

Andrew M. Moskowitz 041721997  
JAVERBAUM WURGAFT HICKS KAHN WIKSTROM & SININS, P.C.  
505 Morris Avenue  
Springfield, NJ 07081  
(973) 379-4200  
Attorneys for Plaintiff Kevin McManus

KEVIN P. MCMANUS,

Plaintiff,

v.

BOARD OF EDUCATION OF THE  
SOMERSET COUNTY VOCATIONAL &  
TECHNICAL SCHOOLS, SOMERSET  
COUNTY VOCATIONAL &  
TECHNICAL SCHOOLS,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: SOMERSET COUNTY

DOCKET NO.: L-31475

CIVIL ACTION

COMPLAINT, JURY DEMAND,  
R. 4:5-1 CERTIFICATION  
AND DESIGNATION OF  
TRIAL COUNSEL

ND

Plaintiff Kevin P. McManus ("Plaintiff" or "Mr. McManus"), by way of Complaint against Defendants Board of Education of the Somerset County Vocational and Technical Schools ("the Board") and the Somerset County Vocational & Technical Schools ("SCVTS") (collectively, "Defendants"), says the following:

FACTS COMMON TO ALL COUNTS

1. Plaintiff is an individual residing in Metuchen, New Jersey.
2. Upon information and belief, the Board and SCVTS maintain an address at 14 Vogt Drive, P.O. Box 6350, Bridgewater, NJ 08807-0350.
3. From September 2008 until in or about June 2014, Mr. McManus was employed at SCVTS as a Spanish Teacher.

4. In the 2009-10 school year (which was prior to his receipt of tenure), Mr. McManus received a District Nomination for teacher of the year. In his January 2010 letter to Mr. McManus regarding this nomination, then-Superintendent Michael Maddaluna commended him for his "demonstration of leadership in the classroom and the incorporation of innovative techniques and strategies for your students." Superintendent Maddaluna further lauded Mr. McManus for "demonstrat[ing] a commitment to creating a climate for caring respect for your assigned pupils."

5. In or about September 2011, Mr. McManus was awarded tenure.

6. From 2008 to in or about 2013, Mr. McManus received high marks on his observation reports and annual reviews.

7. In all respects, Mr. McManus' performance met or exceeded Defendants' expectations.

8. Mr. McManus is gay.

9. On or about May 17, 2011, the student S.G. disclosed Mr. McManus' sexual orientation to the students in a Spanish class that Plaintiff was teaching.

10. On May 20, 2011, Mr. McManus reported S.G.'s action to the Supervisor of Academics and Affirmative Action Officer, Teresa Morelli.

11. After his sexual orientation was revealed, Mr. McManus was subject to a hostile work environment.

12. On May 25, 2011, S.G. shouted "you're gay" at Mr. McManus while he was teaching a Spanish class.

13. In or about the beginning of 2012, Jaime Morales was appointed as the Non-Supervisory Coordinator of Student Discipline.

14. Upon information and belief, Mr. Morales lacked the training, knowledge and ability to effectively administer the SCVTS Student Discipline Policy.

15. During the 2012-2013 school year, students S.L. and D.M. were students in Plaintiff's Spanish class.

16. During the course of the year, S.L. repeatedly made inappropriate and harassing comments to Plaintiff based on his sexual orientation. These comments included without limitation stating, "don't choke on that d\*\*k"; "that's gay"; "suck it," "why do they call it the pokey? Because you get poked"; "do you like nuts?"; "do you like fudge?" etc.

17. S.L. also touched Plaintiff; placed his hands inside his coat; and was insubordinate and disruptive during class. For example, he would glare at Plaintiff throughout the class period. On other occasions, S.L. would yell "f\*\*k" at Plaintiff in the hallway.

18. Student D.M. also repeatedly made inappropriate and harassing comments to Plaintiff. These comments included without limitation stating "cocoa butter makes my d\*\*k hard" and "don't drop the soap." Like S.L., D.M. was also insubordinate and disruptive.

