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on behalf of the American Civil Liberties  
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**BEFORE THE COMMISSIONER  
NEW JERSEY DEPARTMENT OF EDUCATION**

Susan Coll-Guedes., on behalf of her minor  
son, A.G.,

Petitioner,

v.

Cape May County Special Services School  
District,

Respondent.

**PETITION**

Petitioner, Susan Coll-Guedes, residing in Mays Landing, New Jersey, and represented by the undersigned counsel, hereby requests the Commissioner of Education to consider a controversy which has arisen between petitioner and respondent, whose address is 148 Crest Haven Road, Cape May Court House, New Jersey 08210, pursuant to the authority of the

Commissioner to hear and determine controversies under the school law pursuant to N.J.S.A. 18A:6-9, by reason of the following facts:

1. Petitioner brings this action to vindicate the civil rights of her son, A.G., who attends the Ocean Academy, a public elementary school that is part of the Cape May County Special Services School District.<sup>1</sup> For children who have multiple disabilities, like A.G., the Ocean Academy segregates classes based on gender for children who are in grades 6, 7, and 8. This type of gender-based segregation is fundamentally unequal and violates the New Jersey Law Against Discrimination, and regulations promulgated by the New Jersey Department of Education.<sup>2</sup>

### **Factual Background**

2. The Cape May County Special Services School District (“School District”) is a school district organized pursuant to N.J.S.A. 18A:46-29 that provides special education and related services to school-aged children. The Ocean Academy, operated by the School District, is a public elementary school, providing education to children with special needs from age three through 13.

3. The School District is a public accommodation and is required to comply with the Law Against Discrimination, N.J.S.A. 10:5-1, et seq., and regulations promulgated by the New Jersey Department of Education.

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<sup>1</sup> A.G. is subject to the provisions of an individualized education plan. Because this matter only raises claims related to his civil rights, he has not filed a petition with the Office of Special Education Programs.

<sup>2</sup> This complaint uses the words “gender” and “sex” interchangeably; discrimination based on either is against the law. See, e.g., N.J.S.A. 10:5-12(f)(1) (referring to discrimination based on “sex” and “gender identity or expression” and N.J.A.C. 6A:7-1.1, et seq. (referring to educational equity and equality based on “gender”).

4. The School District, as a recipient of federal funding, is likewise obligated to comply with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., which prohibits schools receiving federal funding from excluding individuals from any educational program or activity based on their sex. Specifically, Title IX states, “No person in the United States shall, on the basis of sex, *be excluded from participation in*, be denied the benefits of, or be subjected to discrimination under *any education program or activity* receiving Federal financial assistance[.]” 20 U.S.C. § 1681(a) (emphasis added).

5. A.G. is a twelve year old student with special needs. Susan Coll-Guedes is his parent and brings this action on his behalf. A.G. has been diagnosed with multiple disabilities and is eligible for special education and related services. He lives in Mays Landing, New Jersey, and his local school district is the Hamilton Township School District (“sending district”). The School District has contracted with the sending district to provide educational services to A.G. for nearly seven years.

6. A.G. is a sixth grader and has attended the Ocean Academy in the Cape May Special Services School District since March 2006, when he began in the pre-school program. He is currently in the school’s Multiple Disabilities Program.

7. Through fifth grade, the School District had placed A.G. in classes for children with multiple disabilities that are co-educational. By all accounts, he had a successful experience in those classes.

8. Ms. Coll-Guedes has been aware since at least 2006 that the School District segregates classes for children with multiple disabilities based on their gender beginning in the sixth grade and continuing through the eighth grade. The all-female class for multiply-disabled students is the only all-female class at the Ocean Academy.

9. On information and belief, when children with multiple disabilities begin ninth grade at the School District's high school, they are assigned to co-educational classes.

10. Ms. Coll-Guedes believes that A.G. benefitted educationally and socially from a co-educational experience. For example, he developed and improved his interpersonal relationships with female classmates.

11. Ms. Coll-Guedes believes that a coeducational environment reflects the real world, and wants A.G. to learn to act appropriately and be comfortable around different kinds of people, including girls.

12. Ms. Coll-Guedes has observed that the segregated classes offer different learning opportunities based on sex-stereotypes. For example, the class of girls dances, engages in dress-up play and has field trips to the mall and beauty salon. The boys classes do not offer these activities, and instead have a pre-vocational focus on traditionally male vocations such as landscaping. On information and belief, the girls are provided more opportunities to learn socialization and cooperation skills.

