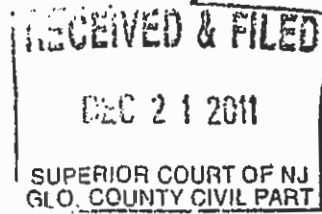


COSTELLO & MAINS, P.C.
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Attorneys for Plaintiff



MARC A. LOPEZ,	:	SUPERIOR COURT OF NEW JERSEY
	:	GLOUCESTER COUNTY-LAW DIV.
Plaintiff,	:	
	:	Civil Action
vs.	:	
	:	DOCKET NO. L-2175-11
THE DEPTFORD TOWNSHIP	:	
BOARD OF EDUCATION	:	
and JOHN DOES 1-5 AND 6-10,	:	COMPLAINT AND JURY DEMAND
	:	
Defendants.	:	

Plaintiff, Marc A. Lopez, residing at 29 East Collingswood Avenue, Haddon Township, New Jersey, by way of complaint against the defendants, says:

Preliminary Statement

This Complaint is brought under the New Jersey Law Against Discrimination ("LAD") alleging sexual orientation harassment, perception of sexual orientation harassment, discriminatory discharge based upon sexual orientation and retaliatory discharge under the LAD.

Identification of Parties

1. Plaintiff Marc A. Lopez is, at all relevant times herein, a resident of the State of New Jersey and was, during all relevant times herein, an employee of the Deptford Township Board of Education, specifically being employed at the Deptford Township High School.
2. Defendant Deptford Township Board of Education was, at all relevant times herein, plaintiff's employer and is located at 2022 Good Intent Road, Deptford, New Jersey.

3. Defendants John Does 1-5 and 6-10, currently unidentified, are individuals on the one hand and/or public entities on the other, who, on the basis of their direct acts or on the basis of *respondeat superior*, are liable to the plaintiff.

General Allegations

4. Plaintiff is a homosexual male.

5. Plaintiff was employed as a teacher in the Deptford Township High School beginning in September of 2008 and concluding in June of 2011, when his employment was terminated by the school district. Plaintiff was given notice of said termination on or about April 26, 2011.

6. Beginning in the late Fall of 2008 and continuing until the termination of his employment, plaintiff was subjected to continuous and egregious harassment based upon his sexual orientation and/or perceptions held regarding his sexual orientation by students at the high school. To the extent that any harassment described herein took place more than two years before the filing date of this complaint, plaintiff alleges a “continuing violation,” such that all harassment that he suffered is actionable.

7. All harassment described herein is alleged to be severe and/or pervasive, either individually or taken as a continuum of conduct.

8. All harassment herein is alleged to be especially egregious.

9. All harassment herein is alleged to have been willfully ignored by supervisors and/or members of upper management.

10. All harassment alleged herein is such that a reasonable person in the same circumstances as plaintiff would have considered the workplace to have become hostile, intimidating or abusive.

11. All harassment alleged herein is alleged to have, in fact, altered plaintiff's workplace experience such that it, in fact, became hostile, intimidating and/or abusive.

12. In addition to enduring the harassment which will be described herein, plaintiff was discharged from employment after continually complaining to members of upper management about the harassment to which he was subjected.

13. Plaintiff alleges that his discharge was motivated by considerations of his sexual orientation and/or because plaintiff engaged in conduct protected by the LAD, to wit, making a good faith complaint that he was being subjected to sexual harassment based upon his sexual orientation or perceptions regarding his sexual orientation.

14. To the extent that any member of upper management actually participated in or willfully ignored any of the discriminatory, retaliatory or harassing conduct described herein, and to the extent that such participation and/or willful indifference involved egregious conduct, either singly or taken as a continuum, the defendants are automatically liable in punitive damages for such conduct.

15. Plaintiff was hired as a Spanish teacher in the Deptford High School, with his employment starting in the 2008/2009 school year.

16. When plaintiff first started in the high school, he noticed that students at the school commonly used the word "gay" to describe things in a derogatory manner.

17. At the commencement of his employment, plaintiff was not "out" to his students, but it quickly became apparent to plaintiff that his students developed the perception that plaintiff was homosexual.

