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May 15, 2013

Peggy McDonald, Director
Office of Special Education
New Jersey Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

Craig Sashihara, Director
New Jersey Division on Civil Rights
Office of the Attorney General
P.O. Box 090
Trenton, New Jersey 08625-0090

RE: Discriminatory Practices at the Cape May County Special Services School District

Dear Directors McDonald and Sashihara:

The American Civil Liberties Union of New Jersey represents a parent who filed a petition last month against the Cape May County Special Services School District because her child would have been assigned to a classroom segregated on the basis of sex. Today, the parent withdrew the individual petition. As we considered the legal issues at stake, we realized that the practice complained of is not about one particular child, but about a pattern and practice of discrimination against students at the school.

Accordingly, on behalf of the ACLU of New Jersey, I now write to request that both the Department of Education and the Division on Civil Rights investigate the practices at the district's Ocean Academy as it relates to sex-segregated classrooms for students with multiple disabilities. We believe that the school district's efforts to maintain separate classes for girls and boys with multiple disabilities violates the Law Against Discrimination because it treats students differently (1) on the basis of their sex, *i.e.*, the district uses sex (and not individual assessment) as a proxy for determining the composition of classes and (2) on the basis of their disability, *i.e.*, students without multiple disabilities are not segregated based on sex.

As an initial matter, it is clear that New Jersey's Law Against Discrimination protects students from discrimination by a school district. *See, e.g., L.W. v. Toms River Reg'l Sch. Bd. of Educ.*, 189 N.J. 381 (2007) (finding that the LAD establishes a cause of action by a student against a school district for discriminatory peer harassment). The language of the LAD declares public schools to be places of public accommodation. N.J.S.A. 10:5-5(*l*). It further provides 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 ... on account of the ...sex... or ...disability... of such person....” N.J.S.A. 10:5–12(f).

The Cape May County Special Services School District operates Ocean Academy, a public school for children with special needs through age 14. For children with multiple disabilities, classes are co-educational until students are eligible to be placed in the class with the oldest students. At that point, students who have multiple disabilities are placed in classes segregated by sex. In response to a public records request about the practice, the district responded that students classes “are assigned based on [students’] age, their specific disability and level of functioning.”

We call on you to investigate the district’s practices because it does not seem plausible for the district to have a class comprised solely of girls without the administration having engaged in discrimination.¹ Moreover, counsel for the district represented to me that the girls-only class developed for fifth through eighth graders because girls in that age group deal with “feminine issues that boys don’t have to deal with.” While it is true that students experience puberty differently based on their sex, the school district cannot rely on this singular fact to determine its class composition without running afoul of the Law Against Discrimination and the New Jersey Department of Education’s regulations regarding equity in education.² In addition to potential violations of state civil rights protections, the district, as a recipient of federal funding, appears to be engaging in activity prohibited by Title IX.

For your reference, I have enclosed a copy of the now-withdrawn complaint which more thoroughly outlines the civil rights issues at stake. I also have enclosed a copy of the public records request and response referenced above for your reference.

The district’s practices regarding placement of students in sex-segregated classes need to be comprehensively reviewed to determine if administrators are impermissibly discriminating against students. Children with special needs who attend the Ocean Academy are entitled to the protection of New Jersey’s strong anti-discrimination laws and public policies, just like all other public school students. To that end, we encourage you to compare the practices at the Ocean Academy with the practices for the same group of children at similar public schools, such as those in the Burlington or Atlantic County Special Services School Districts.

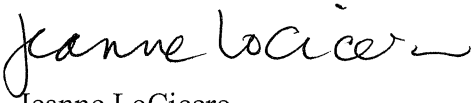
¹ This is not to say that a single sex class could not exist but for a discriminatory practice. For example, the 2011-2012 demographic information available on the Department of Education’s website suggests that the Ocean Academy enrolled at least twice as many male students as female students. Based on that data, it may be the case that a class could be composed solely of boys without administrators intending to create a single sex class. Given that girls are outnumbered two-to-one, the same could not be said for a class to be comprised exclusively of girls.

² The Department’s current regulations specify that districts are not to offer classes separately based on, among other things, gender. N.J.A.C. 6A:7-1.7(b).

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Please feel free to contact me at 973-854-1715 or jlocicero@aclu-nj.org if I can provide any additional information as you consider an examination of the school district's practices.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne LoCicero". The signature is written in black ink and includes a long horizontal flourish at the end.

Jeanne LoCicero
Deputy Legal Director

Enclosures

cc: Kathleen Duncan, New Jersey Department of Education
Patrick Carrigg, Esq.