

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

JESSICA GIANFROCCO,
Plaintiff,

vs.

CRANSTON SCHOOL DEPARTMENT,
by and through SUPERINTENDENT
PETER NERO, CRANSTON SCHOOL
COMMITTEE, by and through its
members, Chairman MICHAEL
TRAFICANTE, PAULA MCFARLAND,
STEPHANIE CULHANE, ANDREA
IANNAZZI, FRANK S. LOMBARDI,
STEVEN A. STYCOS, and JANICE
RUGGIERI, CITY OF CRANSTON,

Defendants.

C.A. No. PC 10-

COMPLAINT

1. This Complaint arises out of allegations of discrimination based on disability, perceived disability and/or record of disability as well as the denial of equal protection of the law and due process.

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to the Rhode Island Civil Rights Act, G.L. 1956 § 42-112-1 et seq., the Rhode Island Civil Rights of People with Disabilities Act, G.L. 1956 § 42-87-1 et seq., the Uniform Declaratory Judgments Act, G.L. 1956 § 9-30-1 et seq. and Article 1, Section 2 of the Rhode Island Constitution.

PARTIES

3. Plaintiff, Jessica Gianfrocco (“Plaintiff”) is a female citizen of the United States and a resident of the State of Rhode Island.

4. Defendant Cranston School Department (“CSD”) is a department of Cranston city government. The CSD is sued by and through its Superintendent, Peter Nero (“Nero”) who participated in the discriminatory and illegal decision-making at issue. Nero is named in his

official capacity only.

5. Defendant Cranston School Committee (“CSC”) and its members also participated in the relevant illegal and discriminatory decision-making at issue. The CSC members are sued in their official capacity only.

6. Defendant City of Cranston is a municipality of the State.

ADMINISTRATIVE PROCEDURES

7. On or about August 23, 2010, charges of discrimination on behalf of Plaintiff, based upon disability, were filed with the Commission for Human Rights for the State of Rhode Island (the “Commission”).

8. On or about August 23, 2010, charges of discrimination on behalf of Plaintiff, based upon disability and a complaint related to school policy, was filed with the Rhode Island Department of Education (the “DOE”).

STATEMENT OF FACTS

9. Plaintiff is a recovering drug addict. Prior to her recovery, she had been a heroin addict for about five years.

10. During the time Plaintiff was addicted to heroin, she had at least one conviction for felony drug possession related to her addiction. She had no convictions for selling or distributing drugs.

11. These convictions predated the birth of Plaintiff’s daughter, which occurred in late 2003.

12. As part of her recovery, Plaintiff sought professional treatment and continues to participate in a 12-Step Program.

13. Plaintiff has served as a “team mom” for the Edgewood Eagles Cheerleading Team (which required a criminal background check). Plaintiff spent at least three years serving on the Parents Advisory Committee at Kids Kingdom pre-school. Finally, Plaintiff has traveled to Washington, DC and spoken to members of Congress regarding drug program funding as part of the Brown University Center for the Study of Children at Risk Vulnerable Infants Program of R.I.

14. In addition to Plaintiff’s accomplishments in Paragraph 13, Plaintiff is taking classes towards earning her Licensed Chemical Dependency Professional certificate. She recently enrolled in classes at Drug and Alcohol Treatment of R.I. (D.A.T.A.). DATA is a nonprofit membership organization representing public and private alcohol and drug treatment, behavioral health, prevention and student assistant programs. Plaintiff also works part-time.

15. In June 2009, prior to the start of the 2009-2010 school year the CSD adopted, for the first time, a policy regarding school volunteers. Appendix A, *Volunteer Policy*.

16. According to the policy: “[A]ll volunteers shall be required to obtain a Rhode Island BCI. * * * If there is any disqualifying information concerning a potential volunteer * * * It is the responsibility of the Superintendent or his/her designee to meet with that person and explain that he/she will not be able to participate due to the information contained in the report(s).

