will also irreparably harm transgender, gender non-conforming, non-binary, genderqueer, and other gender-expansive students enrolled in 5th grade and below by directing school staff to treat all such students not in accordance with their own gender identity or expression, but rather in accordance with the gender identity or expression imposed by their parents. Treating transgender students consistently with their own gender identity—their internal experience of gender—is crucial for their mental health and welfare, reduces the amount of harassment and discrimination they face in school, and improves their academic performance.

9. Complainants seek relief to remedy and prevent the Manalapan-Englishtown Respondents’ violations of the LAD, including, among other things, a permanent injunction

¹ The term “LGBTQ+” is intended to include individuals who are gay, lesbian, bisexual, polysexual, pansexual, transgender, gender non-conforming, non-binary, genderqueer, questioning, queer, or otherwise not straight and/or not cisgender.

prohibiting Respondents from implementing Revised Policy 5756 and from otherwise giving effect to the aspects of Revised Policy 5756 that violate the LAD, whether by further amending that policy or adopting a new policy covering similar subject-matter.

FACTUAL ALLEGATIONS

Respondents' March 2019 Version of Policy 5756 Concerning Transgender Students Aligns with State Guidance and the LAD

10. The LAD provides that it is the policy of the State of New Jersey to prevent and remedy unlawful discrimination in all its forms, see N.J.S.A. 10:5-3, including unlawful discrimination against transgender, gender non-conforming, non-binary, genderqueer, and other gender-expansive students in schools and other places of public accommodation, see N.J.S.A. 10:5-5(l), -12(f).

11. The District and the Board operate a “place of public accommodation” under the LAD. N.J.S.A. 10:5-5(l) (“A place of public accommodation’ shall include, but not be limited to: . . . any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education or the Commissioner of Education of the State of New Jersey.”).

12. The LAD provides, in relevant part, that it is unlawful discrimination for

any owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation directly or indirectly 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 . . . on account of the . . . gender identity or expression . . . of such person .

...

[N.J.S.A. 10:5-12(f)(1) (emphases added).]

13. The Legislature directed the Commissioner of the New Jersey Department of Education to develop and distribute to school districts guidelines concerning transgender students

to “maintain[] a safe and supportive learning environment that is free from discrimination and harassment for transgender students, including students going through a gender transition.” N.J.S.A. 18A:36-41, -41(a)(2). The Legislature placed particular focus on “confidentiality and privacy concerns, including ensuring that school personnel do not disclose information that may reveal a student's transgender status except as allowed by law, and advising schools to work with the student to create an appropriate confidentiality plan regarding the student's transgender or transitioning status.” N.J.S.A. 18A:36-41(a)(3) (emphasis added).

14. Likewise, the Legislature directed such guidelines to specifically address, among other elements, “ensuring that a transgender student is addressed at school by the name and pronoun preferred by the student that corresponds to the student’s gender identity” and “issuing school documentation ... in the name preferred by the student that corresponds to the student’s gender identity,” and permitting the student to dress, participate in activities, and use facilities in accordance with the student’s gender identity. N.J.S.A. 18A:36-41(b)(5)–(9) (emphasis added).

15. In 2018, in accordance with this legislative directive, the State Department of Education published Transgender Student Guidance for School Districts (“State Guidance”), which recognizes that the LAD “generally makes it unlawful for schools to subject individuals to differential treatment based on race, creed, color, national origin, ancestry, marital status, domestic partnership or civil union status, sex, affectional or sexual orientation, gender identity or expression, disability or nationality.” See State Guidance, at 1.

16. The State Guidance was prepared “in consultation with educators, counselors, school psychologists, advocates, and parents.” Ibid.

17. The State Guidance directs schools and school districts to treat transgender students consistently with their gender identity, and defines gender identity as “a person’s internal, deeply held sense of gender.” Ibid.

18. The State Guidance adopts a student-centered and individualized approach, instructing that schools and school districts “communicate openly, albeit confidentially, with students regarding their transgender status or gender identity.” Ibid. The State Guidance also states “school districts should discuss with the student, and any other individuals at the student’s request, the risks associated with the student’s transgender status being inadvertently disclosed.” Id. at 3.

