

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2016CP2172
)	EEOC NO.: N/A
C.Y., (MINOR) BY TRACY &)	ALS NO.: 17-0067
MICHAEL YATES (PARENTS))	
Petitioner.)	

ORDER

This matter coming before the Commission on July 10, 2019 by a panel of three, Commissioners Michael Bigger, Cheryl Mainor, and Robert A. Cantone presiding, upon C.Y. (Minor) by Tracy & Michael Yates' (Parents) ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2016CP2172 and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

- A) The Respondent's dismissal of **Count A** of the Petitioner's charge is **VACATED** and **REMANDED** to Respondent for a finding of **SUBSTANTIAL EVIDENCE** and for further proceedings consistent with this Order and the Act.**
- B) The Respondent's dismissal of **Counts B and C** of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.**

DISCUSSION

On March 24, 2016, the Petitioner filed a perfected charge of discrimination with the Respondent, alleging that Lake Park Community High School District No. 108 (the "District"), as the operator of a place of public accommodation, denied the Petitioner full and equal access to its facilities because of his sexual orientation (gender-related identity, transgender male) (Count A) and his mental disability (gender dysphoria) (Count B); and failed to accommodate his mental disability (Count C), in violation of Section 5-102(A) of the Illinois Human Rights Act ("Act"). On December 12, 2016, the Respondent dismissed

¹ In a request for review proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Illinois Department of Human Rights's action shall be referred to as the "Petitioner."

the Petitioner's charge for Lack of Substantial Evidence. The Petitioner filed a timely Request.

The Commission concludes the Respondent improperly dismissed Count A of the Petitioner's charge for Lack of Substantial Evidence. The Commission further concludes the Respondent properly dismissed Counts B and C of the Petitioner's charge for Lack of Substantial Evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

In the instant case, the Petitioner, a public high school student, alleges that on January 7, 2016 and continuing through March 23, 2016, the District denied him the full and equal enjoyment of its facility because of his sexual orientation and mental disability in that the District required the Petitioner to change his clothes behind a privacy curtain in the boys' locker room, while non-transgender, non-disabled boys were not required to change behind a privacy curtain. The Petitioner further alleges that on January 7, 2016, and continuing through March 23, 2016, the District failed to accommodate his mental disability in that the District did not allow him the same access to its boys' locker facilities that it offered non-disabled boys.

The District maintains it did not deny the Petitioner full and equal enjoyment of its facility based on the Petitioner's sexual orientation or mental disability and denies it failed to make a reasonable accommodation for the Petitioner's mental disability. The District maintains the Petitioner was eventually allowed equal access of the boys' locker room and that the Petitioner was not required to use a privacy curtain when changing clothes. The District further maintains the Petitioner failed to provide any medical documentation during the relevant timeframe regarding the Petitioner's disability diagnosis or any requested reasonable accommodation.

Count A: Denial of full and equal access of the District's facility based on sexual orientation:

The Commission concludes there was substantial evidence the Petitioner was denied the full and equal access of the District's facility based on his sexual orientation. There are two methods for proving discrimination, direct and indirect. Sola v. Illinois Human Rights Commission, 316 Ill.App.3d 528, 736 N.E.2d 1150 (1st Dist. 2000). Under the direct approach, the Petitioner must present sufficient evidence, direct or circumstantial, without reliance upon inference or presumption, to allow a trier of fact to decide that his sexual

related identity was a motivating factor in the District's alleged adverse act. Id. Once the Petitioner establishes a *prima facie* case of discrimination using direct evidence, "the burden shifts to the respondent to prove by a preponderance of the evidence it would have made the same adverse decision even if the complainant's [protected status] had not been considered." See In the Matter of: Jean Wood and Marvin Keller Trucking, Inc., Charge No. 2004SA3451, 2008 WL 5622603, *8 (Dec. 30, 2008). Additionally, where there is direct evidence of discrimination, it is unnecessary to use the three-part analysis. Catherine Littlejohn and Wal-Mart Stores, IHRC, ALS No. 9929, November 4, 2009.

