

AUTISM AND THE LAW

Part 2: Discrimination Against Persons with Autism

By Lawrence R. Jones

This article is the second installment of a four-part special series in honor and recognition of National Autism Awareness Month.

New Jersey's Law against Discrimination (LAD) protects against discrimination based upon age, race, gender, marital status, disability and other categories as well. See N.J.S.A 10:5-5, 10:5-12. Accordingly, as a matter of public policy, our case law is evolving so as to help eradicate the cancer of discrimination. See *L.W. v. Toms River Regional Schools Board of Education*, 189 N.J. 381, 399 (2007). Freedom from this cancer is in fact one of the fundamental principles of our society. *Lehmann v. Toys R Us*, 132 N.J. 587, 600 (1993).

Lawrence R. Jones is a former New Jersey Superior Court Judge, who retired from the Bench in 2017. Prior to his appointment to the Judiciary, he served as a gubernatorial appointee to both the New Jersey Council on Developmental Disabilities and the Adults with Autism Task Force.

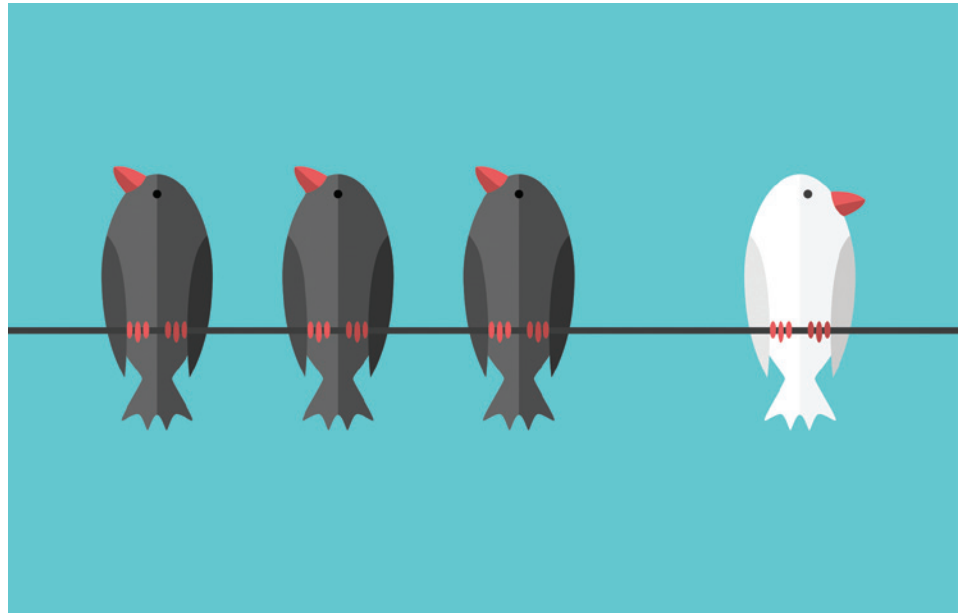


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The recent case of 'Oasis Therapeutic Life Centers v. Wade' serves as a significant breakthrough in this underdeveloped area of the law.

While there is a growing body of precedential case law that focuses on issues of discrimination based upon race, religion, gender, age, familial status, and various physical disabilities, there has been comparatively little focus of the law of discrimination relating to persons with developmental disabilities such as Autism Spectrum Disorder. The recent case of *Oasis Therapeutic Life Centers v. Wade*, ___ N.J. Super. ___ (App. Div. 2018), however, serves as a significant

breakthrough in this underdeveloped area of the law. *Oasis* is relevant in not only in addressing discrimination against people with autism, but in serving as a decision which has been approved for publication by the Committee on Judicial Opinions, thereby giving the ruling a significant degree of precedential value.

In *Oasis*, plaintiff alleged that defendants interfered with efforts to purchase property for use as a group home for persons with

autism, in violation of the New Jersey Law Against Discrimination. The trial court dismissed plaintiff's action. On appeal, however, the appellate court reversed and remanded the matter for further trial-level proceedings, concluding that plaintiffs set forth a case that defendants "targeted and tormented Oasis because Oasis was providing a residence for autistic individuals." The court concluded that plaintiffs established a potential cause of action because: (a) it is unlawful to discriminate against a buyer of real estate because of the disabilities of the persons with autism intending to live on the premises, N.J.S.A. 10:5-4.1; and (b) it is improper, with discriminatory intent, to interfere with another's transaction under N.J.S.A. 10:5-12, by attempting to obstruct plaintiff's attempt to secure a monetary grant from a nonprofit foundation to assist with the proposed purchase of the subject estate to establish the group home.