19. The State Guidance specifically instructs that “there is no affirmative duty for any school district personnel to notify a student’s parent or guardian of the student’s gender identity or expression” and expressly provides that “[s]chool district personnel should have an open, but confidential discussion with the student to ascertain the student’s preference on matters such as chosen name, chosen pronoun to use, and parental communications.” Ibid. (emphasis added).

20. Section 4 of the State Guidance, entitled “Confidentiality and Privacy,” provides that “[s]chool personnel may not disclose information that may reveal a student’s transgender status except as allowed by law,” and further instructs that “[a] school district shall keep confidential a current, new, or prospective student’s transgender status.” Id. at 4. The State Guidance provides only a narrow exception to this mandate when there is “a specific and compelling need, such as the health and safety of a student or an incident of bias-related crime.” Id. at 5 (emphasis added). Even within that narrow exception, “the student should be given the opportunity to personally disclose” their transgender status themselves. Ibid.

21. The State Guidance directs that schools and school districts “shall accept a student’s asserted gender identity; parental consent is not required.” Id. at 2. There is no exception or limitation on this instruction on the basis of age or grade level. Additionally, when conflict between the student and parent or guardian exists over the name and pronouns to be used for the student in school, the State Guidance instructs schools that “[s]taff should continue to refer to the student in accordance with the student’s chosen name and pronoun at school . . .” Ibid. (emphasis added).

22. Similarly, without exemption or limitation based on a student’s age or grade level, the State Guidance instructs that schools and school districts “shall issue school documentation for the transgender student . . . in the name chosen by the student,” and that “[a] transgender student shall be allowed to dress in accordance with the student’s gender identity.” Id. at 3. The State Guidance also requires that all students be allowed to participate in activities and use facilities in a manner that aligns with their gender identity. Id. at 6–7.

23. In March 2019, Manalapan-Englishtown Regional Schools Board of Education revised its Policy 5756, entitled “Transgender Students,” “to ensure that its schools provide a safe and supportive learning environment that is free from discrimination and harassment for transgender students, including students going through a gender transitions,” and “to help school and district administrators take steps to create an inclusive environment in which transgender and gender nonconforming students feel safe and supported, and to ensure each school provides equal educational opportunities for all students, in compliance with N.J.S.A. 6A:7-1.1, et seq.” Revised Policy at 3 and 7.

24. The March 2019 version of School Board Policy 5756 adopted a student-centered and individualized approach that focused on preventing unlawful discrimination, protecting

student privacy, and affirming the self-identification of a student’s gender identity —without limitation to age or grade— adopting much of the language of the State Guidance, including its “Confidentiality and Privacy” protections. Ibid.

**Respondents’ Revised Policy 5756 Treats Students Differently
Based On LAD-Protected Characteristics**

25. On June 20, 2023, the Manalapan-Englishtown Regional Schools Board of Education adopted a revised version of Policy 5756.

26. Revised Policy 5756 deletes the section title “Student-Centered Approach,” and the following language from the section: “The school district shall accept a student’s asserted gender identity; parental consent is not required . . . There is no affirmative duty for a school district staff member to notify a student’s parent of the student’s gender identity or expression.

27. In its place, Revised Policy 5756, adds a new section, titled “Approach,” which states, in most relevant part:

This policy establishes the Board’s expectations for addressing the needs of transgender students in compliance with applicable anti-discrimination laws. For grades 6 through 8, the school district shall accept a student’s asserted gender identity; parental consent is not required. For students in grades Pre-K through 5, the responsibility for determining a student’s gender identity rests with the student’s parents/guardians . . .

The Board finds that conversations with counselors, teachers or other staff about one’s gender identity and expression are entitled to confidentiality. However, in the event a student requests a public social transition accommodation, such as a public name/identity/pronoun change, bathroom/locker room accommodation, or club/sports accommodations, or the like, the school district shall notify a student’s parents or guardian of the student’s asserted gender identity and/or name change, or other requested accommodation, provided there is no credible evidence that doing so would subject the student to physical or emotional harm or abuse. Prior to disclosure, the student shall be given the opportunity to personally disclose that information. It shall be the policy of the Board to support and facilitate healthy communication

between a transgender student and their family, when disclosure is consistent with this policy.

[Revised Policy 5756]

28. Revised Policy 5756 subjects transgender students and certain gender non-conforming, non-binary, genderqueer, and other gender-expansive students to a parental notification policy to which cisgender students are not subject.