19. As is the procedure at SCVTS, Plaintiff documented each infraction and submitted discipline referral reports to Mr. Morales.

20. Although made aware of S.L. and D.M.'s harassment of Plaintiff, Mr. Morales did not take appropriate steps to stop it. Instead, he encouraged D.M. to "keep doing what you're doing" (which comment D.M. conveyed to S.L. in the presence of a number of students) and to "document" Mr. McManus' activity during class.

21. On or about April 25, 2013; Plaintiff informed Principal Diane Ziegler that he was being harassed by these two students based on his sexual orientation.

22. On or about April 26, 2013, Plaintiff submitted a complaint to the aforementioned Supervisor of Academics and Affirmative Action Officer, Mrs. Morelli, regarding the hostile work environment created by student D.M.

23. On or about April 30, 2013, Plaintiff again met with Principal Ziegler ("the April 30, 2013 Meeting").

24. During the April 30, 2013 Meeting, Plaintiff described in detail the hostile work environment to which he had been subject as set forth in paragraphs 16-18, *supra*. He stated that S.L.'s harassment had intensified since an April 25, 2013 meeting with S.L.'s parents and that he found S.L. to be "very threatening."

25. During the April 30, 2013 Meeting, Principal Ziegler said to Plaintiff, "You seem very afraid."

26. On April 30, 2013, Plaintiff received his annual performance review. In the review, Plaintiff's problems with S.L. and D.M. were described as "classroom management issues" for which Plaintiff should seek "professional development" training.

27. On or about May 2, 2013, Plaintiff met again with Mrs. Morelli ("the May 2, 2013 Meeting").

28. At the May 2, 2013 Meeting, Mrs. Morelli acknowledged that Plaintiff was being subject to harassment based on actual and/or perceived sexual orientation. During this meeting, Mrs. Morelli stated that Plaintiff's allegations had been corroborated by other students and that he had been subject to harassment based on sexual orientation. She stated that Plaintiff "look[ed] like a different man" and seemed "beleaguered and detached." Mrs. Morelli recommended that Plaintiff utilize the Employee Assistance Program (EAP) to "help deal with stress."

29. On or about May 2, 2013, student D.M. was suspended from school for one week.

30. On or about May 3, 2013, Plaintiff submitted a complaint to Mrs. Morelli regarding the hostile work environment created by student S.L.

31. On or about May 28, 2013, Plaintiff met with Mrs. Morelli ("the May 28, 2013 Meeting").

32. At the May 28, 2013 Meeting, Mrs. Morelli informed Plaintiff that, as a result of the aforementioned complaint that he had submitted on May 3, she would investigate his complaint against S.L. Although Mrs. Morelli stated that she would advise Plaintiff regarding the results of this investigation, she failed to do so.

33. On or about May 29, 2013, Plaintiff met with Principal Ziegler ("the May 29, 2013 Meeting")

34. During the May 29, 2013 Meeting, Plaintiff informed Principal Ziegler that S.L. continued to harass him.

35. During the May 29, 2013 Meeting, Principal Ziegler said that she and Mr. Morales would meet with S.L.

36. Notwithstanding Principal Ziegler's assurances, no investigation was conducted; no report was issued; and no plan was developed to address S.L.'s continuing harassment of Plaintiff. S.L. was not suspended from school or disciplined in any substantive manner due to his conduct during the 2012 - 2013 school year.

37. In the absence of a thorough and effective investigation and appropriate remedial measures, S.L.'s harassment continued.

38. On or about October 3, 2013, S.L. approached Plaintiff's classroom while Plaintiff was teaching and took a photograph of him without his consent. S.L. took these photographs with a digital camera provided by SCVTS for a photography class.

39. When SCVTS staff member Deborah Gichan questioned S.L. about the incident, he denied that he had taken a photograph of Plaintiff. Instead, he showed Mrs. Gichan a photo of a locker. When Mrs. Gichan looked at the other photos on the camera, she learned that S.L. had in fact photographed Mr. McManus without his permission.

