

COSTELLO & MAINS, P.C.

By: Kevin M. Costello, Esquire
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Attorneys for Plaintiffs

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| █, a minor and █ a minor by their parent and guardian, █. | : | SUPERIOR COURT OF NEW JERSEY CAMDEN COUNTY - LAW DIVISION |
| | : | |
| Plaintiffs, | : | |
| | : | Civil Action |
| vs. | : | |
| | : | DOCKET NO.: CAM-L-3606-12 |
| | : | |
| MT. EPHRAIM SCHOOL DISTRICT and JOHN DOES 1-5 AND 6-10, | : | FIRST AMENDED COMPLAINT AND JURY DEMAND |
| | : | |
| Defendants. | : | |

Plaintiffs, █, and █, and their mother █, residents of Mt. Ephraim, Camden County, by way of Complaint against the defendants, say:

Reason for Amending Complaint

This amended Complaint is being filed to clarify the factual allegations made in the original Complaint.

Preliminary Statement

This Complaint arises under the New Jersey Law Against Discrimination's ("LAD") prohibition against permitting disability/perceived disability in a school setting, alleging that plaintiffs █ and █ were harassed by fellow students on the basis of their disability and/or perceived disability and that school officials were placed on notice of same, and that school officials, having been willfully indifferent to same, permitted the disability/perceived disability harassment to continue, causing the plaintiffs to suffer damages throughout said period.

Plaintiffs seeks compensatory damages for pain and suffering, punitive damages due to willful indifference and due to the egregious nature of the harassment, attorneys' fees, enhanced attorneys' fees and equitable remedies.

Plaintiff [REDACTED] is [REDACTED] and therefore brings this Complaint through [REDACTED] mother, [REDACTED]

Plaintiff [REDACTED] is a minor child currently [REDACTED] and therefore brings this Complaint through [REDACTED] mother [REDACTED]

Identification of Parties

1. Plaintiff [REDACTED] is a minor child [REDACTED] and was formerly a student at the [REDACTED] [REDACTED] in Mt. Ephraim which upon information and belief is under the administration of the Mt. Ephraim School District.
2. Plaintiff [REDACTED] is a minor child [REDACTED] and was formerly a student at the [REDACTED] [REDACTED] in Mt. Ephraim which upon information and belief is under the administration of the Mt. Ephraim School District.
3. Plaintiff [REDACTED] is mother and guardian of plaintiffs [REDACTED]
4. Defendant Mt. Ephraim School District ("District") is a municipal entity amenable to suit under this theory of law and in this Court and is charged with the responsibility of maintaining a harassment-free school environment for [REDACTED] and [REDACTED] and to prevent further harassment once having been advised of same.
5. Defendants John Does 1-5 and 6-10, currently unidentified, are individuals and/or entities who, on the basis of their direct acts or on the basis of *respondeat superior*, are answerable to the plaintiffs in this matter.

General Allegations as to [REDACTED]

6. In or about September of 2008, [REDACTED], then an [REDACTED] student, began to come under disability/perceived disability harassment as the term is identified by the LAD and its associated case law.
7. This harassment was perpetuated against the plaintiff, over the course of the time period set forth herein, by fellow [REDACTED] students identified hereafter.
8. The harassment was severe owing to the tender age of the plaintiff and owing to the actual verbal and physical content of the harassment and the circumstances attendant to same.
9. The harassment was pervasive inasmuch as it was frequently undertaken in the school and on school grounds, several times per week, from the period commencing September of 2008 through to the end of the school year in June 2009.
10. The harassment was "because of" disability and/or perceived disability, inasmuch as it was motivated by [REDACTED] disabilities and/or perceived disability.
11. [REDACTED] was a student in the special education program due to [REDACTED] diagnosed disabilities.
12. On a constant and regular basis, [REDACTED] was subjected to being called names as well as being bullied due to [REDACTED] disability and/or perceived disability.
13. At the time [REDACTED] when speaking and fellow students would harass [REDACTED] by speaking to [REDACTED] while forcing a [REDACTED]
14. [REDACTED] would also be commonly referred to as a "loser" as a result of [REDACTED] being a part of the special education program.
15. [REDACTED] repeatedly and consistently contacted school principal and other school officials however no action was taken to prevent the continued harassment.

16. In or about October of 2008 and although [REDACTED] had already made complaints to the District regarding the disability harassment, [REDACTED] was physically attacked adjacent to school property.

17. During this incident, several fellow students threw [REDACTED] off of [REDACTED] bike and proceeded to destroy the bicycle.

