

COSTELLO & MAINS, LLC

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 Attorneys for Plaintiff

C.G. and L.G. by their parent K.G.,	:	SUPERIOR COURT OF NEW JERSEY
	:	CAMDEN COUNTY - LAW DIV.
Plaintiffs,	:	
	:	CIVIL ACTION
vs.	:	
	:	
CHERRY HILL PUBLIC SCHOOL	:	DOCKET NO: CAM-L-4446-18
DISTRICT and JOHN DOES 1-5	:	
AND 6-10,	:	
	:	FIRST AMENDED CLASS ACTION
Defendants.	:	CIVIL COMPLAINT AND JURY
	:	DEMAND

Plaintiffs, C.G. and L.G., minors, by and through their parent, K.G., residing in the County of Camden, on behalf of themselves and all others similarly situated, say:

Reason for First Amended Complaint

Since the undertaking of the initial Complaint, it has become clear that the Cherry Hill Public School District persists in denying female students access to the W.A.T.C.H. Program, through and including the present academic year (2019 to 2020).

Since undertaking the litigation, Plaintiffs and counsel have learned that, instead of making the W.A.T.C.H. Program universally available to all female students once they were placed on notice of the discriminatory nature of the program in the middle of 2018, the district has instead created a putative "separate but equal" program called "Girls, Incorporated" which

the district claims provides an equal (but still separate) program substantially equal to that offered to boys through W.A.T.C.H..

The Plaintiffs categorically reject the notion that any "separate but equal" program can be both, and contest that there continues to be no data study, data collection, analysis, legal review, review of the harm done to one or both genders, or any other undertaking meant to support, in any way, persisting with openly discriminatory leadership training programs.

For this reason, this First Amended Class Action Civil Complaint and Jury Demand seeks to include all female students enrolled at Clara Barton during this academic year in the putative Class (see "**Amended General Allegations**" hereafter).

Preliminary Statement

This matter is opened to the Court pursuant to the New Jersey Law Against Discrimination's ("LAD") prohibition regarding gender discrimination in a place of public accommodation, to wit, a school.

Both minor plaintiffs claim that they were the victims of gender based discrimination at the Clara Barton Elementary School, administrated by the Cherry Hill Public School District.

Specifically, by virtue of their gender, which is female, both minor plaintiffs were deprived of the opportunity to join a male-only "leadership" program, resulting in a gender-based inequity and unequal treatment in a place of public accommodation.

Class Action Averments

1. Plaintiffs bring this case on behalf of themselves and all others similarly situated.
2. The number of female students having passed through the Clara Barton School during the years in which the subject program (see hereafter) has been maintained is unknown,

but it is averred that this number is so numerous that joinder of all members of the putative class would be impracticable.

3. There are questions of law or fact common to the class, inasmuch as the mechanism of injury is identical for all plaintiffs (in that they are female), and the mechanism of harm is identical for all plaintiffs (in that each has been deprived of the opportunity to benefit from an education program offering leadership training simply by virtue of their gender).

4. The claims of the plaintiffs are typical, and are, in fact, identical, to the claims of the class.

5. The defenses to the claims of the plaintiffs are identical to the defenses to the claims of the class.

6. The representative plaintiffs will fairly and adequately protect the interests of the class.

7. The prosecution of separate actions by individual plaintiffs would bear a risk of inconsistent or varying adjudications with respect to individual members of the class that might therefore establish incompatible standards of conduct for the defendants opposing the class.

8. As well, the prosecution of separate actions by individual members of the class would pose a risk of adjudications with respect to those individual claims that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication and or would substantially impair or impede the ability to protect such interests.

9. It is averred that the Cherry Hill School District has acted and/or refused to act on grounds generally applicable to all potential class members, therefore making appropriate final injunctive relief or a corresponding declaratory relief with respect to the class as a whole, desirable.

10. Questions of law and fact common to the members of the class predominate over any questions which effect individual members.

11. A class action is a superior vehicle to other available methods for the fair and efficient adjudication of this controversy.

12. The interest of members of the potential class and individually controlling the prosecution or defense of the separate actions is and/or should be secondary to the interest of adjudicating the broader social issue represented by the alleged discriminatory act.

13. Upon information and belief, there is no other identical litigation regarding this issue against the defendants in this matter or on behalf of any potential class member.

14. It is desirable to concentrate the litigation of these claims in one form, and at one time, since one specific discriminatory act is alleged, to all members of the class and since one standard of conduct should emerge therefrom.

