

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC
SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NO.: P2023-900003

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

Complainants,

v.

MARLBORO TOWNSHIP BOARD OF
EDUCATION, and MARLBORO
TOWNSHIP PUBLIC 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 Marlboro Township Board of Education and Marlboro Township Public 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 Marlboro Township Public Schools (“District”) is a public school district that serves students in kindergarten through grade 8 who reside in Marlboro Township, New Jersey. The District’s principal office is located at 1980 Township Drive, Marlboro, NJ 07746.

4. Respondent Marlboro Township Board of Education (“Board” or “BOE”) is a nine-member board authorized to set policy and oversee the fiscal and educational operation of the District. The BOE’s principal office is located at 1980 Township Drive, Marlboro, NJ 07746.

INTRODUCTION

5. This case seeks to remedy unlawful discrimination by the Marlboro Township Public Schools and Marlboro Township Board of Education (collectively, the “Marlboro Respondents”). The Marlboro 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 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 “plan for how the student will be referred to at school” developed in consultation with their parents/guardians, even when that plan does not affirm the child’s gender expression or identity. 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 Marlboro Respondents’ violations of the LAD, including, among other things, a permanent injunction prohibiting Respondents from implementing Revised Policy 5756 and from otherwise giving effect to the

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.

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' September 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 use facilities that align with the student’s gender identity. N.J.S.A. 18A:36-41(b)(5)–(6) & (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 (emphasis added). 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]tuff 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.” Id. at 3 (emphasis added). The State Guidance also requires that all students be allowed to use facilities in a manner that aligns with their gender identity. Id. at 6–7.

23. In September 2019, Marlboro Township Board of Education revised its Policy 5756, entitled “Transgender Students,” “to assist schools in establishing policies and procedures that ensure a supportive and nondiscriminatory environment for transgender students.”

24. The September 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, adopting much of the language of the State Guidance, including its “Confidentiality and Privacy” protections. Ibid.

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

25. On June 20, 2023, the Marlboro Township Board of Education adopted a revised version of Policy 5756.

26. Revised Policy 5756 deletes the following language from the September 2019 version of the policy: “There is no affirmative duty for any 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 “Family Centered Approach,” which states:

[I]n the spirit of transparency and parental involvement, the district will notify a student’s parent/guardian of the student’s change in gender identity or expression except where there is reason to believe that doing so would pose a danger to the health or safety of the pupil. A school counselor will notify and collaborate with the student first before discussing a student’s gender nonconformity or transgender status with the student’s parent/guardian. That discussion will address any concerns the student has about such parental notification and discuss the process by which such notification shall occur including, but not limited to whether the student wishes to be given the opportunity to notify the parent/guardian first. Where there are concerns about disclosure to a parent/guardian posing a danger to the health or safety of the pupil, the administration in consultation with the school counselor, school psychologist and other district professionals shall determine the appropriate course of action. Those measures may include the facilitation of counseling and other resources for the student and the student’s family to facilitate the family’s support of the student’s transgender status. Confidentiality related to each student’s unique situation should be addressed on a case-by-case basis, which shall include an open line of communication with the student, parent/guardian and school personnel, subject to the conditions set forth above.

[Revised Policy 5756 (emphases added)]

28. Having imposed this affirmative duty of parental notification on school staff, the Revised Policy states that a parent/guardian should be notified when “ascertain[ing] the student’s preference on matters such as chosen name and pronoun,” and requires that a parent/guardian “shall” be consulted “[w]here there is a disagreement between the student and the family” in order to “develop a plan for how the student will be referred to at school, including the pupil’s name and/or choice of pronouns.” Ibid.

29. The Revised Policy further forecloses the possibility that such plan will honor the name preference of a student over their parent or guardian, stating that, “[i]f the student has previously been known at school or in school records by a birth name, the Principal or designee should direct school staff members to use the student’s chosen name and not the student’s birth

name if requested by the parent/guardian and student"; in other words, if the parent or guardian disagrees, school staff are not directed to use the student's chosen name. Ibid.

30. The Revised Policy also eliminates the prior policy's requirement that school staff members "shall keep confidential a current, new, or prospective student's transgender status," now instead permitting that school staff members "may" disclose any such student's transgender status if doing so is "in accordance with the wishes of the parent/guardian." Ibid.

31. As to the use of school facilities, the Revised Policy abandons the prior policy's statement that "[a]ll students are entitled to have access to restrooms, locker rooms, and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities," the Revised Policy casts doubt on this promise by now providing only that a student "may" be allowed such access only once "[t]he Principal or designee ... consult[s] with the student and the student's parent/guardian to develop a plan for the student's use of facilities." Ibid.

32. 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.

33. 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 "a student's change in gender identity or expression." Ibid.

34. Revised Policy 5756 also targets transgender, gender non-conforming, non-binary, genderqueer, and other gender-expansive students by instructing school staff to treat those students not in accordance with their own gender identity or expression, but rather in accordance with the

“plan for how the student will be referred to at school, including the pupil’s name and/or choice of pronouns” that is to be developed in consultation with their parents/guardians, even if that plan does not affirm the child’s gender expression or identity. Ibid.

35. Revised Policy 5756 also treats transgender, gender non-conforming, non-binary, genderqueer, and other gender-expansive students differently than students who are cisgender by stating that school staff members may disclose any such student’s gender identity or expression if doing so is “in accordance with the wishes of the parent/guardian.” Ibid.

36. In the alternative, even if the Revised Policy is construed as neutral, it will actually and predictably have an unjustified disparate impact on transgender, gender non-conforming, and non-binary students at Marlboro Township schools, including by subjecting them to the 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

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

38. Defendants operate Marlboro Township Public Schools, which are places of public accommodation under the LAD. N.J.S.A. 10:5-5(l).

39. 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 “gender identity or expression.”

40. 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).

41. 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.

42. 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.

43. By enacting Revised Policy 5756, which requires that school officials take actions that discriminate against transgender, gender non-conforming, non-binary, genderqueer, and other gender expansive students in violation of the LAD, Respondents have unlawfully incited, compelled, or coerced those school officials, by policy or practice, to notify parents of student's gender identity or gender expression in violation of the LAD.

DEMAND FOR RELIEF

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

45. 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.

46. 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.

Danielle Thorne, 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



Danielle Thorne
Legal Specialist
NJ Division on Civil Rights