18. [REDACTED] was prepared to contact the police, however, the parents of the fellow students involved made arrangements with [REDACTED] to cover the cost of the bicycle and from a legal standpoint the matter did not go any further.

19. Subsequent to [REDACTED] reporting this incident to the School District, the harassment of [REDACTED] continued.

20. On a regular basis [REDACTED] was continually harassed as [REDACTED] had been previously whereby fellow students spoke to [REDACTED] while forcing [REDACTED] and referred to [REDACTED] as a loser and other such names because of [REDACTED] disability and/or perceived disability.

21. In the Spring of 2009, a student, whose initials are [REDACTED], punched [REDACTED] in the face.

22. During the meeting in which [REDACTED] reported this incident to the School District, Ms. Conley, an [REDACTED] teacher, reported to the superintendent that students stole [REDACTED]'s lock to [REDACTED] locker.

General Allegations as to R.B.

23. In or about January of 2011, midway through [REDACTED] fifth grade year, plaintiff [REDACTED] began to suffer discriminatory harassment by fellow students because of [REDACTED] disability and/or perceived disability.

24. Fellow students, mostly all of whom are female, referred to [REDACTED] as [REDACTED] and other similar words in reference to [REDACTED] physical appearance and physical abilities resulting from [REDACTED] disability and/or perceived disability.
25. The bullying was also physical in nature, as students would kick, push, and stomp on [REDACTED]
26. As was the case with [REDACTED] notified the school principal on numerous occasions regarding the harassment, all of which was violative of the LAD, which [REDACTED] was suffering from at the hands of fellow students.
27. [REDACTED] reported the physical bullying to police, in or around March or April of 2011.
28. Despite numerous emails and contact with the School District, no action was taken to either prevent and/or cause said harassment to cease.
29. As a result, [REDACTED] pulled [REDACTED] out of the school.
30. The School District refused to home school [REDACTED] in [REDACTED]'s home, because teachers would feel "unsafe" there.
31. For the remainder of the 2010 – 2011 school year, [REDACTED] was forced to provide transportation for [REDACTED] children to be home schooled at a local public library.
32. Ultimately, and due to the District's failure to meaningfully respond to the complaints of [REDACTED] regarding the discriminatory harassment, [REDACTED] was placed in another school system outside the district.
33. [REDACTED] made numerous requests for the School District to bus [REDACTED] to the new school due to its distance from their home and [REDACTED] need for transportation.
34. The School District refused to provide transportation for [REDACTED] to the new district.

35. Although [REDACTED] was aware that transportation has been provided in other similar circumstances, and made the request on numerous occasions, same was routinely denied.

36. [REDACTED] has been forced to provide the transportation at a great financial expense.

37. [REDACTED] proceeded to provide the school district with the cost of the transportation for reimbursement, however, only a small portion of said transportation costs have been reimbursed.

38. Upon information and belief, the School District's failure to provide transportation and/or fully reimburse [REDACTED] is a retaliatory act which has been taken as a result of the complaints of discriminatory harassment which the district failed to address.

39. [REDACTED] is in the special education program and has an IEP due to [REDACTED] diagnosed disabilities of which the school district is well aware.

40. As a result of the district's failure to promulgate an effective anti-discrimination policy and/or to take effective action following [REDACTED] complaints of harassment towards [REDACTED], [REDACTED] has suffered distress and has been forced to endure a hostile environment in the school system.

COUNT I

LAD Harassment

41. Plaintiff hereby repeats and realleges paragraphs 1 through 40 as though fully set forth herein.

42. For the reasons set forth above, the defendants are responsible for failing to properly educate regarding, deter, develop a policy against and respond to disability/perceived disability harassment of [REDACTED] and [REDACTED].

43. The school is also responsible for the reasons set forth above for the continued harassment following notification of same for acted participation by school officials combined with an utter and complete failure to properly, reasonably, legitimately and legally respond to said harassment and/or to prevent same, constituting willful indifference in the face of egregious conduct by students and by professionals.

WHEREFORE, plaintiff demand judgment against 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

Request for Equitable Relief

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

45. Plaintiff requests an equitable order from the Court requiring Mt. Ephraim School District to develop and deploy a practical, enforceable and clear policy prohibiting disability/perceived disability harassment in the school setting and to require that all school professionals, including janitors, teachers, counselors, administrators and other professionals, have a defined and clear role on how to report, deter, prevent and respond to disability/perceived disability harassment.

WHEREFORE, plaintiff demand judgment against 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.

DATED:

11/30/12

By:


Kevin M. Costello

DEMAND TO PRESERVE EVIDENCE

1. All defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to plaintiffs' employment, to plaintiffs' 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.

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JURY DEMAND

Plaintiffs hereby demand a trial by jury.

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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.

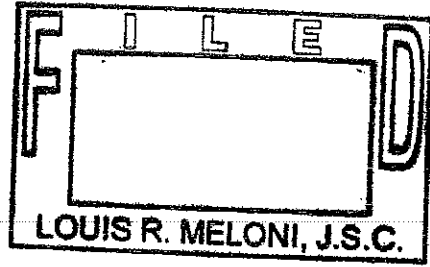
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██████, a MINOR and ██████ a minor by their
parent and guardian ██████.

Plaintiff(s),

v.

MT. EPHRAIM SCHOOL DISTRICT and
JOHN DOES 1-5 and 6-10

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
CAMDEN COUNTY
LAW DIVISION

DOCKET NO: CAM-L-3606-12

CIVIL ACTION

JUDGMENT APPROVING ██████
SETTLEMENT AND DIRECTING
THE DEPOSIT OF FUNDS

THIS MATTER having coming before the court in accordance with Rule 4:44-3 on or about November 2nd, 2015, and Michael V. Madden, Esquire, attorney for Defendant, and Daniel T. Silverman, Esquire, attorney for the Plaintiffs, appearing, and the attorneys for the parties having reported to the Court that they have arrived at a settlement of ██████ claim against the defendant, Mt. Ephraim Public School District, and the Court having reviewed the claims and taken proofs on the records concerning ██████ claims, and being satisfied that the settlement amount is fair and reasonable and in ██████ best interest;

IT IS on this 2nd day of November, 2015, ORDERED AND ADJUDGED that:

1. Judgment is entered on behalf of ██████, a minor, by her mother and natural guardian, ██████, in the gross amount of \$50,000.00 and against the defendant, Mt. Ephraim Public School District, without costs and/or interest; and

2. The following deductions shall be made from the gross settlement and paid by the defendants in separate drafts as follows:

- a) \$3,977.23 in costs, payable to Costello & Mains, P.C.
- b) \$20,710.25 in attorney's fees to Costello & Mains, P.C.

3. [REDACTED] shall immediately apply to the Surrogate of Camden County pursuant to R. 4:81 for the appointment of a guardian of the estate of [REDACTED]. It shall be the responsibility of the attorney for the plaintiff to see that this appointment is completed.

4. Pursuant to R. 4:48A the amount of \$25,312.52, payable for the benefit of [REDACTED], shall be paid by or on behalf of the defendant(s) by check payable to the "Surrogate of Camden County Intermingled Trust Fund F/B/O of [REDACTED], a minor," within fourteen (14) days of this judgment. It is and shall be the responsibility of the attorney for the plaintiff to see that the deposit is completed.

5. Upon payment of [REDACTED] net recovery into the Surrogate's Intermingled Trust Fund, the posting of a bond by the person applying to guardian of the minor's estate is dispensed with pursuant to N.J.S.A. 3B:15-16.

6. Monies may be withdrawn from said account only upon further order of the Superior Court of New Jersey, Chancery Division, Probate Part, pursuant to N.J.S.A. 3B:15-17, or upon [REDACTED] obtaining majority pursuant to N.J.S.A. 3B:15-17.1.

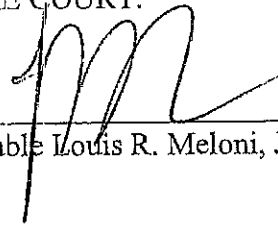
7. The guardian ad litem, [REDACTED], shall provide the Surrogate with [REDACTED]'s social security number and a copy of [REDACTED]'s birth certificate. Personal identifying information shall be redacted from said documents and same shall not be released to or made available for public scrutiny unless ordered to do so by the Superior Court.

8. [REDACTED] is not authorized to receive any additional funds or property on behalf of [REDACTED], except upon application to the Superior Court, Chancery Division, Probate Part, where the terms or conditions for receipt of additional funds or property may be fixed. Pursuant to N.J.S.A. 3B:12-37, said limitations shall be stated in the letter of guardianship certificates hereinafter issued by the Surrogate.

9. Upon qualifying, the Surrogate of Camden County shall issue letters of guardianship for the estate of [REDACTED], a minor, and thereupon said person appointed guardian be and hereby is authorized to perform all the duties and responsibilities of a guardian as allowed by law, except as limited herein.

10. The attorney for the plaintiff shall deliver a copy of this judgment to all parties and the Surrogate of Camden County within seven (7) days of the date hereof.

BY THE COURT:



Honorable Louis R. Meloni, J.S.C.