13. The programs and activities that occur in the girls' class are better suited to A.G.'s interests and abilities. For example, A.G. enjoys singing, dancing, and dressing up. He is less able to engage in the vocational programming offered in the boys' class.

14. At the end of the 2011-12 school year, Ms. Coll-Guedes was advised that A.G. would be placed in an all boy class the following year. Because of A.G.'s schedule, were he to be in that class, he would not have any coeducational opportunities during his school day.

15. On August 16, 2012, Ms. Coll-Guedes requested a due process hearing and indicated that one of the problems she had was A.G.'s "[p]lacement in single-gender pre-vocational program." The request form is attached as Ex. A.

16. On September 10, 2012, a conflict resolution meeting was held. The summary states that Ms. Coll-Guedes had other concerns, but that she was “equally concerned about the fact that there were no female [student] role models in the proposed placement.” The summary is attached as Ex. B.

17. The summary states that Ocean Academy Interim Principal Mary Margaret Lynn “reserved the right to choose the teacher and the class make up for the students in the public school for the disabled.”

18. At the meeting, Ms. Coll-Guedes tried to propose alternatives to co-educational classes that would provide A.G. exposure to female classmates, such as having A.G. “push-in” to the girl class for a certain subject lesson.

19. Ms. Lynn refused to accommodate these requests. The summary further states that “Cape May County Special Services has indicated that it is their belief that they can no longer meet [A.G.’s] special needs in light of the concerns brought forth at this meeting. Hence they have unilaterally informed the Hamilton Township School District that his program will be terminated.” Ex. B.

20. On September 13, 2012, Principal Lynn wrote to the sending district’s Supervisor of Special Education and advised him that “it was determined that Cape May County Special Services School District was unable to provide [A.G.] with the program requested by his mother” and indicated that the school district would continue to provide his educational program until a new school placement was found.

21. The parties agreed that A.G. would remain in his fifth grade coeducational placement.

22. On September 18, 2012, Ms. Coll-Guedes attended a School District Board of Education meeting and expressed her frustration with the gender-segregated classes and with the district's decision to terminate A.G.'s placement.

23. On September 19, 2012, the School District's solicitor responded in writing to her comments. This letter is attached as Exhibit C. The solicitor suggested that the district would be able to meet A.G.'s needs, but would not provide him with a coeducational program.

24. On October 16, 2012, Ms. Coll-Guedes attended a School District Board of Education meeting and asked for clarification about the letter from the solicitor. The superintendent confirmed that A.G. would be able to remain in the district, but only in a class with all male students.

25. On October 24, 2012, after being contacted by Ms. Coll-Guedes, the American Civil Liberties Union of New Jersey ("ACLU") submitted a request for public records regarding the School District's policies and practices for segregating students by gender.

26. In correspondence dated November 26, 2012, the School District solicitor responded to the request confirming that the Ocean Academy has classes that are all male and all female, asserting that such classes "are assigned based on [students'] age, their specific disability and level of functioning."

27. On November 30, 2012, Ms. Coll-Guedes met with her sending district special education supervisor and case manager. They advised her that Ms. Lynn was upset that Ms. Coll-Guedes had contacted the ACLU and was taking it personally. He told her that Ms. Lynn wanted to terminate A.G.'s placement immediately, but because of A.G.'s rights pursuant to special education statutes, the district would be giving notice that his placement would be terminated as of June 30, 2013.

28. That same day, the sending district's special education supervisor wrote to Ms. Lynn reporting that Ms. Coll-Guedes "feels strongly that gender bias issues remain and she is seeking opportunities for [A.G.] to interact with females during his school day." He wrote that he advised Ms. Coll-Guedes that "a receiving school has the right to terminate a placement in accordance with the rules governing special education."

29. On February 1, 2013, the sending district inquired to the School District's superintendent whether A.G. would be permitted to remain at Ocean Academy for the 2013-2014 school year.

30. On February 12, 2013, the superintendent responded that his placement had not been terminated, but refused to provide a coeducational class maintaining that "the makeup of the class is an administrative prerogative." The email is attached as Exhibit D.

31. These assertions by the School District that they would discontinue A.G.'s placement at Ocean Academy because of Ms. Coll-Guedes's advocacy for a coeducational class caused Ms. Coll-Guedes and her family a great deal of emotional distress.

### **Count I**

#### **(Violation of New Jersey Law Against Discrimination)**

32. Petitioner incorporates Paragraphs 1 through \_\_\_\_, as if fully set forth herein.

33. The New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq., prohibits public accommodations from discriminating against individuals based, among other classifications, on their gender or disability.