18. On one occasion during the first semester of the 2008/2009 school year, one of plaintiff's students placed a "Growing Up Gay" pamphlet on the podium in plaintiff's classroom,

while plaintiff was present, and laughed. (We will not be identifying any of the students involved in any incident described herein, inasmuch as they were minors at the time of the incidents and some of them remain minors).

19. By the beginning of the second semester of the 2008/2009 school year, plaintiff's students had begun to openly and overtly harass him based upon their perception of his sexual orientation. Examples of the harassment that occurred during the second semester of that school year include, but are not limited to, the following:

- A student asked plaintiff if he "slept" with his male students for extra credit;
- A student told plaintiff that he didn't agree with having a Gay/Straight Alliance at school because the student didn't believe that gay people should be allowed to exist;
- A student told plaintiff that he didn't agree with a Gay/Straight Alliance because the student was Christian;
- Calling plaintiff "fag;"
- Calling plaintiff "faggot;"
- Calling plaintiff "gay;"
- Calling plaintiff "fruity;"
- A student asked plaintiff if "Fairleigh Dickenson College is *hard*;" and
- Calling plaintiff "fucking faggot."

20. Because plaintiff had, during the entirety of his employment, been attempting to educate his students about orientation discrimination and assisting them in understanding that

their comments were both discriminatory and hurtful, came out to his students on or about May 15, 2009.

21. The students' harassment of plaintiff continued unabated.

22. Examples of the harassment that continued to be directed at Mr. Lopez in the 2009/2010 school year include, but are not limited to, the following:

- Students writing "gay" on papers turned into plaintiff during class;
- Students writing "homo" on papers turned into plaintiff during class;
- Writing "fag" on papers turned into plaintiff during class;
- Calling plaintiff "faggot" and "fag;" and
- Continuing to use the word "gay" in plaintiff's presence in a derogatory way.

23. The harassment continued unabated into the 2010/2011 school year.

24. Examples of the harassment to which plaintiff was subjected in the 2010/2011 school year include, but are not limited to, the following:

- Continuing to call plaintiff "faggot," "gay," and "fucking faggot;"
- One student wrote on an assignment, over and over, the phrase "I don't like this story because it's gay;"
- Students made paper cutouts of penises in plaintiff's class;
- Singing the song "It's Raining Men" to plaintiff;
- Calling plaintiff "fruit cup;" and
- Using a high-pitched/feminized voice to mock plaintiff.

25. Throughout the entirety of his time with defendants, plaintiff notified school administrators of the harassment to which he was being subjected, to no avail.

26. Plaintiff implored the school administration to educate students on sexual orientation discrimination, again to no avail.

27. The only “action” defendant took in response to plaintiff’s pleas was to approve the creation of a “Gay/Straight Alliance” at the school. However, at the same time that the “GSA” was approved, the school let plaintiff know that there was no “funding” for the GSA.

28. Plaintiff’s attempts to discipline students for harassment were thwarted.

29. In fact, in one incident, in February of 2011, plaintiff attempted to “code” a student discipline as “harassment” and his superiors in administration changed the “code” to “disrespect.” Plaintiff was told that the administration could change the code to whatever they wanted.

30. Indeed, because the school had never taken any steps to address plaintiff’s complaints of sexual orientation harassment, by January of 2011, plaintiff was requesting a transfer. That request, too, was ignored.

31. On or about March 30, 2011, plaintiff provided the school administration with a copy of the current anti-harassment, intimidation and bullying law. A few days later, on or about April 4, 2011, plaintiff received a surprise observation and resulting poor evaluation. This was the first time that an observation had resulted in a poor evaluation of plaintiff.

32. On or about April 20, 2011, plaintiff was again speaking to members of administration and to the school officer about a particular student incident.

33. During this conversation, plaintiff made it clear to members of administration that he may start pressing charges against students as a result of his belief that his civil rights were being violated.

34. On that same date, it was necessary for plaintiff to call a member of administration to his room after three separate incidents of sexual orientation harassment. On that one occasion, the student was removed from plaintiff's classroom, but apparently placed into a study hall.