17. “Disqualifying information” means those offenses listed in R.I.G.L. §§ 23-17-37 (murder, voluntary manslaughter, involuntary manslaughter, first degree sexual assault, second degree sexual assault, third degree sexual assault, assault on persons sixty (60) years of age or older, assault with intent to commit specified felonies (murder, robbery, rape, burglary, or the abominable and detestable crime against nature) felony assault, patient abuse, neglect or mistreatment of patients, burglary, first degree arson, robbery, felony drug offenses, larceny, or felony banking law), § 11-37-8.1 (first degree child molestation) and § 11-37-8.3 (second degree child molestation). Appendix A (emphasis added).

18. The policy also provides that: “Volunteers should not be with a student/s unless in the presence of a classroom teacher, administrator or appropriate school personnel. A volunteer shall not be in a one-on-one situation with a child, during or outside of a school day.” Appendix A.

19. Accordingly, under the policy a person with a drug-related felony is disqualified from serving as a volunteer at their child’s school in Cranston under the policy even though that person will not be alone with any child.

20. The policy includes a pro forma appeals process whereby a volunteer against whom disqualifying information has been found may request that a copy of the criminal background report be sent to the Superintendent. When provided with disqualifying information, the Superintendent must meet with the person “and explain that he/she will not be able to participate” due to the disqualifying information. If the potential volunteer is unsatisfied by the Superintendent’s decision, he or she may appeal to the CSC by requesting a hearing. Appendix A.

21. Plaintiff’s daughter enrolled in Kindergarten in the Fall of 2009 at Arlington Elementary School.

22. Accordingly, Plaintiff applied to become a school volunteer so that she could participate in school activities with her child, such as PTO events which require volunteers.

23. On or about September 23, 2009, Plaintiff was told by CSD Chief Operating Officer Raymond Votto that Nero had rejected her volunteer application, but that she would get something in the mail indicating she could appeal.

24. Consistent therewith, Plaintiff appealed the CSD's decision by letter of September 25, 2009 to CSC Chairman Michael Traficante. Plaintiff specifically noted that she was an addict in recovery and that the disqualifying information directly related to the time period during which she was an active drug user. Appendix B, *9/25/09 Letter*.

25. On or about September 30, 2009, Plaintiff was notified by Chairman Traficante that a hearing had been scheduled for October 26 "for consideration of the Superintendent's decision to deny your volunteer application." The Letter further read that Plaintiff was "previously made aware of the reason for the Superintendent's action and that reason was communicated to you by Mr. Raymond Votto, Chief Operating Officer on September 23, 2009." Finally, the Letter noted that because the discussions may involve Plaintiff's "character," it was her option as to whether to hold the appeal hearing in public or in closed session. Appendix C, *9/30/09 Letter*.

26. Plaintiff appeared for a hearing and was asked a number of questions about her status as a recovering addict.

27. Plaintiff responded with details about her addiction and recovery. In addition, Plaintiff presented letters written on her behalf regarding her fitness to be a volunteer, related to some of her activities in Paragraph 13 and 14 above.

28. Plaintiff was then told by the CSC that there actually was nothing they could do in terms of processing an appeal and there was nothing they could do regarding the CSD's denial.

29. However, the evening of the hearing, Nero told Plaintiff that the CSD would be going "back to the drawing board" with the policy.

30. Thereafter, CSC Member Culhane contacted Plaintiff strongly suggesting Plaintiff withdraw her application in light of the fact that the policy was going to be revised. Accordingly, Plaintiff withdrew her request on November 18.

31. Since that time, no changes have been made to the policy.

32. Plaintiff took a position on the Arlington Elementary PTO as a Correspondence Coordinator, but is still not allowed to help out with any event involving school children.

33. Significantly, under state law teachers and other employees who have routine direct contact with school children are not automatically disqualified from employment based on the existence of a criminal record or drug-related disability.

34. Significantly, under state law (G.L. 1956 § 16-48.1-1 *et seq.*), among other disparities, personnel that operate and are employed by facilities involving "very young children" such as a daycare only require background checks, etc., if the operator or employee's position requires them to be alone with children.

35. Finally, the policy excludes various people, like vendors, from the BCI check and

disqualification restrictions as long as they are with school personnel.

COUNT I

**Rhode Island Civil Rights Act
G.L. 1956 § 42-112-1 et seq.
(Disparate Treatment)**

36. Plaintiff incorporates Paragraphs 1 through 35 as if fully set forth herein.

37. Plaintiff has a physical impairment that substantially limits one or more major life activities. Plaintiff is a recovering heroin addict.

