



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

EDU16-0274

January 9, 2018

Michael Greene o/b/o minor child (Windham)

v.

Friends School of Portland (Cumberland Foreside)

Summary of Case:

Complainant Michael Greene o/b/o minor child alleged that Respondent Friends School of Portland, a private school, discriminated against Complainant on the basis of disability by refusing to accommodate his daughter's ("Daughter") disability during the admissions process. Respondent denied discrimination and stated the accommodation it offered complied with the medical restrictions provided. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties and requesting additional information from Complainant. Based upon this information, the Investigator recommends that there are reasonable grounds to believe that Respondent discriminated against Complainant on the basis of disability.

Jurisdictional Data:

- 1) Dates of alleged discrimination: 2/24/2016.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): 5/31/2016.
- 3) Respondent is an educational institution and is subject to the Maine Human Rights Act ("MHRA"), as well as state educational regulations.
- 4) Complainant is not represented by counsel. Respondent is represented by Matthew S. Raynes, Esq.

IV. Development of Facts:

- 1) Complainant provided the following in support of his claims:

Daughter has ██████ to furred animals. The family attended an open house at Respondent's school and were told that the school did not keep any animals. Two days before Daughter was scheduled to attend a required visit with Respondent's teachers, her parents were notified that there were two guinea pigs in one of the classrooms. Complainant asked for a reasonable accommodation of having the animals be removed from school on the day of the visit, but Respondent refused, claiming that this would be too

difficult. Complainant decided Daughter would not visit or pursue admission to the school because doing so would put her health at risk.

2) Respondent provided the following in support of its position:

Daughter's application stated that she was [REDACTED] to rabbits and needed to avoid furred animals, especially indoors. Complainant was assured that Daughter's visit would not include going to the wing of the school where the guinea pigs were kept, and that children in that classroom would not handle the animals on that day. The guinea pigs were part of a project teaching students how to care for developing animals. Bringing them to and from the teacher's home in February would have exposed them to the cold. The accommodation Respondent offered met Daughter's doctor's recommendation.

3) The Investigator made the following findings of fact:

- a) In 2013, a doctor wrote a letter confirming Daughter had tested positive for [REDACTED]. The doctor further wrote "[w]hile there has not been a history of serious reactions to animals in this patient, there is a strong familial history of such" and recommended avoidance of [REDACTED] in home and school environments. The doctor stated, "Animals should be excluded from the school as you are already doing. We cannot provide reassurance that this patient will not experience [REDACTED] symptoms with animal exposure."³ Complainant did not provide Respondent a copy of this letter during the admission process.
- b) Complainant wrote on Daughter's school application that she "has a potentially life-threatening [REDACTED] to rabbits," that she had a demonstrated [REDACTED] to dogs, and that her doctor recommended she "avoid contact with furred mammals, especially in an indoor environment."
- c) In October 2015, Complainant and his family attended an open house at Respondent's school and asked a teacher if there were any animals in the school. Complainant's family was told there were not any at that time, although two classes did have fish in tanks. Afterward, Daughter submitted an application.
- d) Respondent had previously had other animals in the school, including chicks, guinea pigs, fish, birds, hamsters, an occasional visiting pet from a student's home, and a yearly school-wide assembly with an animal handler. Complainant and Respondent's Admissions Director discussed that Daughter could be excused from school early on the day the animal handler was scheduled. Complainant was unaware that the school previously had other animals in the classroom aside from animal handler's annual visit, although Respondent's Admissions Director claimed she did inform the parents that the school did have classroom pets (chicks, parakeets, and fish) in the past during their discussion about the animal handler.
- e) Respondent's application process included a required visit for assessments and interaction with teachers.
- f) Complainant was notified two days prior to Daughter's visit that there were two guinea pigs present in the kindergarten classroom, which is at the end of a hallway on the first floor of the school building. Complainant's visit would have taken place on the second floor of the school, where older students had class, although she would need to go to the first floor for a physical education class, which was approximately 80 feet from the classroom containing the guinea pigs.

