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Attorneys for Plaintiff, Nancy Wadington

-----	x	SUPERIOR COURT OF NEW JERSEY
NANCY WADINGTON,	:	LAW DIVISION: MONMOUTH COUNTY
	:	
Plaintiff,	:	DOCKET NO.
	:	
v.	:	Civil Action
	:	
HOLMDEL TOWNSHIP BOARD OF	:	
EDUCATION,	:	
	:	COMPLAINT AND
Defendant.	:	<u>JURY DEMAND</u>
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Plaintiff, Nancy Wadington (“Nancy”), a New Jersey citizen whose permanent residence is 742 Holmdel Road, Holmdel, New Jersey 07733, complains of Defendant, Holmdel Township Board of Education, as follows:

Summary of the Action

1. This is an action for compensatory damages and equitable relief under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. The action arises out of the denial to a young person of her right, under the New Jersey Law Against Discrimination, to get a sound education at her local community high school, free of harassment and abuse based on her sexual orientation. For years, students in the Holmdel High School harassed and abused plaintiff, Nancy Wadington, because she is a lesbian. Although the school administration knew, or should have known, about the harassment and abuse, they refused to take effective action to stop it. As a result, the abuse escalated to the point at which Nancy’s physical safety was imperiled. At that point, the school administrators concluded that, for her own safety, they had to remove Nancy from Holmdel High School altogether, first to be educated at home and then to be transferred to another high school. These last measures evidenced the fact that the school administration not only had failed to take effective measures reasonably calculated, in light of the known circumstances, to stop the harassment of Nancy, but also that the environment at Holmdel High School had become so hostile and abusive that she could not enjoy her right to an education there.

2. Nancy suffered physical and emotional injury—including emotional distress and humiliation—as a proximate result of Defendant’s acts. By this action, Nancy seeks substantial compensatory damages for those injuries, together with costs and reasonable attorney’s fees in gaining that compensation and vindicating her rights.

3. During the time Nancy attended Holmdel High School, the Holmdel Township Board of Education and the school administration, acting under the Board’s direction and control, failed to have in place well-publicized and enforced policies against student-on-student harassment based upon sexual orientation, effective formal and informal complaint structures, or adequate training and/or monitoring mechanisms dealing with such harassment. These failures allowed a hostile environment to develop at Holmdel High School and ultimately contributed to the injuries that Nancy suffered. Nancy also understands and believes that, to this day, the Holmdel Board of Education still has not put the appropriate anti-harassment policies and procedures in place at Holmdel High School. Accordingly, Nancy respectfully requests, pursuant to the New Jersey Law Against Discrimination, that the Court grant appropriate equitable relief, including the entry of orders requiring the Holmdel Board of Education to implement and enforce policies and procedures adequate to remedy its systemic failure to address and end anti-gay discrimination and student-on-student abuse. Although the Holmdel Township Board of Education is charged with the solemn responsibility of educating youth within the Holmdel School District and has the unyielding legal duty of protecting those young people in its care, its actions in Nancy’s case show that Board itself requires

education in the requirements of the New Jersey Law Against Discrimination lest other students suffer the injuries of the kind inflicted on Nancy Wadington.

The Parties

4. At all relevant times, Plaintiff, Nancy Wadington (“Nancy” or “Plaintiff”), a citizen and resident of New Jersey, was a student enrolled at and attending the public schools operated and under the supervision of the Holmdel Township Board of Education, including the Holmdel High School.

5. Defendant, Holmdel Township Board of Education (“Defendant”), at Crawford’s Corner Road, Holmdel, New Jersey 07733 in the Township of Holmdel, Monmouth County, New Jersey, operates the Holmdel High School.

Venue

6. Venue is proper in the Superior Court of Monmouth County, New Jersey, pursuant to R. 4:3-2(a), because the cause of action arose in Monmouth County.

Acts giving rise to the Complaint

7. Nancy is a lesbian. She enrolled in Holmdel High School in the ninth grade in the fall of 2001. Almost immediately, several students identified Nancy as a lesbian and began verbally harassing and physically abusing Nancy because of her sexual orientation. Beginning in or around October 2001, students began verbally abusing Nancy based on her sexual orientation in all areas of the school campus, including in the classrooms during instructional time and in the school’s bathrooms. That verbal abuse included use of the epithets “dyke,” “lesbo,” and “fag,” and continued throughout the

year. Often accompanying their verbal abuse with physical abuse, students pelted Nancy with candy, bottles and other objects. This usually occurred several times per week as Nancy walked through the school cafeteria (an area known as “the Commons”). In one of those incidents, in or about November 2001, a student threw a bottle at Nancy as she walked through the Commons, called her epithets that included “dyke,” “lesbo,” and “fag,” and told Nancy that she should “walk where I want you to walk.”