15. It will not be difficult to manage the management of this action, since it is not anticipated that there will be any unique or individual issues effecting claims or class members that would predominate over the allegations above.

Identification of Parties

16. Plaintiff C.G. is, at all relevant times herein, a minor female and lives in Cherry Hill, New Jersey with her family, having formerly attended the Clara Barton School.

17. Plaintiff L.G. is, at all relevant times herein, a minor female and lives in Cherry Hill, New Jersey with her family, having formerly attended the Clara Barton School.

18. Plaintiff K.G. is, at all relevant times herein, the parent of C.G. and L.G. and brings this action on their behalf.

19. Defendant Cherry Hill Public School District is, at all relevant times herein, a New Jersey public entity and place of public accommodation maintaining a principal place of business at 49 Ranoldo Terrace, Cherry Hill, New Jersey 08034.

20. The district is, at all relevant times herein, the educational entity that each minor plaintiff was utilizing at the time of the events herein.

21. The district is, at all relevant times herein, the employer of all individuals referenced, by name, or otherwise, herein.

22. 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

23. Both minor plaintiffs attended the Clara Barton Elementary School through their elementary school years.

24. The school, and the district which administrates it, are “places of public accommodation,” as that term is utilized by the LAD.

25. Plaintiff C.G.’s tenure at Clara Barton ended after the 2016-2017 school year.

26. Plaintiff L.G.’s tenure ended after the 2017-2018 school year.

27. Upon information and belief, the district and/or the school began, a number of years ago, to maintain what it called a “W.A.T.C.H. Program” at the Clara Barton School.

28. It is not known whether or not this discriminatory program was initiated and/or maintained, at any time herein, at other institutions.

29. Upon information and belief, the W.A.T.C.H. Program was open to fifth grade boys only.

30. The W.A.T.C.H. Program, upon information and belief, was introduced by Principal Sean Sweeney in either 2013 or 2014.

31. The program was built and maintained as a “leadership program for boys.”

32. The description of the program is, by definition, as a matter of fact and of law, openly and blatantly discriminatory, inasmuch as the disposition of the description is that *only* boys deserve training in “leadership.”

33. The program allegedly focused or focuses on “leadership skills, communication skills, being good role models and preparing for middle school.”

34. Once again, these needs are possessed by both male and female students and such training is desired by, and desirable for, both male and female students.

35. There is no statutory, legal, factual, biological or other justification to explain or defend foreclosing such a program to an entire gender of students.

36. The program was “mandatory” for male students and was entirely closed to female students.

37. An uncountable number of female students, since the program began, were foreclosed from obtaining the educational benefits thereof for all of the years since the program began and through and including the present time.

38. All such female students would be under the age of 18 presently and thus all may partake of the legal remedies sought herein.

39. All female students suffered the same loss of opportunity by being denied the opportunity to enjoy the putative benefits of this program.

40. C.G. and L.G. were both denied the opportunity to enjoy the benefits of this program, and have suffered thereby.

41. When there was some inquiry or complaint made by parents of students, either male or female, a “Girls Gab Club” was created to mollify female students and their families.

42. This program was not mandatory, unlike the W.A.T.C.H. Program, and offered no training in leadership, being a good role model, etc., or, in the alternative, offered less of such training, or unequal training to girls.

43. In fact, the very name “Girls Gab” implies a “less than” view of how females communicate, and implies that females simply “gab” with one another, where gab is clearly used in a pejorative sense.

44. All female students deprived of the opportunity to enjoy the benefits of this program have an identical manner by which they have been injured, inasmuch as all are female and therefore foreclosed from the program by virtue of their gender, and have suffered identical loss, inasmuch as each of them has been denied the opportunity to receive the training and/or other benefits of the program.

45. Despite K.G. having contacted the director of pupil services and the Title IX/chief equity compliance officer, LaCoyya Weathington, to voice her concerns about the program, the program was neither discontinued nor remedied, inasmuch as it was not opened to members of both genders.

46. To date, and upon information and belief, the discriminatory program continues to be administered solely for the benefit of boys with either no corresponding program for girls and/or an inadequate and/or inherently discriminatory (on its face) “lesser” option for girls to pursue.

47. A material and/or motivating factor in the denial of the W.A.T.C.H. Program to girls is gender.

48. The construction of the program, notwithstanding subjective intentions of its architects, is such that it is blatantly, intentionally, egregiously and inexcusably discriminatory on its face.