40. Plaintiff informed Mrs. Morelli and Principal Ziegler about the October 3, 2013 incident.

41. On or about October 9, 2013, while Plaintiff was teaching a class in the media centre, S.L. stood in a student seating area adjacent to where Plaintiff was teaching and laughed, coughed, gestured and waved at Plaintiff.

42. One of his classmates admitted in an October 10, 2013 statement that S.L. "was coughing pretty loud which I think was to catch Mr. McManus' attention and then he started laughing."

43. On or about October 11, 2013, Plaintiff received a letter from Principal Ziegler indicating that she believed the "student/teacher conflict," as she described student S.L.'s harassing behavior, indicated that there was a "classroom management concern ... and professional development in the area was encouraged."

44. On or about November 5, 2013, Plaintiff again met with Principal Ziegler ("the November 5, 2013 Meeting").

45. During the November 5, 2013 Meeting, Plaintiff again complained that he was being harassed due to his perceived sexual orientation. He noted that S.L. made himself visible to Plaintiff "as often as possible."

46. SCVTS prohibits students from entering the faculty dining room.

47. On or about November 21, 2013, S.L. walked through the faculty dining room during seventh period while the Plaintiff ate his lunch. S.L. knew that Plaintiff would be in the faculty dining room because the Plaintiff and S.L. are assigned to lunch at the same time.

48. S.L. had previously entered the faculty dining room when Plaintiff was present in May 2013. At that time, after Plaintiff informed her of S.L.'s actions, Principal Ziegler agreed that they were inappropriate, stating, "Mr. Morales and I will talk to this student. This is a student putting his toe over the line."

49. Upon information and belief, after this May 2013 discussion, S.L. was informed that he should not enter the faculty dining room again.

50. Although, in or about October 2013, Defendants required to S.L. to sign a "behavior" contract which purported to impose zero tolerance for future discipline problems, S.L. was not disciplined for the aforementioned November 21, 2013 incident.

51. Throughout the winter of 2013-14, S.L. continued to harass Plaintiff and to create a hostile work environment.

52. As a result of the hostile work environment to which he was subject, Mr. McManus has suffered and continues to experience irritable bowel syndrome, urinary incontinence, depression, post-traumatic stress disorder, anxiety, panic attacks, sleep deprivation, loss of concentration, exhaustion, irritability, hopelessness, exacerbated hypertension and exacerbated erectile dysfunction.

53. On or about October 23, 2013, Plaintiff filed a complaint with the New Jersey Division on Civil Rights.

54. Due to his filing of a complaint as well as his numerous complaints about the hostile work environment as described supra, Plaintiff was subject to a number of retaliatory acts by defendants.

55. For example, beginning in the 2013-2014 school year, and although he had previously been allowed to do so, Plaintiff was not permitted to use personal days on shorter weeks with holidays such as Thanksgiving and Christmas. In contrast, other teachers and staff were permitted to use their personal days on these weeks.

56. In addition, during a meeting on January 14, 2014 with SCVTS' Superintendent Dr. Chrys Harttraft, Ed.D and four other administrators ("the January 14, 2014 Meeting"), Dr. Harttraft demanded that Mr. McManus provided embarrassing details regarding the exact nature of his medical issues and why he required an accommodation (which had been provided the prior two years). These details had previously been provided to school nurse Mrs. Patricia Morales, who is the wife of the aforementioned Jaime Morales.

57. During the January 14, 2014 Meeting, Dr. Harttraft stated that SCVTS could not provide Mr. McManus with his requested accommodation. In the presence of the four other administrators, Dr. Harttraft stated to Mr. McManus, "Perhaps you should consider a part-time schedule if you want to remain here."

58. The last day that Plaintiff worked at SCVTS was February 12, 2014.

59. On March 3, 2014, Plaintiff requested a medical leave of absence. On or about March 24, 2014, the Board granted plaintiff's request.