8. Nancy reported the unrelenting verbal harassment and one of the bottle-throwing incidents to appropriate school personnel, agents and employees of the Holmdel Board of Education. In addition, Nancy’s mother made repeated calls to the school and requested that school officials protect Nancy from the harassment and abuse. However, the Defendant, through the administrators, teachers, and guidance counselors of Holmdel High School, failed to take effective measures to stop the harassment or physical abuse.

9. The harassment and physical abuse continued unabated into spring of 2002 and the second half of Nancy’s ninth grade. At that time, Nancy met with school administrators to complain about the ongoing harassment she was enduring. Again, school officials took no effective measures in response.

10. Later in the spring of her ninth grade, Nancy’s personal property was stolen and destroyed on the school campus. Her backpack, which contained many of her schoolbooks, was later found in one of the boys’ bathrooms covered in urine, inside and out. Nancy reported the incident to school administrators, who claimed that nothing could be done.

11. Not long thereafter, Nancy emerged from a classroom to find that her locker had been broken into and her belongings, including schoolbooks, scattered around a school hallway. Some books had been spat on and otherwise damaged. When Nancy reported this incident, school administrators once again told her that nothing could be done. Instead school administrators charged Nancy for the books that had been destroyed and refused to issue report cards to Nancy unless and until she paid for the books.

12. In the course of trying to cope with an increasingly abusive school environment in ninth grade, Nancy began to seek ways to navigate the school so as to avoid those students who were harassing and abusing her, often going out of her way so that she could be marginally more emotionally and physically safe. Nancy also took all of her schoolbooks out of her locker and carried them around with her so that they would not be stolen or damaged, and she experienced severe back pain during this period. In the classroom, where Nancy had no choice but to be present and remain present, she constantly worried about what would be said to her, or worse yet done to her—especially from behind—and her ability to focus on the classroom tasks, and thus to obtain a sound education, deteriorated.

13. The relentless harassment and physical abuse of Nancy based on her sexual orientation continued unabated in her tenth grade at Holmdel High School. Nancy's complaints to school personnel also continued and included a request that her lunch hour be changed so that it coincided with the lunch hour of some friends whose presence might help create a more emotionally safe climate for Nancy, if school officials

would not otherwise ensure such an environment. Not surprisingly, because school personnel failed to address the source of the problem and instead changed Nancy's schedule, students continued to harass Nancy.

14. During one of the incidents in tenth grade, when a friend of Nancy's responded to an anti-gay epithet aimed at Nancy, the abusive students explicitly threatened Nancy, stating to her: "You deserve the shit that you get," and, "I'm going to beat your ass." Nancy reported this incident to school administrators, who failed to take effective steps to stop the harassment, limiting the response to merely a verbal warning to just one of the abusive students.

15. Also during the tenth grade, in a striking example of the isolation Nancy suffered at Holmdel High School and the degree to which the abuse had become physical, students pushed Nancy down a set of stairs during gym class. Nancy twisted her ankle and could not walk. Not one student, out of about twenty-five in the class, offered to help her as she lay on the floor. Nancy reported the incident to her gym teacher, whose only response was to send her to the school nurse.

16. Throughout tenth grade, Nancy's mother continued to plead with school personnel to protect her daughter from harassment and abuse. But school officials took no effective steps to stop the harassment and abuse of Nancy, leaving Nancy with the burden of finding her own ways to cope and her own approaches to manage getting through each day. For Nancy, each and every day at Holmdel High School became one of fear and humiliation.

17. By the end of tenth grade, Nancy had stopped using the school bathrooms, except in rare instances where she could be certain no other students would be present, because of fears for her emotional and physical safety. She restricted herself to using the bathroom before she left for school and then only after she returned home. This meant she had to find ways to forego using the bathroom for hours at a time, often developing abdominal pain during school as a result.

18. Based on the same fears of being harassed, Nancy also stopped using the girls' locker room facilities. Instead, she wore gym attire to school, or underneath her clothing so that she could change in the gymnasium rather than the locker room. In addition, in order to feel safer, Nancy developed a complex map for negotiating the school campus in order to avoid abusive students. In trying to get from class to class on time, she often had to take a much longer route. At times, even in rainy or bitterly cold weather, Nancy had to leave the school building altogether and quickly walk the perimeter to another entrance instead of merely walking down a hall from one classroom to the next.

19. Nancy's mother continued to contact the school demanding that school officials protect her child from harassment and abuse of other students. Despite their knowledge of the ongoing harassment, school officials failed to take effective action to stop the harassment.