49. The program was created by educational professions in a position of “upper management” such that punitive damages are warranted.

Amended General Allegations

50. This action was commenced in the fall of 2018.

51. Defendants were placed upon notice of the illegality of their conduct in the early summer of 2018.

52. Notwithstanding this Notice, Defendant egregiously and willfully declined to either eliminate the W.A.T.C.H. Program for the coming academic year (2018-2019) or to modify the program so that it was equally accessible to both girls and boys.

53. The Defendants persisted in offering no access to W.A.T.C.H. Program by girls, but did create a program called "Girls, Incorporated" with the idea that the district would provide "separate but equal" program for fifth grade girls at the Clara Barton School.

54. There is no legal, educational, scientific, neurological, sociological or other scientifically viable or data driven reason to create putatively "separate but equal" programs of this nature.

55. Plaintiffs maintain that the W.A.T.C.H. Program continues to be openly, inexplicably, indefensibly and intentionally discriminatory, and that there is no proper foundation for same or any legal defensibility of same.

56. The fifth-grade girls at Clara Barton are also being offered the legally impossible "separate but equal" access to Girls, Incorporated in lieu of W.A.T.C.H. participation.

57. In addition to being legally and otherwise indefensible, as all "separate but equal" programs have been deemed to be by prevailing law over the last sixty years, Plaintiffs also aver that the programs are *actually* not equal, inasmuch as the girls receive an inferior and inadequate training compared to what the boys receive in W.A.T.C.H.

58. The Plaintiffs contend that the fewer resources, and fewer speakers, are devoted to "Girls, Incorporated" than are devoted to W.A.T.C.H.

59. Plaintiffs also aver that any "separate but equal" educational opportunity of this nature, which is not predicated upon any data driven conclusion, is by definition unequal and illegally discriminatory.

60. For these reasons, the Plaintiffs aver that all female students at the Clara Barton School should be included in the putative Class.

COUNT I

Violation of the LAD

61. Plaintiffs hereby repeat and reallege paragraphs 1 through 60, as though fully set forth herein.

62. Plaintiffs contend that they, and all potential members of the class, have suffered harm by way of denial of services at a place of public accommodation, in direct contravention to the LAD, and in intentional and egregious violation thereof, and that damages and equitable remedies are therefore appropriate.

63. The district is responsible for the program because members of "upper management" created and maintained the program, and refused to ameliorate same even when given notice that it was intentionally and inexcusably discriminatory.

WHEREFORE, plaintiffs demand judgment against the defendants jointly, severally and in the alternative, together with legal damages for each plaintiff, punitive damages to be divided amongst all class representatives, attorneys' fees, enhanced attorneys' fees, and the equitable remedies set forth in Count II, hereafter.

COUNT II

Request for Equitable Remedies

64. Plaintiffs hereby repeat and reallege paragraphs 1 through 63, as though fully set forth herein.

65. Plaintiffs request the following legal remedies be imposed upon the defendants in this matter.

66. Firstly, that the "W.A.T.C.H. Program" be reorganized immediately, or as soon as is reasonably practicable, so that it is equally available to both boys and girls, either on a mandatory or non-mandatory basis.

67. Secondly, that attendance and/or participation in the program, whether any "opt-out" option is available to a family, be equal, as between boys and girls.

68. Thirdly, that the same benefits offered by the program are equally made available to both boys and girls, by mechanisms and/or delivery systems and/or professionals as equal as circumstances reasonably allow.

69. Fourthly, that the district be stopped, now and permanently, from altering the program in such a way so as to render it once more in violation of the LAD.

WHEREFORE, plaintiffs demand judgment against the defendants jointly, severally and in the alternative, together with legal damages for each plaintiff, punitive damages to be divided amongst all class representatives, attorneys' fees, enhanced attorneys' fees, and the equitable remedies set forth in Count II.

COSTELLO & MAINS, LLC

Dated: December 17, 2019

By: /s/ Kevin M. Costello
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 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/ Kevin M. Costello
Kevin M. Costello

JURY DEMAND

Plaintiff hereby demands a trial by jury.

COSTELLO & MAINS, LLC

By: /s/ Kevin M. Costello
Kevin M. Costello

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/ Kevin M. Costello
Kevin M. Costello

DESIGNATION OF TRIAL COUNSEL

Kevin M. Costello, Esquire, of the law firm of Costello & Mains, LLC, is hereby-designated trial counsel.

COSTELLO & MAINS, LLC

By: /s/ Kevin M. Costello
Kevin M. Costello