34. The School District is a public accommodation.

35. The School District's long standing practice of segregating students with multiple disabilities based on their gender violates the Law Against Discrimination's prohibition against discrimination based on gender.

36. The School District is providing different learning opportunities to students with multiple disabilities based on their gender.

37. Though the School District's administrators may have the prerogative to determine the makeup of a class, they may not do so in a way that discriminates based on gender.

38. It is not plausible that the School District has made an individualized assessment of all sixth through eighth graders with multiple disabilities that has resulted in sex-segregated classes at Ocean Academy year after year, especially given that fifth graders and ninth graders are placed in coeducational classes.

39. The School District's long standing practices of segregating students with multiple disabilities based on their gender violates the Law Against Discrimination's prohibitions against discrimination based on disability.

40. By segregating students with multiple disabilities based on their gender, the School District has made a blanket determination that is not based on an individualized assessment. Students in sixth, seventh and eighth grade who have multiple disabilities are subject to gender segregated classes. The School District does not treat students with other classifications similarly, providing coeducational opportunities in all grades in its other programs.

41. Though the School District's administrators may have the prerogative to determine the makeup of a particular class, they may not do so in a way that discriminates based on disability.

42. The School District's threats to terminate A.G.'s placement at Ocean Academy because Ms. Coll-Guedes complained about discrimination and advocated for coeducational classes amount to retaliation in violation of the Law Against Discrimination.

## Count II

### **(Violation of New Jersey Administrative Regulation 6A:7-1.7).**

43. Petitioner incorporates Paragraphs 1 through \_\_\_\_, as if fully set forth herein.

44. The New Jersey Department of Education, as part of its constitutional and statutory obligations to ensure that students are provided equity in education, has promulgated regulations governing the policies and procedures for the provision of educational services. N.J.A.C. 6A:7-1.1.

45. To address the elimination of discrimination, each district board of education is required to provide equity in its educational programs and to provide "opportunities for students to interact positively with others regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability or socioeconomic status." N.J.A.C. 6A:7-1.7(b).

46. To that end, a district must ensure "that courses shall not be offered separately on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability or socioeconomic status."

47. The School District is offering courses separately based on the gender of its students.

48. The School District is providing different learning opportunities to students with multiple disabilities based on their gender.

49. While the School District's administrators may have the prerogative to determine the makeup of a class, they may not do so in a way that discriminates based on gender.

50. It is not plausible that the School District has made an individualized assessment of all sixth through eighth graders with multiple disabilities that has resulted in sex-segregated classes at Ocean Academy year after year, especially given that fifth graders and ninth graders are placed in coeducational classes.

WHEREFORE, Petitioner demands judgment in her and A.G.'s favor and against the School District as follows:

- A. For a declaration that the School District's segregated male and female classes are in violation of the Law Against Discrimination and New Jersey Administrative Code 6A:7-1.7(b);
- B. For a permanent injunction against the use of gender to segregate children with multiple disabilities in to single gender classrooms;
- C. For a permanent injunction against the School District terminating the placement of A.G. at the Ocean Academy based on reasons other than those related to the school's ability to meet the needs of his Individualized Educational Program;
- D. Compensatory damages;
- E. For attorneys' fees and costs, pursuant to N.J.S.A. 10:5-27.1;
- F. All other appropriate relief.

Dated: March 25, 2013

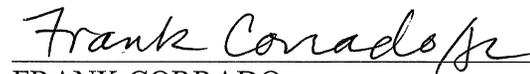
BY:

  
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EDWARD BAROCAS

JEANNE LOCICERO

American Civil Liberties Union of New Jersey  
Foundation

  
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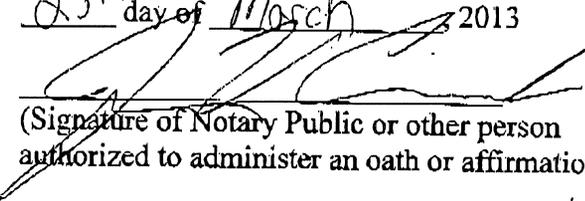
On behalf of the American Civil Liberties Union  
of New Jersey Foundation

Susan Coll-Guedes of full age, being duly sworn upon her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.
2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

  
Susan Coll-Guedes

Sworn and subscribed to before me this  
05<sup>th</sup> day of March, 2013

  
(Signature of Notary Public or other person  
authorized to administer an oath or affirmation)

Joseph V. Casale #2414415  
Notary Public of New Jersey  
My Commission Expires 11/14/16