From a legal standpoint, the alleged facts of *Oasis* are particularly noteworthy. Apparently, there were some homeowners and residents who opposed the creation of a group home for persons with autism in the neighborhood where they resided, based upon unfounded, purported "fears" that people with autism were somehow dangerous to the community and/or created a risk to public

safety. Certain neighbors began a door-to-door campaign, compiling signatures on a petition objecting to the proposed group home, and taking steps to derail or otherwise interfere with the property owner's plan to sell his land to the organization intending to establish the group home on the property.

When such efforts failed, and the land sale was proceeding, the defendant-neighbors attempted to interfere with the group home's access to a shared driveway (erecting a fence across the easement), and further defaced and vandalized the area around the property with "enormous, garish and frightening graffiti" that included depictions of snakes and fire covering approximately 600-700 square feet on and around the property driveway. Thereafter, defendants participated in having animals trespass onto the Oasis property, including an aggressive goat and a horse that grazed and left piles of manure on the land.

For the autism community, the legal and social relevance of *Oasis* potentially extends far beyond the specific facts of the case. In a larger sense, *Oasis* shines a light upon the reality that as members of the autistic community become further integrated into the mainstream of society, there may potentially be additional cases and circumstances where the cancer of discrimination rears its head in the form of unfounded stereotypes and

misinformation, resulting in additional social hardships to persons with autism. For this reason, it is critical that members of the autistic community, as well as family members and professional service providers, become as educated as possible not only on the nature of ASD itself, but on the legal rights designed to protect persons against prejudice and discrimination as well.

What is particularly interesting about the *Oasis* opinion is that while the content focuses upon the New Jersey Law against Discrimination and its liberal construction and application under N.J.S. 10:5-1, the decision makes no specific reference to a 2009 statutory amendment to N.J.S.A. 10:5-12(q) which provides that the anti-discrimination statute applies to persons with a disability "which shall include, but not be limited to ... any ... developmental disability, *including autism spectrum disorders*" While the Legislature amended the law nearly a decade ago in order to better protect members of the autistic community from discrimination in housing, employment and other important aspects of daily living, many people are simply unaware that this statutory provision exists. Yet, it does exist and will likely be relevant on an ongoing basis to the autistic community and the public as a whole.

As a participant to the drafting and enactment of this statutory

amendment, the author can detail the history of this legislative development. In 2007, the New Jersey Legislature enacted legislation enabling the governor to (a) create an “Adults with Autism Task Force” and (b) appoint its members. The main function of the Task Force was to study the needs of adults in the autistic community, and to write a report of concise recommendations for consideration of implementation by the governor and legislature. In 2009, following over a year of intensive study and debate, the Task Force rendered a report of 44 specific recommendations to the governor on ways to assist adults with autism, including, but not limited to, issues relating to the development of day programs, life skills, health care, employment, housing, and private sector engagement.

This author chaired the Legal Issues Subcommittee of the Governor’s Task Force. A copy of the 2009 report is available here: <http://state.nj.us/humanservices/ddd/boards/AATFrpt.pdf>

As part of this report to the governor, the Task Force recommended an amendment of N.J.S.A.

10:5-1(q), to expressly reflect an intent of the governor and legislature to prohibit discrimination against persons with autism and other developmental disabilities. This clarification was of specific importance to the Committee on various issues including but not limited to housing, so as to cover the exact type of circumstances that ultimately arose in the *Oasis* case. In the end, the legislature voted overwhelmingly to approve the proposed amendment accordingly.

While nearly 10 years have passed since enactment of this statutory amendment, the issue of discrimination against persons with autism has rarely presented itself in such a publicly magnified manner as in *Oasis*. The concept of neighbors acting out in such a socially inappropriate manner against developmentally disabled members of our society reflects not only a genuine present risk of discrimination, but also exemplifies why there is a need for (1) heightened social education on autism in general, and (2) greater social tolerance, acceptance and inclusion of persons with autism and other developmental disabilities.

For these reasons, and consistent with the spirit of April as National Autism Awareness month, it is urged that our public officials and the legal community spend a reasonable allotment of time and energies in educating the public in a constructive manner on Autism Spectrum Disorder. Arguably, the more educated the general population becomes about autism, the less common will be occurrences of discrimination based upon ignorance, and fear-induced prejudices which have no legitimate place in our society.

Moreover, as nearly 10 years have passed since the issuance of the 2009 Report to the Governor, the time is arguably ripe for the present New Jersey Legislature and governor to convene a new task force to review the status and progress made in assisting the autistic community over the past decade, and to thereafter update, develop and frame fresh new strategies to meet specific, still-outstanding goals and objectives. Such new strategies would logically include but not be limited to the goal of effectively countering and eradicating the cancer of discrimination against persons with Autism Spectrum Disorder. ■