35. On or about April 25, 2011, plaintiff sent an email to the superintendent of schools to request a meeting to address the sexual orientation harassment he was suffering.

36. On or about April 26, 2011, plaintiff met with members of administration to discuss a sexual harassment incident by a particular student.

37. On the same day, plaintiff was summoned into another meeting, this time with the superintendent of schools present, and advised, for the first time, that he was being "laid off."

38. As an employer, the Deptford Board of Education had an obligation under the LAD to provide plaintiff with a working environment free of unlawful discrimination, retaliation and harassment.

39. The defendant failed in that obligation.

40. As set forth above, plaintiff alleges that his termination was motivated, in whole or in part, by the fact that he had made repeated good faith complaints of discrimination and harassment under the LAD, and by his sexual orientation.

41. Plaintiff was able to find new employment for the 2011 school year and, therefore, has suffered no economic loss as a result of the illegal acts directed against him by defendants. However, plaintiff has suffered non-economic losses as a result of the harassment, discrimination and retaliation to which he was subjected.

COUNT I

Sexual Orientation/Perception of Sexual Orientation Harassment Under the LAD

42. Plaintiff hereby repeats and realleges paragraphs 1 through 41 as though fully set forth herein.

43. The conduct set forth above sets forth sexual orientation harassment and/or a perception of sexual orientation harassment in violation of the LAD.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, costs, attorneys' fees, enhanced attorneys' fees and any other relief the Court deems equitable and just.

COUNT II

Discriminatory Discharge in Violation of the LAD

44. Plaintiff hereby repeats and realleges paragraphs 1 through 43 as though fully set forth herein.

45. Plaintiff's discharge from employment by defendant was motivated, in whole or as part of a "mixed motive," by plaintiff's sexual orientation, in violation of the LAD.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, costs, attorneys' fees, enhanced attorneys' fees and any other relief the Court deems equitable and just.

COUNT III

Retaliatory Discharge Under the LAD

46. Plaintiff hereby repeats and realleges paragraphs 1 through 45 as though fully set forth herein.

47. Plaintiff's discharge from employment was motivated, in whole or as part of a "mixed motive," by plaintiff's protected conduct under the LAD, to wit, making a good faith complaint of unlawful and discriminatory harassment, in violation of the LAD.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, costs, attorneys' fees, enhanced attorneys' fees and any other relief the Court deems equitable and just.

COUNT IV

Request for Equitable Relief

48. Plaintiff hereby repeats and realleges paragraphs 1 through 47 as though fully set forth herein.

49. In addition to all legal damages prayed for in the counts above, plaintiff prays for the following equitable relief:

a. An Order requiring defendant to educate members of the administration of the Deptford Board of Education and the Deptford High School concerning workplace harassment and discrimination; and

b. An Order requiring defendant to provide education to the students of the Deptford High School regarding sexual orientation harassment.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, costs, attorneys' fees, enhanced attorneys' fees and any other relief the Court deems equitable and just.

COSTELLO & MAINS, P.C.

By: 

Kevin M. Costello

Dated:

12-19-11

DEMAND TO PRESERVE EVIDENCE

1. All defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to plaintiff's employment, to plaintiff's cause of action and/or prayers for relief, to any defenses to same, and pertaining to any party, including, but not limited to, electronic data storage, closed circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

2. Failure to do so will result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

COSTELLO & MAINS, P.C.

By: 

Kevin M. Costello

JURY DEMAND

Plaintiff hereby demands a trial by jury.

COSTELLO & MAINS, P.C.

By: 

Kevin M. Costello

RULE 4:5-1 CERTIFICATION

1. I am licensed to practice law in New Jersey and am responsible for the captioned matter.
2. I am aware of no other matter currently filed or pending in any court in any jurisdiction which may affect the parties or matters described herein.

COSTELLO & MAINS, P.C.

By:



Kevin M. Costello

DESIGNATION OF TRIAL COUNSEL

Kevin M. Costello, Esquire, of the law firm of Costello & Mains, P.C., is hereby designated trial counsel.

COSTELLO & MAINS, P.C.

By:



Kevin M. Costello