

COSTELLO & MAINS, LLC
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Attorneys for Plaintiff

L.P. by her parent and guardian P.P.,	:	SUPERIOR COURT OF NEW JERSEY
	:	OCEAN COUNTY - LAW DIV.
Plaintiffs,	:	
	:	CIVIL ACTION
vs.	:	
	:	
LACEY TOWNSHIP SCHOOL DISTRICT	:	DOCKET NO:
and JOHN DOES 1-5 AND 6-10,	:	
	:	
Defendant.	:	COMPLAINT AND JURY DEMAND

Plaintiff, L.P., a minor by her parent and guardian P.P., residing in Forked River, New Jersey, by way of Complaint against the defendants, says:

Preliminary Statement

This matter is brought under the New Jersey Law Against Discrimination ("LAD") alleging egregious racial harassment permitted by the school and which, the school having been advised of the existence of the same, failed to prevent and/or deter.

Identification of Parties

1. Plaintiff L.P., a minor, brings this claim by way of P.P., her mother and guardian, asserting claim as a student in the schools of the Lacey Township School District.
2. Defendant Lacey Township School District is, at all relevant times herein, a public body amenable to suit under the LAD, maintaining a principal place of business in Lanoka Harbor, New Jersey, and is the owner and administrator of the schools mentioned herein.
3. 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 plaintiff for the acts set forth herein.

General Allegations

4. Plaintiff was, at all relevant times herein, a student in the schools of the Lacey Township School District.

5. The problems which give rise to this Complaint began in the Fall of the 2016-2017 school year while plaintiff was a [REDACTED] grade student at Mill Pond Elementary School and continued into the 2017-2018 and 2018-2019 school years while plaintiff was a student at the Lacey Township Middle School.

6. During that time, plaintiff has been subjected to egregious and disturbing racial harassment.

7. Plaintiff is an African-American female.

8. The harassment was because of race.

9. The harassment has been severe and/or pervasive.

10. The harassment is such that a reasonable African-American student in the same or similar circumstances would have found the school environment to have become hostile, intimidating and/or abusive.

11. The school environment did so alter for plaintiff.

12. The harassment included, but was not limited to, other students regularly using the word "nigger" towards plaintiff through directly referring to the plaintiff as a "nigger," and phrases such as "hey nigger," "nigger please," and "what's up nigger?"

13. In addition to the verbal harassment, the harassment has also taken on a physical component in that plaintiff has been continually smacked.

14. The racial harassment occurred in the presence of teachers, who engaged in no responsive action.

15. Both plaintiff and her mother made complaints to school officials and personnel.

16. In or around April of 2017, the Mill Pond Elementary School anti-bullying specialist, Brooke E. Borel, conducted an investigation and found that use of the word "nigger" was "slang" and "common" among students of the school.

17. At the time, plaintiff was the only African-American student in her class.

18. Ms. Borel also confirmed that the smacking had occurred, but described it as "playful."

19. Despite having confirmed common usage of the word "nigger" upon the complaint of the only African-American student in the class, Ms. Borel's investigation findings reflected belief that the same was not Harassment, Intimidation or Bullying ("HIB").

20. Those findings were reversed by the superintendent, who found that the evidence supported a finding of HIB.

21. Regardless of those findings, the harassment continued into the next year at Lacey Township Middle School.

22. The administrators of the middle school advised plaintiff's mother that they had never been previously made aware of the HIB findings concerning plaintiff.

23. Due to the ongoing harassment, the middle school's solution was to have plaintiff leave class approximately ten minutes early so as to avoid confrontation in the halls.

24. This deprived plaintiff of instructional time.

25. Plaintiff and her mother complained to school administrators at the middle school including the principal and superintendent.

26. The harassment continued unabated.

27. As a result of the ongoing stress, plaintiff missed approximately two weeks of school in October of 2018.

28. Shortly thereafter, plaintiff's doctor placed her on homebound instruction for approximately one month due to anxiety.

29. The failure of any of these members of upper management to take effective or appropriate remedial action constitutes willful indifference.

30. Because the complained of conduct was egregious, and because defendant's upper management was willfully indifferent to the same, punitive damages are warranted.

31. In addition, prior to the harassment being commenced, there was no appropriate and reasonable promulgation of training for staff, administration and/or students to identify, prevent and/or not engage in such practices.

32. This duty to conduct assemblies and/or in-service trainings and/or other preventative and policy based measures has been known to the school district since the promulgation of the LAD and especially since the decision in *L.W. v. Toms River* a number of years ago.

33. To the extent that the *L.W.* decision codified and clarified the responsibility of the school to prevent harassment and also to stop it once identified, the Lacey Township School District has failed in both responsibilities and is responsible for all harassment which has occurred herein, both the initial harassment and the harassment which continued even after plaintiff and her mother began to complain.

34. Plaintiff has suffered emotional distress as a result of the harassment and as a result of the failure of the school district to prevent and/or deter it.

35. Plaintiff's response was the same as a reasonable African-American student under the circumstances.

36. Plaintiff has been denied the enjoyment of the use of a public school.

37. Because plaintiff has suffered harm which resulted from defendant's acts and/or omissions that were a wanton and willful disregard of plaintiff's rights, punitive damages are warranted.

COUNT I

Discrimination in a School Setting Under the LAD

38. Plaintiff hereby repeats and realleges paragraphs 1 through 37, as though fully set forth herein.

39. For the reasons set forth above, the harassment plaintiff suffered in the school environment is the responsibility of defendants for having failed to adequately prevent the harassment and/or respond to it once it was brought to their attention.

40. Because the harassment was egregious and because there was a willful non-response once the school was placed on notice, punitive damages are warranted.

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

COSTELLO & MAINS, LLC

Dated: April 8, 2019

By: /s/ Daniel T. Silverman
Daniel T. Silverman

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, LLC

By: /s/ Daniel T. Silverman
Daniel T. Silverman

JURY DEMAND

Plaintiff hereby demands a trial by jury.

COSTELLO & MAINS, LLC

By: /s/ Daniel T. Silverman
Daniel T. Silverman

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, LLC

By: /s/ Daniel T. Silverman
Daniel T. Silverman

DESIGNATION OF TRIAL COUNSEL

Daniel T. Silverman, Esquire, of the law firm of Costello & Mains, LLC, is hereby-designated trial counsel.

COSTELLO & MAINS, LLC

By: /s/ Daniel T. Silverman
Daniel T. Silverman