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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0638-16T1

G.A., by his parent and  
guardian L.A.,

Plaintiff-Appellant,

v.

ST. MARY OF THE LAKES SCHOOL  
and THE CATHOLIC DIOCESE OF  
TRENTON,

Defendants-Respondents.

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Submitted November 15, 2017 — Decided December 20, 2017

Before Judges Alvarez, Nugent and Currier.

On appeal from Superior Court of New Jersey,  
Law Division, Burlington County, Docket No.  
L-1189-16

Costello & Mains, LLC, attorney for appellant  
(Deborah L. Mains, on the brief).

Goldberg Segalla, LLP, attorneys for  
respondents (Caroline J. Berdzik, Michael S.  
Katzen and Jonathan A. Amar, on the brief).

PER CURIAM

Plaintiffs appeal from the order that dismissed for failure  
to state a cause of action their complaint alleging defendants

violated the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The complaint alleged two older children bullied the minor plaintiff and subjected the child to serious verbal sexual harassment during three of the years plaintiff attended St. Mary of the Lakes Catholic School.<sup>1</sup> Plaintiffs acknowledge the LAD's definition of places of public accommodation expressly excludes religious educational institutions. Rather than asserting a claim based on discrimination in a place of public accommodation, they make the novel argument that defendants violated an LAD provision that prohibits "any person to refuse to . . . contract with . . . any other person on the basis of . . . sex, gender identity or expression, affectional or sexual orientation." N.J.S.A. 10:5-12(1). The trial court determined plaintiffs' complaint failed to state a cause of action under this LAD provision. We agree and affirm the order dismissing the complaint.

Our review of an order dismissing a complaint under Rule 4:6-2(e) for failure to state a claim upon which relief can be granted is de novo. J.D. v. Davy, 415 N.J. Super. 375, 398 (App. Div. 2010). We apply the same standard as the trial judge. Malik v. Ruttenberg, 398 N.J. Super. 489, 494 (App. Div. 2008). This

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<sup>1</sup> We refer to the minor child as "plaintiff" and to the child and the child's parent and guardian, collectively, as "plaintiffs."

standard requires courts to review a complaint to determine "whether a cause of action is 'suggested' by the facts." Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989) (citation omitted). A court must dismiss a complaint that fails "to articulate a legal basis entitling plaintiff to relief." Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005) (citation omitted).

In the case before us, plaintiffs' first amended complaint alleges the following facts. When he was five years old, plaintiff began attending St. Mary of the Lakes School, which is controlled by the Catholic Diocese of Trenton. Plaintiff's parents contracted with the school and the Diocese in order to have plaintiff attend the school and act as the intended beneficiary of the contract.

Two older students began to verbally harass plaintiff shortly after plaintiff entered the fifth grade. We need not repeat the content of the verbal abuse detailed in the amended complaint. Suffice it to say the verbiage was disturbing, disgusting, and deviant. We accept for purposes of the issues presented on this appeal that the older students' persistent taunting of plaintiff constituted sexual harassment.

Without expressing the precise nature of the abuse, plaintiff told his parents about the bullying. In winter 2014 and spring 2015, one of plaintiff's parents contacted the school principal

and several of plaintiff's sixth grade teachers. The following summer, school personnel told one of plaintiff's parents the school had "counseled" the bullies, and the school would separate them from plaintiff during the upcoming school year. When plaintiff began seventh grade in September 2015, the bullying and verbal sexual harassment continued. Contrary to its assurance to plaintiff's parent, the school did not separate the bullies from plaintiff.

Plaintiff's parents were unable to resolve the issue with the bullies' parents directly. In fall 2015, plaintiff disclosed the sexual nature of the verbal abuse to a psychiatrist. Following this disclosure, one of plaintiff's parents contacted the school principal regarding the sexual nature of the verbal abuse, but the principal did not return the parent's calls and emails. Teachers were also unresponsive to text messages sent directly to them concerning the ongoing bullying. In October 2015, plaintiff's same parent made calls to the Camden Diocese, attempting to contact a responsible Monsignor. In the messages, the parent explained that because the principal was ignoring the issue, the family was turning to the Diocese for help. The Monsignor returned the call, reprimanded the parent for interrupting his "silent retreat," and asked why the parent had expected to "hear back from [him]." When the parent responded the family was on the verge of pulling

plaintiff out of school due to the abuse, the Monsignor replied, "I think it's best if you do leave."