29. Revised Policy 5756 treats transgender students and certain gender non-conforming, non-binary, genderqueer, and other gender-expansive students differently on its face than students who are cisgender by explicitly requiring parental notification of students' gender identity or expression for students who seek to have their gender affirmed at school, whether through the use of a gender affirming name and pronoun, or access to facilities and activities that align with their gender identity or expression. Ibid.

30. Revised Policy 5756 also targets transgender, gender non-conforming, non-binary, genderqueer, and other gender-expansive students in Pre-K through 5th grade by instructing school staff to treat those students not in accordance with their own gender identity or expression, but rather in accordance with the gender identity or expression imposed by their parents, even when that identity does not affirm the child's gender expression or identity. Ibid.

31. Revised Policy 5756 treats transgender, gender non-conforming, non-binary, genderqueer, and other gender-expansive students in Pre-K through 5th grade differently than similarly situated cisgender students by requiring that school staff invalidate the gender identity or expression of such students when such students' parents reject their gender identity or expression. Ibid.

32. Revised Policy 5756 discriminates against transgender, gender non-conforming, non-binary, genderqueer, and other gender-expansive students from Pre-K through 5th grade

differently than students who are cisgender by mandating that access to facilities and activities not be based on their gender identity, but in accordance with the gender identify or expression imposed by their parents.

33. Revised Policy 5756 treats transgender, gender non-conforming, non-binary, genderqueer, and other gender-expansive students from Pre-K through 5th grade differently than students who are cisgender by requiring school staff to refuse to use such students' affirming name and pronouns when those students' parents reject their gender identity or expression.

34. In the alternative, even if the Revised Policy is construed as facially neutral, it will actually and predictably have an unjustified disparate impact on transgender, gender non-conforming, and non-binary students at Manalapan-Englishtown schools, including by subjecting them to continuous threat of being "outed" if they have not already made their gender identity or gender expression known to their parents or guardians.

DISCRIMINATION STATEMENT

35. Plaintiffs repeat the allegations set forth in the preceding paragraphs of this Complaint as though set forth fully herein.

36. Defendants operate Manalapan-Englishtown Regional Schools, which are places of public accommodation under the LAD. N.J.S.A. 10:5-5(l).

37. N.J.S.A. 10:5-12(f)(1) makes it unlawful for any owner, manager, superintendent, agent, or employee of any place of public accommodation to "discriminate against any person in the furnishing thereof" on the basis of actual or perceived "sex" or "gender identity or expression."

38. The LAD defines "gender identity or expression" as "having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person's assigned sex at birth." N.J.S.A. 10:5-5(rr).

39. By enacting Revised Policy 5756, Respondents have engaged in unlawful public accommodations discrimination based on gender identity or expression both by expressly singling out students for disparate treatment based on their gender identity or expression and by having an actual and predictable disparate impact on transgender, gender non-conforming, and non-binary students.

40. N.J.S.A. 10:5-12(e) makes it unlawful for any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.

41. By enacting Revised Policy 5756, which requires that school staff take actions that discriminate against LGBTQ+ students in violation of the LAD, Respondents have unlawfully incited, compelled, or coerced those school staff members, by policy or practice, to notify parents of student's gender identity or gender expression in violation of the LAD.

DEMAND FOR RELIEF

42. Said acts of discrimination occurred in Monmouth County, New Jersey.

43. Complainants request the full extent of relief provided by law, including but not limited to injunctive relief; compensatory damages for economic loss, humiliation, mental pain and suffering for any victims of the alleged discrimination; statutory penalties; and investigative and litigation costs. See N.J.S.A. 10:5-13 & 14.1a.

44. Complainants have not instituted any other action in any court, either criminal or civil, regarding this matter. However, Complainants intend to file a complaint and order to show cause in Superior Court seeking preliminary relief pending the resolution of this administrative proceeding, pursuant to N.J.S.A. 10:5-14.1.

Iris Bromberg, of full age, hereby certifies that she is a Legal Specialist in the Division on Civil Rights and is authorized to file this verified complaint on behalf of the Attorney General of New Jersey and the Director of the Division on Civil Rights, pursuant to N.J.S.A. 10:5-8. She has read this complaint and understands the allegations, and to the best of her knowledge, information and belief, the allegations made in this complaint are true.

DATED: June 21, 2023



Iris Bromberg
Legal Specialist
NJ Division on Civil Rights