



Matthew J. Platkin, Attorney General of the State of New Jersey (the “Attorney General”), and Sundeep Iyer, Director of the New Jersey Division on Civil Rights (the “Director,” and together with the Attorney General, “Plaintiffs”), by way of this Verified Complaint, hereby allege the following:

### **INTRODUCTION**

1. This case seeks to prevent potential harm to students in the Middletown Township school system resulting from unlawful discrimination by the Middletown Township Public School District (“District”) and Middletown Township Board of Education (“Board”) (collectively, “Defendants”). Defendants have enacted an amended policy that unlawfully discriminates against students on the basis of gender identity and gender expression, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50, and will result in significant and irreversible harm to students if not enjoined.

2. On June 20, 2023, the Board passed amended Policy 5756 (the “Amended Policy”), which singles out students on the basis of LAD-protected characteristics. Both the text of Amended Policy 5756 and related Board discussions make clear that the Amended Policy targets students on the basis of gender identity and gender expression, in violation of New Jersey law.

3. The Amended Policy violates the LAD on its face and is inconsistent with established guidance from the New Jersey Department of Education.

4. On June 21, 2023, Plaintiffs filed an administrative complaint with the Division on Civil Rights (“DCR”), alleging that Defendants have unlawfully discriminated against students on the basis of gender identity and gender expression, in violation of the LAD (the “Administrative Complaint”). The administrative litigation before DCR is ongoing.

5. Allowing Defendants to implement Amended Policy 5756 while the underlying administrative proceeding is ongoing will irreparably harm transgender students as well as certain gender non-conforming and non-binary students by mandating parental disclosure of their gender identity or expression. “Outing” transgender, gender non-conforming, and non-binary students against their will poses serious mental health risks; threatens physical harm to students, including increased risk of suicide; and shirks the District’s duty to create a safe and supportive learning environment for all.

6. With this summary proceeding, Plaintiffs now seek temporary restraints and an interlocutory injunction, pursuant to N.J.S.A. 10:5-14.1, N.J.A.C. 13:4-11.3, and Rule 4:52-1, to maintain the pre-Amended Policy status quo while the Administrative Complaint is being resolved.

7. Plaintiffs seek temporary and preliminary restraints to preserve the status quo ante prior to the adoption of Amended Policy 5756, including enjoining the effectiveness, implementation, or enforcement of Amended Policy 5756 and

restraining the Board from otherwise amending, modifying, or superseding any portion of Policy 5756, whether by amendment to any existing policy or adoption of a new policy, until the litigation arising from the Administrative Complaint is resolved.

### **JURISDICTION, VENUE, AND PARTIES**

8. The Attorney General of New Jersey, having offices at 25 Market Street, Trenton, New Jersey, 08625 and 124 Halsey Street, Newark, New Jersey, 07102, is charged with enforcing the LAD, N.J.S.A. 10:5-1 to -50. The Attorney General is authorized to file a verified complaint with DCR and to bring enforcement actions for any violation of the LAD in the Office of Administrative Law, N.J.S.A. 10:5-8.2(b), -13, and is authorized to proceed against any person in a summary manner in the Superior Court of New Jersey to obtain an injunction prohibiting violations of the LAD. N.J.S.A. 10:5-14.1; N.J.A.C. 13:4-11.3; R. 4:52-1.

9. The Director of the New Jersey Division on Civil Rights is charged with administering the LAD on behalf of the Attorney General. DCR, having offices located at 31 Clinton Street, Newark, New Jersey, 07102; 140 East Front Street, Trenton, New Jersey, 08625; 5 Executive Campus, Cherry Hill, New Jersey, 08002; and 1601 Atlantic Avenue, Atlantic City, New Jersey, 08401, is charged, inter alia, with preventing and eliminating discrimination in employment, housing, and access to public accommodations, as well as preventing interference with rights protected

under the LAD. N.J.S.A. 10:5-4, -6, -12. This action is brought by the Director in his official capacity pursuant to the Director's authority under N.J.S.A. 10:5-14.1 and N.J.A.C. 13:4-11.3.

10. Defendant Middletown Township Public School District is a public school district that serves students in kindergarten through grade 12 who reside in Middletown Township, New Jersey. The District's principal office is located at 834 Leonardville Road, 2nd Floor, Leonardo, NJ 07737.

11. Defendant Middletown Township Board of Education is a nine-member board authorized to set policy and oversee the fiscal and educational operation of the District. The Board's principal office is located at 834 Leonardville Road, 2nd Floor, Leonardo, NJ 07737. The Board and the District operate the Middletown Township public schools.