³ [REDACTED] is defined as a "severe, potentially life-threatening [REDACTED]" that can cause a body to go into shock, which can be fatal if untreated.

- g) Complainant requested that the animals be removed from the school on the day of the visit.
- h) Respondent refused, claiming that this would be too difficult. Respondent's asserted reasons for not agreeing to remove the animals on the day of Daughter's visit were that the baby guinea pigs had only just arrived at the school days earlier, that the kindergarten class had already shifted its learning focus to these animals, and that it would "not have been ideal" for the animals to be transported to and from the teachers' home by car due to the cold weather in February. Respondent assured Complainant that Daughter's visit would not include going to the wing of the school where the guinea pigs were kept, and that children in that classroom would not handle the animals on that day.
- i) Complainant informed Respondent that Daughter's doctor could not provide a safe level of exposure to ██████████ for Daughter and recommended that she not be indoors with furred animals, but Respondent believed that the accommodation it offered met Daughter's medical needs.
- j) Respondent told Complainant that if Daughter did not visit the school within the next 10 days she would not be considered for admission.
- k) On 2/24/2016, Complainant's wife sent an email to Respondent's Admissions Director again requesting that the animals be removed from the school for the day of Daughter's visit. The wife wrote that, "As a trained medical professional,⁴ I cannot allow you to dictate what is medically acceptable."

V. Analysis:

- 1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 Maine Revised Statutes ("M.R.S.") § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA prohibits discrimination on the basis of physical or mental disability in academic programs. 5 M.R.S. § 4602. Under the MHRA, it is unlawful to exclude anyone from participation in educational programs or deny admission to anyone on the basis of physical or mental disability. 5 M.R.S. § 4602(2)(A), (C). This means that educational programs must make reasonable accommodations for individuals with disabilities.⁵
- 3) To establish a denial of reasonable accommodation, Complainant must show that:
 - (1) Daughter comes within the protections of the MHRA as a person with a disability;
 - (2) Respondent operates a covered educational program under the MHRA;
 - (3) Respondent has in effect a policy, practice, or procedure that, directly or indirectly because of Daughter's disability, results in Daughter's inability to participate in its educational program;
 - (4) Complainant requested a reasonable modification in that policy, practice, or procedure which, if granted, would have afforded Daughter access to Respondent's program;

⁴ Complainant's wife is an orthodontist.

⁵ Complainant alleged both denial of a reasonable accommodation and denial of the ability to complete Respondent's application process. Since the denial of the ability to complete the application process rises and falls with the reasonable accommodation request, only the reasonable accommodation claim is fully analyzed here.

- (5) The requested modification—or a modification like it—was necessary to afford that access; and
- (6) The Respondent nonetheless refused to modify the policy, practice, or procedure.