20. The relentless harassment and physical abuse of Nancy based on her sexual orientation also continued unabated into the eleventh grade at Holmdel High

School, the year in which Nancy was driven out of the school altogether. The verbal epithets of “lesbo,” “dyke,” and “fag” were constant, as were Nancy’s fears, including during instructional time in the classroom. Students again stole Nancy’s backpack, and when it was found the pack and books were ruined by a red liquid.

21. By the spring term of her eleventh grade, in early 2004, the danger to Nancy’s emotional and physical well-being was such that a Counselor at the YMCA Community Services intervened with school administrators. Two meetings occurred in March 2004. The school administrators and staff responded not by taking meaningful and effective steps to stop the harassment and abuse of Nancy, but instead by placing Nancy on home instruction, treating her, rather than the abusive students, as the problem. Soon thereafter, the school district classified Nancy as “emotionally disturbed,” making her eligible for special education services.

22. The Holmdel Board of Education’s own records confirm the Defendant’s violations of Nancy’s rights and document some of the injuries she sustained as a result, such as in this evaluation of Nancy’s experience in junior year at Holmdel High School:

This past year has been difficult for Nancy since she has suffered from panic attacks and an acute stress disorder due to continual harassment at Holmdel high school from her peers. . . . She is being harassed and teased at school because of her sexual orientation and as a result has been experiencing high levels of anxiety She has had verbal and physical threats made against her by her peers. She reports telling her teachers and school administration but she feels they have not followed up on these issues.

23. Based in part on Defendant’s classification of Nancy as “emotionally disturbed,” she was transferred to Collier High School, which had services for special

needs students. Nancy completed her last year of high school at Collier High School, without experiencing anti-gay harassment and abuse and in an environment that allowed her to focus as well as she could on learning. She was able to improve on her educational performance over the prior three years of abuse, but did so without enjoying her right to the safe and sound high school education to which all young people in New Jersey are entitled, without discrimination. As a direct and proximate result of Defendant's conduct, Nancy was denied the high school experience that others cherish, deprived of the sound education to best prepare her for a future, and forced to suffer terrible injury to her emotional and physical well-being.

Cause of Action

For Violation of the New Jersey Law Against Discrimination

24. Plaintiff repeats and realleges the foregoing allegations of this Complaint.

25. By reason of the facts and circumstances set forth above, Nancy was discriminated against, harassed, and physically abused at Holmdel High School because of her sexual orientation.

26. The harassment and abuse of Nancy was so severe and pervasive that any reasonable gay student—indeed, any reasonable student—would find the school environment hostile or abusive.

27. Although Defendant knew or should have known of the harassment and physical abuse suffered by Nancy, and the hostile and abusive environment based on sexual orientation that it created, Defendant failed to take any effective measures to stop

the harassment or abuse and to prevent it from happening again, in violation of the New Jersey Law Against Discrimination.

28. As a direct and proximate result of Defendant's aforesaid violations of the New Jersey Law Against Discrimination, Nancy suffered injury, including, without limitation, serious emotional injury, mental anguish, distress, humiliation, and indignity.

Prayer for Relief

WHEREFORE, Plaintiff, Nancy Wadington, demands judgment against Defendant, the Holmdel Township Board of Education, as follows:

- (i) awarding equitable remedies, as provided for in civil actions under the New Jersey Law Against Discrimination, that will effectuate the purpose of the Act to eliminate sexual orientation discrimination with application to Holmdel High School;
- (ii) awarding Plaintiff compensatory damages;
- (iii) awarding Plaintiff reasonable attorneys' fees;
- (iv) awarding costs of the within action to Plaintiff;
- (v) prejudgment and postjudgment interest on all amounts claimed, and

(vi) awarding such other relief as the Court deems proper and just.

Dated: September 6, 2005

Respectfully submitted,

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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Attorneys for Plaintiff, Nancy Wadington

JURY DEMAND

Plaintiff, Nancy Wadington, hereby demands, pursuant to R. 4:35-1, trial by jury
of all issues so triable.

Dated: September 6, 2005

Robert J. Del Tufo

One of the attorneys for Plaintiff, Nancy Wadington

CERTIFICATION PURSUANT TO R. 4:5-1

I hereby certify that the matter in controversy is not the subject of any other action pending in any court or pending arbitration proceeding. I further certify that I have no knowledge of any contemplated action or arbitration proceeding regarding the subject matter of this action and that I am not aware of any other parties who should join this action.

Dated: September 6, 2005

Robert J. Del Tufo

One of the attorneys for Plaintiff, Nancy Wadington