12. Venue is proper in this county under Rule 4:3-2(a)(2) because the cause of action giving rise to Plaintiffs' claim for interlocutory relief arose within Essex County. This action is brought pursuant to N.J.S.A. 10:5-14.1, N.J.A.C. 13:4-11.3, and Rule 4:52-1 seeking interlocutory injunctive relief to preserve the pre-Amended Policy status quo until such time as the Administrative Complaint filed before the New Jersey Division on Civil Rights, having offices located at 31 Clinton Street, Newark, New Jersey 07102, is resolved. Plaintiffs' authority to bring this action for interlocutory injunctive relief pursuant to N.J.S.A. 10:5-14.1 arises from the filing

of this Administrative Complaint and the ongoing litigation before the Division on Civil Rights in Essex County. Further, the interests of efficient judicial management, the uniform application of law, and the convenience of parties and witnesses in the interest of justice are served by ensuring that both the Administrative Complaint and this ancillary action for preliminary relief are heard within the same county.

### **FACTUAL ALLEGATIONS**

#### **Defendants Issue Policy 5756 Concerning Transgender Students in Accordance with State Guidance and the LAD**

13. 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, and non-binary students in schools and other places of public accommodation, see N.J.S.A. 10:5-5(l), -12(f).

14. 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) (emphasis added).]

15. The LAD defines a “place of public accommodation” to include “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.” N.J.S.A. 10:5-5(l).

16. The LAD also prohibits “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.” N.J.S.A. 10:5-12(e).

17. Consistent with the LAD, the Legislature instructed the Commissioner of the New Jersey Department of Education to develop and distribute guidance to school districts to “assist schools in establishing policies and procedures that ensure a supportive learning environment that is free from discrimination for transgender students, including students going through a gender transition,” with a 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.

18. In 2018, pursuant to this legislative directive, the State Department of Education published Transgender Student Guidance for School Districts (“State

Guidance”). The State Guidance recognizes that schools may not “subject individuals to differential treatment based on . . . gender identity or expression,” which is prohibited by the LAD. *Michael Cert.*, Ex. D, at 1.

19. The State Guidance adopts a student-centered and individualized approach, instructing schools and school districts to “communicate openly, albeit confidentially, with students regarding their transgender status or gender identity” and encouraging school staff to “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.” *Ibid.*

20. 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.” *Ibid.*

21. Section 4 of the State Guidance, entitled “Confidentiality and Privacy,” provides that “[a] school district shall keep confidential a current, new, or prospective student’s transgender status,” and instructs that “[s]chool personnel may not disclose information that may reveal a student’s transgender status except as allowed by law,” or “[d]ue to a specific and compelling need, such as the health and safety of a student or an incident of bias-related crime.” *Ibid.*

22. In 2019, the Middletown Township Board of Education adopted Policy 5756, titled “Transgender Students,” “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.” Michael Cert., Ex. C, at 5.

23. Policy 5756 adopted a student-centered approach that focused on preventing unlawful discrimination and protecting student privacy, adopting much of the language of the State Guidance, including its “Confidentiality and Privacy” protections. Michael Cert., Ex. C, at 2–3.

**Defendants Issue Amended Policy 5756 Concerning Parental Notification  
in Contravention of State Guidance and the LAD**

24. On June 20, 2023, the Middletown Township Board of Education adopted Amended Policy 5756, titled “Transgender Students.”

25. Amended Policy 5756 dispenses with the approach set forth in the prior version of the policy and the State Guidance, instead adopting one that presumes that a student’s gender identity or expression will be affirmatively disclosed to parents/guardians in connection with any request for accommodations relating to a student’s name, pronoun use, access to facilities, or related matters. Michael Cert., Ex. B, at 1.

26. To effectuate this new approach, Defendants eliminated the prior policy’s statement, consistent with State Guidance, that there is “no affirmative

duty” requiring parental notification of a student’s gender identity or expression, and replaced it with the following:

[I]n the event a student requests a public social transition accommodation, such as 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 documented evidence that doing so would subject the student to physical or emotional harm or abuse. It shall be the policy of the Board to support and facilitate healthy communication between a transgender student and their family, rather than foster an unreasonable expectation that a public in-school transition will remain confidential or require district staff to affirmatively misrepresent information to parents.

[Michael Cert., Ex. B, at 1 (emphasis added).]

27. Having imposed this general affirmative requirement of parental notification on school staff, the Amended Policy goes on to state that whenever emotional support services are provided to, among others, “transgender students, students facing other gender identity issues, or students who may be transitioning,” that student’s parents/guardians “shall” also be provided “[t]he full, complete, and accurate reasoning for counseling and/or referrals for mental health crisis and/or concerns . . . in relation to parental notification/consent for such services” Michael Cert., Ex. B, at 1–2.