60. The duration of this initial leave was from March 11, 2014 to June 30, 2014.



61. Plaintiff requested that this leave be paid.

62. The Board voted to deny plaintiff's request that this leave be paid.

63. Plaintiff made two additional requests for leave: On May 12, 2014, he asked for paid leave from June 11, 2014 to June 30, 2014. In addition, in July 2014, he requested paid leave from September 1, 2014 through November 30, 2014.

64. Although the Board approved these two additional requests for leave, it voted to deny plaintiff's request that they be paid.

65. The Board has previously granted other employees' request for paid leave. For example, in or about the end of May 2011, the Board voted to grant paid medical leave to teacher M. Christina Perrone.

66. On March 31, 2014, Dr. Harttraft demanded that Plaintiff resign his position as a tenured Teacher of Spanish. She further stated that, if Plaintiff failed to comply with her request, his application for disability retirement would be delayed.

67. In or about November 2014, Plaintiff learned that SCVTS' Superintendent Dr. Harttraft had expressed her opinion that she did not believe that Plaintiff was "homosexual" because "he is not effeminate."

68. On or about November 14, 2014, Mr. McManus submitted his resignation from his position as a tenured Teacher of Spanish.

**FIRST COUNT**

(New Jersey Law Against Discrimination,  
N.J.S.A. 10:5-1 to -42 - Hostile Work Environment)

69. Plaintiff hereby repeats and realleges all of the allegations set forth above as if set forth at length herein.

70. The New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -42, prohibits harassment on the basis of actual or perceived sexual orientation.

71. The harassment to which Plaintiff was subject was sufficiently severe or pervasive that a reasonable person would have deemed it to be hostile, abusive, intimidating, or offensive.

72. This harassment would not have occurred but for Plaintiff's actual or perceived sexual orientation.

73. The aforementioned constituted a hostile work environment.

74. Although, as described in paragraphs 19-25, 27, 30, 33-35, 40, and 44-45, supra ("Plaintiff's Complaints"), on multiple occasions, Plaintiff complained about the hostile work environment, defendant failed to take appropriate measures.

75. As evidenced by, *inter alia*, defendants' failure to provide appropriate training to its employees; failure to suspend or otherwise discipline S.L., and failure to enforce the October 2013 "behavior" contract, defendants have not demonstrated an unequivocal commitment from their highest levels that harassment will not be tolerated.

76. Defendants' above-described actions constitute unlawful employment actions in violation of NJLAD including, *inter alia*, N.J.S.A. § 10:5-12a.

77. As a direct and proximate result of Defendants' discriminatory actions, Plaintiff has suffered economic and emotional damages.

78. Because the harassment was especially egregious and defendants' upper management such as Principal Ziegler, SCVTS' Superintendent Dr. Hartcraft, Supervisor of Academics and Affirmative Action Officer Mrs. Morelli, and Non-Supervisory Coordinator of

Student Discipline Mr. Morales were aware of and were willfully indifferent to this wrongful conduct, punitive damages should be awarded.

WHEREFORE, Plaintiff Kevin P. McManus demands that a judgment be entered against Defendants Board of Education of the Somerset County Vocational and Technical Schools and the Somerset County Vocational & Technical Schools awarding i) compensatory and punitive damages; ii) reasonable attorney's fees and expenses pursuant to N.J.S.A. § 10:5-27.1; and iii) such other relief as this Court deems just and proper.

**SECOND COUNT**  
**(New Jersey Law Against Discrimination,  
N.J.S.A. 10:5-1 to -42)**

79. Plaintiff hereby repeats and realleges all of the allegations set forth above as if set forth at length herein.

80. The LAD prohibits an employer from discriminating against an individual due to his actual or perceived sexual orientation.

81. Plaintiff is and/or was perceived to be gay.

82. Although he was otherwise qualified and performed the essential functions of his job, defendants nevertheless permitted his work environment to change in such a significant and severe manner that any reasonable person would have felt compelled to resign.