Here, the Petitioner has established through direct evidence he was denied full and equal access to the boys' locker room based on his sexual orientation. To be sure, the District's sole motivation in mandating that the Petitioner use a privacy curtain to change while using the boys' locker room was rooted in the Petitioner's gender-related identity, a transgender male. The evidence established the District granted the Petitioner access to use the boys' locker room but mandated he use a privacy curtain while changing, a caveat objected to by the Petitioner and one to which non-transgender males were not subjected. The District's mandating that the Petitioner use a privacy curtain when changing clothes in the boys' locker room is an adverse act and subjects him to different terms and conditions than similarly situated non-transgender males.

While the District relies upon a settlement agreement of a comparable discrimination claim at a local school district as its articulated legitimate, non-discriminatory reason for mandating that the Petitioner use a privacy curtain when changing clothes in the boys' locker room, the District's actions resulted in segregating the Petitioner based solely on his gender related identity. The District has not provided any evidence that non-transgender males were subjected to a mandatory limitation requiring privacy curtain usage in the boys' locker room. Therefore, based on the District's substantial reliance upon this prohibited factor, the District is unable to prove by a preponderance of the evidence it would have made the same adverse decision even if the Petitioner's sexual orientation had not been considered. Thus, the Commission concludes substantial evidence exists the Petitioner was denied full and equal access of the District's facility.

Count B: Denial of full and equal access of the District's facility based on a disability:

The Commission further concludes there was insufficient evidence to establish a *prima facie* case the Petitioner was denied full and equal access to the boys' locker room based on a disability. To prove his case of disability discrimination, the Petitioner must show that: 1) he is in a protected class; 2) he was denied the full enjoyment of Respondent's facilities and services; and 3) others not within his protected class were given full enjoyment of those facilities. In re Walter Henry, Jr. and TCF National Bank of

Illinois, Charge No. 1999CP0242, 2003 WL 24045369, *3 (April 28, 2003). Once the *prima facie* case has been established, the burden shifts to the Employer to articulate a legitimate, non-discriminatory reason for its actions. Then, to prevail, the Petitioner must prove that the Employer's proffered reason is a pretext for unlawful discrimination. McDonnell-Douglas Corp v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1913).

Here, while the Commission concedes gender dysphoria qualifies as a disability under the Act, the Petitioner has presented insufficient evidence the District was made aware of the Petitioner's disability. Under the Rules of the Illinois Human Rights Commission, "it is the burden of the person claiming the disability to establish that the condition results from disease, injury, congenital condition of birth or functional disorder." 56 Ill. Admin. Code, Ch. II, § 2500.20 (c). In the instant case, the evidence showed the Petitioner and the District first began discussions regarding the Petitioner using the boys' locker room in November 2015. The Petitioner alleges that, despite working with the District over the course of several months, as of March 23, 2016, the District insisted the Petitioner would only be allowed access to the boys' locker room on the condition he use a privacy curtain when changing. The Petitioner then began using the boys' locker room beginning in April 2016. However, the evidence showed the Petitioner did not provide the District with any medical documentation regarding the Petitioner's gender dysphoria diagnosis until on or around April 20, 2016 when the family provided the District with documents in support of the Petitioner's athletic eligibility request with the Illinois High School Association.

The Petitioner concedes the District requested a medical records release in February 2016 regarding his mental health status, which was refused. Additionally, the District maintains once it received medical documentation regarding the Petitioner's gender dysphoria diagnosis in April 2016, it promptly initiated the process for evaluating the Petitioner. However, the Petitioner refused to provide consent for an evaluation despite understanding that, without such evaluation, the Petitioner would not qualify for services afforded to disabled students. While it is clear the District was made aware of and recognized the Petitioner's transgender status, the evidence does not establish the District was aware of or informed of the Petitioner's gender dysphoria disability in the relevant timeframe. As not all transgender people have gender dysphoria, it is the Petitioner's burden to establish he suffers from a gender dysphoria disability. Because the Petitioner did not provide the District with sufficient evidence to establish his gender dysphoria disability, he cannot establish a *prima facie* case of disability discrimination.