28. The Amended Policy also eliminates the prior policy’s limitation that school staff members “may not disclose information that may reveal a student’s

transgender status except as allowed by law,” and now instead provides that school staff members “may not disclose information that may reveal a student’s transgender status except as provided by this policy and allowed by law.” Michael Cert., Ex. B, at 2 (emphasis added).

29. As to the use of school facilities, while the policy maintains the State Guidance’s direction 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[,]” Michael Cert., Ex. B, at 3, this promise is qualified by the requirement of parental notification whenever a student actually requests to use these facilities as part of a “public social transition accommodation,” Michael Cert., Ex. B, at 1.

30. “Gender identity or expression” is a protected characteristic under the New Jersey Law Against Discrimination. N.J.S.A. 10:5-12(f).

31. Gender expression refers to “external manifestations of gender,” including as expressed through a person’s name and pronouns. Michael Cert., Ex. D, at 1–2.

32. To “transition,” as it relates to gender identity or expression, is the process during which a person begins to live according to their gender identity, rather than the gender they were assigned at birth, and may, but need not, include changing

one's gender expression, including by changing one's use of name and/or pronouns. Michael Cert., Ex. D, at 2.

33. By creating an affirmative requirement to notify a student's parent/guardian of the student's "asserted gender identity and/or name change, or other requested accommodation," and by subjecting students to differential treatment, the Amended Policy expressly targets students for disparate treatment based on their LAD-protected characteristics—including "gender identity or expression"—and constitutes unlawful discrimination in violation of the LAD.

34. In the alternative, even if the Amended Policy's parent/guardian notification requirement is construed as neutral, it will actually and predictably have an unjustified disparate impact on transgender, gender non-conforming, and non-binary students at Middletown 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.

35. The Amended Policy directly contravenes the established guidance of the New Jersey Department of Education and the New Jersey Legislature's stated intention that "school personnel [] not disclose information that may reveal a student's transgender status except as allowed by law." N.J.S.A. 18A:36-41.

**Plaintiffs File Suit to Enjoin Amended Policy 5756 and  
Prevent Irreparable Harm to Students**

36. A wealth of academic literature demonstrates that affording transgender, gender non-conforming, and non-binary students with safe and supportive school environments is linked to positive outcomes, including better educational engagement, less discrimination in school, and increased feelings of safety and belonging.

37. By contrast, transgender, gender non-conforming, and non-binary students who are subjected to discriminatory policies and practices experience significant and irreparable harms, including mental or emotional distress; educational, familial, and social disruption; and heightened risk of suicide, drug misuse, and alcohol misuse.

38. The Amended Policy's affirmative requirement of parental notification of a student's "asserted gender identity and/or name change, or other requested accommodation" is conditioned on there being "no documented evidence that doing so would subject the student to physical or emotional harm or abuse." Michael Cert., Ex. B, at 1.

39. However, the Amended Policy does not explain what constitutes "documented evidence that [such notification] would subject the student to physical or emotional harm or abuse." Michael Cert., Ex. B, at 1.

40. Even where there is “documented evidence that [such notification] would subject the student to physical or emotional harm or abuse,” the Amended Policy does not outline the appropriate course of action and does not expressly preclude notifying the student’s parent/guardian of the student’s change in gender identity or expression. Rather, it says only that the Principal or designee should “discuss with the student, and any other individuals, as deemed appropriate, the risks associated with the student’s transgender status being disclosed.” Michael Cert., Ex. B, at 1. The Amended Policy further discounts the possibility of confidentiality by emphasizing “the policy of the Board to support and facilitate healthy communication between a transgender student and their family.” Michael Cert., Ex. B, at 1.

41. To the extent this condition does operate as an exception to the Amended Policy’s affirmative requirement of parental notification of a student’s “asserted gender identity and/or name change, or other requested accommodation,” the requirement of “documented evidence” makes this exception exceedingly narrow, and the requisite documentation is undefined. Nor is there any exception language whatsoever to the separate provision requiring that “[t]he full, complete, and accurate reason for counseling and or referrals for mental health crisis and/or concerns shall be provided to parents/guardians” whenever transgender, gender non-

conforming, or non-binary students receive counseling, emotional or psychological support services. Michael Cert. Ex. B, at 1–2.

42. On June 21, 2023, Plaintiffs filed the Administrative Complaint with DCR, alleging that Defendants have unlawfully discriminated against students on the basis of gender identity and gender expression, in violation of the LAD, N.J.S.A. 10:5-12(f), and coerced school staff to take unlawful action, in violation of the LAD, N.J.S.A. 10:5-12(e). Michael Cert., Ex. A.