See Dudley v. Hannaford Bros. Co., 333 F.3d 299, 307 (1st Cir. 2003).⁶

- 4) In proving that a modification is “reasonable,” Complainant must show that, at least on the face of things, it is feasible for the public accommodation under the circumstances. *See Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001) (employment case).
- 5) Upon such a showing, Respondent must make the modification unless it proves that doing so would alter the fundamental nature of its program or would impose an undue financial burden, or that the requested modification would pose a direct threat to the health or safety of others. *See Maine Human Rights Com'n v. City of South Portland*, 508 A.2d 948, 955 (Me. 1986); *Dudley v. Hannaford Bros. Co.*, 333 F.3d at 308; *Halpern v. Wake Forest University Health Sciences*, 669 F.3d 454, 464 (4th Cir. 2012).
- 6) Under the particular circumstances of this case, Complainant has established that Daughter was denied a reasonable accommodation, which resulted in her inability to complete Respondent's application process, with reasoning as follows:
 - a. Daughter has ██████ to furred animals, which, according to her doctor, are potentially life-threatening. The doctor stated that she “cannot provide reassurance that this patient will not experience ██████ or ██████ symptoms with animal exposure” and stated that her school should exclude animals. Although Daughter's ██████ were apparently under control most of the time, an episodic condition can qualify as a disability if it would substantially limit a major life activity when active. In this case, Daughter's doctor specifically noted that an undetermined level of ██████ ██████ could possibly lead to ██████ and ██████ symptoms, if a severe reaction did occur. Under these circumstances, it is found that Complainant's condition might qualify as a disability under the MHRA, particularly based upon the state law's similarity and adherence to federal disability law.
 - b. Respondent asserted that its proposed accommodation (no exposure to the animals, and children not handling them on the day of the visit) was in full compliance with the information Complainant provided about Daughter's ██████ in the application, specifically that her doctor recommended she “avoid *contact*, with furred mammals.” However, Complainant expressed additional concerns about Daughter's safety even with Respondent's proposed accommodation, presumably based upon Daughter's parents' own personal knowledge of her condition, including discussions with doctors about the severity of her condition and how to keep her safe. While Respondent had not been given the earlier note recommending that “animals should be excluded from the school,” Complainant was aware of it, and his insistence on the removal of the guinea pigs was based on it. Respondent refused to consider this accommodation.
 - c. Clearly the ideal situation would have been to discuss Respondent's proposed accommodation with Daughter's doctor and have the doctor express a medical opinion about whether it would suffice. Unfortunately, the animals did not arise as an issue until just two days before Daughter's scheduled visit to the school, and 10 days prior to Respondent making admission decisions for the next semester.
 - d. In this case, Complainant requested the accommodation of removing two guinea pigs from Respondent's building for the day of Daughter's scheduled visit. This would have been a request for a one-day

⁶ This analysis is taken from public accommodations cases, but is equally applicable here.

modification of Respondent's practice of using animals in the classroom to teach children how to care for them. Complainant met his burden of showing that this modification of practice was "reasonable" given that it was requested for just a single day, it involved no more than leaving the animals at the teacher's house on the day of the visit, and it arguably lessened the chance of a potentially dangerous [REDACTED] reaction by Daughter.

e. Respondent did not show that removing the animals for the day would alter the fundamental nature of the services and accommodations it provides, that it would impose an undue financial burden, or that it posed a direct threat to the health or safety of others. Respondent has not asserted that any of these situations existed in this case, nor does the evidence in the record support that they were legitimate considerations. The ongoing project involving caring for the animals would have been postponed for a single day, and even then, the teacher could presumably have provided information about caring for the animals even if they were not physically present. The requested accommodation would appear to cause no more inconvenience to the teaching project than Respondent's being closed for an unexpected snow day. There was also no evidence that leaving the animals at home that day would have involved any additional expense to the teacher or the school, or that doing so would have posed a direct threat to anyone (or even to the animals despite a claim that transporting the animals to and from the school during February was "not ideal" for them).

7) Because Complainant's request for a reasonable accommodation was denied, Daughter was unable to visit the school and unable to complete Respondent's application process, thus excluding her from accessing its education program because of her disability.


8) Discrimination based upon disability is found in this case.⁷

VI. Recommendation:


For the reasons stated above, it is recommended that the Commission issue the following findings:

1) There are **Reasonable Grounds** to believe that the Friends School of Portland unlawfully discriminated against Complainant Michael Greene o/b/o minor child on the basis of disability (denial of reasonable accommodation; denial of access to its programs); and

2) The complaint should be conciliated in accordance with 5 M.R.S. § 4612(2).



Amy M. Sheirson, Executive Director



Robert D. Beauchesne, Investigator

⁷ It is noted that a request to permanently remove all furred animals from Respondent's classrooms and programs might not have been a reasonable accommodation here, since this would arguably fundamentally alter a long-standing practice of using such animals in the classroom as teaching aids. However, that would be far different than the accommodation Complainant actually requested here, which was simply that the animals be removed for a single day.