Count C: Failure to accommodate based on a disability:

Additionally, the Commission finds the evidence insufficient to establish a *prima facie* case of failure to accommodate based on a disability. Generally, in the

employment context, to establish a *prima facie* case of failure to accommodate a disability, there must be evidence that: 1) the Petitioner is disabled within the meaning of the Act; 2) the District had knowledge of the Petitioner's disability; 3) the Petitioner requested a reasonable accommodation; 4) the District failed to accommodate the Petitioner; and 5) with or without a reasonable accommodation, the Petitioner could perform the essential functions of the job. See Illinois Department of Corrections v. Illinois Human Rights Commission, 298 Ill.App.3d 536, 540, 699 N.E.2d 143, 145-146 (3rd Dist. 1998) *citing* Truger v. Department of Human Rights, 293 Ill. App.3d 851, 859, 688 N.E.2d 1209, 1213 (2nd Dist. 1997). Additionally, once the Petitioner has initiated an appropriate request, the parties must participate in an "interactive process" to determine whether the accommodation request is reasonable or appropriate. 56 Ill. Admin. Code 2400.40(c), 2400.40(d); In re: Request for Review by Star S. Mitchell, IHRC, ALS. No. 11-0617, 2014 WL 12852802 (Aug. 10, 2014). Moreover, the Petitioner seeking an accommodation bears the duty to apprise the employer of his condition, show the accommodation is necessary, submit any necessary medical documentation, and cooperate in discussion and evaluation aimed at determining the possible or feasible accommodations. See 56 Ill. Admin. Code 2400.40(c), 2400.40(d); Truger, 293 Ill. App. 3d 851, 859.

Here, the Petitioner failed to establish the second and third elements of his *prima facie* case. As discussed above, the Petitioner failed to establish the District had knowledge of the Petitioner's gender dysphoria diagnosis until after the Petitioner began accessing the boys' locker room. Additionally, the evidence is clear the Petitioner did not request a reasonable accommodation as the evidence established the Petitioner's parents were clear they did not wish the Petitioner to have a 504 accommodation plan (which would describe any accommodations) for a disability related to his gender identity. There is no evidence the Petitioner engaged in an "interactive process" with the District at any point to determine whether any accommodation request was reasonable or appropriate. Furthermore, there is no evidence to show the Petitioner submitted the necessary medical documentation or cooperated in discussion and evaluation aimed at determining the possible or feasible accommodations. As such, the Petitioner is unable to show substantial evidence the District failed to accommodate him based on his disability.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Respondent's dismissal of **Count A** of the Petitioner's charge is **VACATED** and **REMANDED** to Respondent for a finding of **SUBSTANTIAL EVIDENCE** and for further proceedings consistent with this Order and the Act.
2. The Respondent's dismissal of **Counts B and C** of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.
3. This Order is not yet final and appealable.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

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Entered this 15th day of July 2019

Commissioner Michael Bigger



Commissioner Cheryl Mainor



Commissioner Robert A. Cantone



STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

ALS NO(S): 17-0067
CHARGE NO(S): 2016CP2172
EEOC NO(S): N/A
CASE NAME(S): Caden Yates (Minor) by Tracy &
Michael Yates (Parents) v. Lake
Park Community High School
District #108

AFFIDAVIT OF SERVICE

Shantelle Baker, being first duly sworn, on oath states that on **July 15, 2019**, she served a copy of the attached **ORDER** on each person named below by depositing the same in the **U.S. Mail Box** at **100 W. Randolph Street, Chicago, Illinois 60601**, properly posted for **First Class Mail**, addressed as follows:

Colby A. Kingsbury
Faegre Baker Daniels
311 S. Wacker Drive, Suite 4300
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Caroline Roselli
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John A. Knight
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Hand Delivered to:

Betsey M. Madden
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100 West Randolph Street, Suite 10-100
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Case Disposition Unit
Illinois Department of Human Rights
100 West Randolph Street, Suite 10-100
Chicago, IL 60601

Subscribed and sworn to

before me on July 15, 2019

[Redacted Signature]

[Redacted Signature]

NOTARY PUBLIC