38. In the alternative, Plaintiff has a record of disability and/or is perceived by Defendants as having a disability.

39. By the aforesaid actions, Defendants have violated the RICRA. Among other things, Defendants have promulgated an illegal and discriminatory policy and treated Plaintiff differently because of her status as a recovering addict.

40. Plaintiff is damaged as a proximate result of Defendants' conduct.

COUNT II

**Rhode Island Civil Rights Act
G.L. 1956 § 42-112-1 et seq.
(Disparate Impact)**

41. Plaintiff incorporates Paragraphs 1 through 40 as if fully set forth herein.

42. By the aforesaid actions, Defendants have violated the RICRA. Among other things, Defendants' policy has a discriminatory impermissible disparate impact upon disabled applicants.

43. Plaintiff is damaged as a proximate result of Defendants' conduct.

COUNT III

**Rhode Island Civil Rights of People with Disabilities Act
G.L. 1956 § 42-87-1 et seq.
(Disparate Treatment)**

44. Plaintiff incorporates Paragraphs 1 through 43 as if fully set forth herein.

45. Plaintiff has a physical impairment that substantially limits one or more major life

activities. Plaintiff is a recovering heroin addict.

46. In the alternative, Plaintiff has a record of disability and/or is perceived by Defendants as having a disability.

47. By the aforesaid actions, Defendants have violated the RICRPDA. Among other things, Defendants have promulgated an illegal and discriminatory policy and treated Plaintiff differently because of her status as a recovering addict.

48. Plaintiff is damaged as a proximate result of Defendants' conduct.

COUNT IV

**Rhode Island Civil Rights of People with Disabilities Act
G.L. 1956 § 42-87-1 et seq.
(Disparate Impact)**

49. Plaintiff incorporates Paragraphs 1 through 48 as if fully set forth herein.

50. By the aforesaid actions, Defendants have violated the RICRPDA. Among other things, Defendants' policy has a discriminatory impermissible disparate impact upon disabled applicants.

51. Plaintiff is damaged as a proximate result of Defendants' conduct.

COUNT V

**Rhode Island Constitution
Article I, Section 2
(Discrimination, Equal Protection and Due process)**

52. Plaintiff incorporates Paragraphs 1 through 51 as if fully set forth herein.

53. By the aforesaid actions, Defendants have violated Article I, Section 2 of the R.I. Constitution. Among other things, Defendants' policy and decision-making is discriminatory and violates Equal Protection of the laws and Plaintiff's Due Process rights.

54. Plaintiff is damaged as a proximate result of Defendants' conduct.

COUNT VI

**Declaratory Judgment
G.L. 1956 § 9-30-31 et seq.**

55. Plaintiff incorporates by reference Paragraphs 1 through 54 as if fully set forth herein.

56. Plaintiff requests a declaratory judgment that:

- (a) Defendants' policy violates § 42-112-1 et seq. and § 42-87-1 et seq.;
- (b) Defendants' policy impermissibly discriminates against addicts in recovery, who qualify as disabled persons, including Plaintiff;
- (c) Defendants' policy has an impermissible disparate impact on addicts in recovery;
- (d) Defendants' policy violates Article I, Section 2 of the R.I. Constitution;
- (e) Defendants must cease and desist from applying said policy against disabled persons, including Plaintiff.
- (f) Defendants must cease and desist from applying said policy against those with drug convictions for which there is no causal connection of any safety risk to school children.

PRAYER FOR RELIEF

Plaintiff prays that this Court:

- (1) declare that the Defendants' actions complained of are unlawful;
- (2) order the Defendants to make the Plaintiff whole;
- (3) order appropriate equitable relief;
- (4) retain the jurisdiction of this action to ensure full compliance;
- (5) order the Defendants to pay Plaintiff costs and expenses and reasonable attorney's fees;
- (6) grant such other relief to Plaintiff as the court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

Plaintiff,
By her attorney,

Carly Beauvais Iafrate, #6343
R.I. Affiliate,

American Civil Liberties Union
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(401) 421-0065
(401) 421-0964 (Fax)

Dated: August 23, 2010