83. As set forth in paragraph 67, supra, SCVTS' Superintendent Dr. Harttraff, an individual with input into the decision-making process, has made ignorant, biased and stereotypical remarks directed towards Plaintiff.

84. Plaintiff's actual and/or perceived sexual orientation was a motivating factor in defendants' decision to constructively discharge Plaintiff and to treat him in an unequal manner with regard to the terms, conditions or privileges of his employment.

85. As a direct and proximate result of Defendants' discriminatory actions, Plaintiff has suffered economic and emotional damages.

WHEREFORE, Plaintiff Kevin P. McManus demands that a judgment be entered against Defendants Board of Education of the Somerset County Vocational and Technical Schools and the Somerset County Vocational & Technical Schools awarding i) compensatory and punitive damages; ii) reasonable attorney's fees and expenses pursuant to N.J.S.A. § 10:5-27.1; and iii) such other relief as this Court deems just and proper.

### THIRD COUNT

(New Jersey Law Against Discrimination,  
N.J.S.A. 10:5-1 to -42 - Retaliation)

86. Plaintiff hereby repeats and realleges all of the allegations set forth above as if set forth at length herein.

87. N.J.S.A. 10:5-12(d) provides that it is unlawful to retaliate against a person who has opposed or filed a complaint due to discriminatory practices forbidden under NJLAD.

88. As evidenced by Plaintiff's Complaints as defined in paragraph 74, supra, on multiple occasions, Plaintiff complained to Defendant about discriminatory practices forbidden under NJLAD. In addition, as discussed supra, on or about October 23, 2013, Plaintiff filed a complaint with the New Jersey Division on Civil Rights.

89. As discussed supra, in response to plaintiff's protected activity, defendants engaged in a number of retaliatory actions including, *inter alia*, demanding his resignation;

refusing to provide Plaintiff with an accommodation that had been provided the prior two years; denying his requests for paid medical leave; and refusing to permit Plaintiff to use personal days on shorter weeks with holidays such as Thanksgiving and Christmas;

90. As a direct and proximate result of Defendants' discriminatory actions, Plaintiff has suffered economic and emotional damages.

WHEREFORE, Plaintiff Kevin P. McManus demands that a judgment be entered against Defendant Board of Education of the Somerset County Vocational and Technical Schools and the Somerset County Vocational & Technical Schools awarding i) compensatory and punitive damages; ii) reasonable attorney's fees and expenses pursuant to N.J.S.A. § 10:5-27.1; and iii) such other relief as this Court deems just and proper.

**JURY DEMAND**

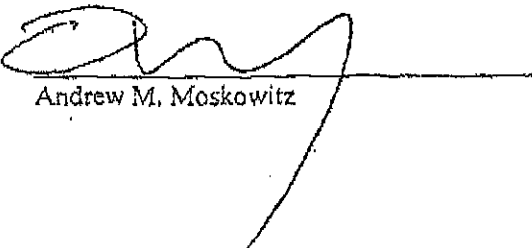
Plaintiff Kevin McManus demands trial by jury on all claims and issues so triable.

**DESIGNATION OF TRIAL COUNSEL**

Andrew M. Moskowitz is hereby designated as trial counsel pursuant to R. 4:5-1(c).

**JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.**  
Attorneys for Plaintiff Kevin McManus

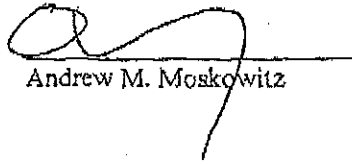
By:

  
Andrew M. Moskowitz

Dated: March 6, 2015

R. 4:5-1 CERTIFICATION

Pursuant to R. 4:5-1, the undersigned certifies that, to the best of his knowledge, the within matters in controversy are not the subject of any other action pending in any other court or of a pending arbitration proceeding nor is any action or arbitration proceeding contemplated nor are other parties required to be joined in this action.

  
Andrew M. Moskowitz

Dated: March 6, 2015