43. On the same day, Plaintiffs brought this summary proceeding seeking temporary restraints and an interlocutory injunction, pursuant to N.J.S.A. 10:5-14.1, N.J.A.C. 13:4-11.3, and Rule 4:52-1, to maintain the pre-Amended Policy status quo while the Administrative Complaint is being resolved.

44. Consistent with the academic literature and the legislature’s directives under N.J.S.A. 18A:36-41, the “outing” of transgender, gender non-conforming, and non-binary students without their consent while the Administrative Complaint is pending will cause drastic, irreversible harms to such students.

### **COUNT ONE**

#### **DISCRIMINATORY ENACTMENT OF AMENDED POLICY 5756 IN VIOLATION OF N.J.S.A. 10:5-12(f) – GENDER IDENTITY OR EXPRESSION**

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

46. N.J.S.A. 10:5-12(f) makes it unlawful for any place of public accommodation to “discriminate against any person in the furnishing thereof” on the basis of that person’s actual or perceived “gender identity or expression.”

47. Defendants’ enactment of the Amended Policy discriminates against Middletown Township students on the basis of their actual or perceived gender identity or expression by expressly singling out students for disparate treatment based on their “gender identity or expression.”

48. Defendants’ enactment of the Amended Policy further discriminates against Middletown Township students on the basis of their actual or perceived gender identity or expression by having an actual and predictable disparate impact on transgender, gender non-conforming, and non-binary students.

49. Amended Policy 5756 is not necessary to achieve any substantial, legitimate, non-discriminatory interest, and it is not the least discriminatory means of serving any such interest.

50. By enacting Amended Policy 5756, Defendants have engaged in conduct that violates the LAD, N.J.S.A. 10:5-12(f).

51. Plaintiffs are authorized to proceed in a summary manner in the Superior Court of New Jersey to obtain an injunction prohibiting violations of the LAD. N.J.S.A. 10:5-14.1; N.J.A.C. 13:4-11.3; R. 4:52-1.



## COUNT TWO

### **DISCRIMINATORY ENACTMENT OF AMENDED POLICY 5756 IN VIOLATION OF N.J.S.A. 10:5-12(e) – INCITING, COMPELLING AND COERCING VIOLATIONS OF THE LAD**

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

53. N.J.S.A. 10:5-12(e) makes it unlawful for any person to, among other things, “incite, compel, or coerce” the doing of any act that violates the LAD.

54. The Amended Policy’s parental notification requirements violate the LAD’s prohibition on discrimination on the basis of gender identity or expression in a place of public accommodation, N.J.S.A. 10:5-12(f).

55. By imposing a mandatory affirmative requirement on District administrators and school staff members to make notifications that would violate the LAD, Defendants have engaged in unlawful coercion in violation of N.J.S.A. 10:5-12(e).

56. Plaintiffs are authorized to proceed in a summary manner in the Superior Court of New Jersey to obtain an injunction prohibiting violations of the LAD. N.J.S.A. 10:5-14.1; N.J.A.C. 13:4-11.3; R. 4:52-1.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants Middletown Township Board of Education and Middletown Township Public School District, and that the Court grant the following relief:

a) Restraining and enjoining the effectiveness, implementation, or enforcement of Amended Policy 5756 “Transgender Students,” pursuant to Rule 4:52-2, until such time as the litigation before DCR arising from the Administrative Complaint is resolved.

b) Restraining and enjoining Defendants, pursuant to Rule 4:52-2, from otherwise amending, modifying, or superseding any portion of Policy 5756, whether by amendment to any existing policy or adoption of a new policy, until the litigation arising from the Administrative Complaint is resolved.

c) Affording Plaintiffs any additional relief the Court may deem just and equitable.

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: /s/ James R. Michael  
James R. Michael  
Deputy Attorney General

Dated: June 21, 2023  
Newark, New Jersey

**CERTIFICATION OF 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 R. 1:38-7(b).

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: /s/ James R. Michael  
James R. Michael  
Deputy Attorney General

Dated: June 21, 2023  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, James R. Michael, Deputy Attorney General, is hereby designated as trial counsel on behalf of the Plaintiffs.

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: /s/ James R. Michael  
James R. Michael  
Deputy Attorney General

Dated: June 21, 2023  
Newark, New Jersey

## VERIFICATION

I, Danielle Thorne, of full age, hereby certify as follows:

1. I am a Legal Specialist employed by the New Jersey Division on Civil Rights (“DCR”).

2. I have read the foregoing Verified Complaint and on my own personal knowledge and review of documents in possession of DCR, I know that the facts set forth herein are true and they are incorporated in this certification by reference, except for those alleged upon information and belief.

3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
DANIELLE THORNE

Dated: June 21, 2023  
Newark, New Jersey