On plaintiff's last day at the school, the principal summoned plaintiff to her office. The principal accused plaintiff of "making all of this up," causing "a lot of trouble for nothing," and making the principal "look bad" in front of her superior, the new Monsignor. The principal asked plaintiff if he had any medical conditions and what medications he was taking. She also asked if plaintiff had been seeing a psychiatrist, and demanded to know what happened at plaintiff's home when his parents got angry.

The principal later told plaintiff's mother she had summoned plaintiff to her office for an "exit interview." The principal had not summoned plaintiff's younger sibling for an exit interview, even though the younger child was also leaving the school.

On appeal, plaintiffs contend the court erroneously dismissed their amended complaint because it stated a cause of action for discrimination during the course of a contract. They assert plaintiff was the intended beneficiary of a contract to provide educational services. They note sexual harassment is a form of discrimination prohibited by the LAD. From these propositions, they reason that sexual harassment of a contract's intended beneficiary violates the LAD's prohibition against refusing to

contract with a person based on that person's gender identity or expression, or affectional or sexual orientation.

Plaintiffs recognize that the LAD's definition of "place of public accommodation" excludes bona fide religious educational institutions. They assert this "limited" exception has no bearing on the LAD's prohibition against refusing to contract with a person who falls within a protected class.

Defendants respond that plaintiffs' proposed construction of the LAD would effectively nullify the exception to places of public accommodation for bona fide religious educational institutions. Defendants further respond that plaintiff is unable as a matter of law to demonstrate he had an actionable contract with them.

The LAD prohibits discrimination in many forms and in many places, including places of public accommodation. Thus, it is unlawful:

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 race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy, sex, gender identity or expression, affectional or sexual orientation, disability or nationality of such person . . . .

[N.J.S.A. 10:5-12(f)(1).]

The LAD defines "place of public accommodation" to include "any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education or the Commissioner of Education of the State of New Jersey." N.J.S.A. 10:5-5(1). The definition expressly excludes "any educational facility operated or maintained by a bona fide religious or sectarian institution." Ibid. Parochial schools such as the Catholic school in this case are thus exempt from liability under N.J.S.A. 10:5-12(f)(1).

A school falling within the definition of a place of public accommodation could be found to violate the LAD based on bullying by its students. The Legislature has declared:

[A] safe and civil environment in school is necessary for students to learn and achieve high academic standards; harassment, intimidation or bullying . . . is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment . . . .

[N.J.S.A. 18A:37-13.]

A cause of action thus exists under the LAD "for student-on-student harassment based on an individual's perceived sexual orientation if the school district's failure to reasonably address that harassment has the effect of denying to that student any of a

school's 'accommodations, advantages, facilities or privileges.'" L.W. v. Toms River Reg'l Sch. Bd. of Educ., 189 N.J. 381, 402 (2007) (quoting N.J.S.A. 10:5-12(f)(1)).

Unlike N.J.S.A. 10:5-12(f)(1), which prohibits both direct and indirect discrimination in places of public accommodation, the plain language of N.J.S.A. 10:5-12(1) makes it unlawful for one person "to refuse to . . . contract with" another based on the latter's "sex, gender identity or expression, affectional or sexual orientation." Here, defendants did not refuse to contract with plaintiff. Plaintiffs' complaint thus fails to state a cause of action under the statute's plain language.

Moreover, we agree entirely with the trial judge, Janet Z. Smith, J.S.C., that plaintiffs' strained interpretation of N.J.S.A. 10:5-12(1) would render meaningless the explicit exemption for parochial schools from the LAD's definition of a place of public accommodation. The Legislature certainly did not intend to render meaningless a section of the LAD.

Plaintiffs' remaining arguments are without sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION