No Argument Requested

Supreme Court of the State of New York

Appellate Division – Second Department

DOCKET NO. 2008-04815

In the Matter of the Application of:

EAST MEADOW UNION FREE SCHOOL DISTRICT,

Petitioner,

Pursuant to Executive Law § 298

- against -

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Respondent.

BRIEF OF *AMICI CURIAE* ADVOCATES FOR CHILDREN OF NEW YORK, INC., THE ANTI-DEFAMATION LEAGUE, CANINE COMPANIONS FOR INDEPENDENCE, DISABILITY ADVOCATES, INC., THE EMPIRE STATE PRIDE AGENDA, GUIDE DOG FOUNDATION FOR THE BLIND, INC., GUIDING EYES FOR THE BLIND, LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., THE NEW YORK CIVIL LIBERTIES UNION, AND PARENTS, FAMILIES AND FRIENDS OF LESBIANS AND GAYS

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PRELIMINARY STATEMENT

The New York Human Rights Law (NYHRL) provides crucial civil rights protections to the state's schoolchildren. Far more specific and inclusive than federal antidiscrimination statutes, the NYHRL not only bars direct discrimination by schools, but expressly prohibits them from "permit[ting] the harassment of any student" based on race, color, religion, disability, national origin, sexual orientation, military status, sex, age or marital status.[1] Through the New York State Division of Human Rights (NYSDHR or the "Division"), the statute provides a uniquely affordable and accessible forum for students to seek remedies and redress for violation of their rights.[2] These expansive protections play a critical role in carrying out the statute's express purpose of ensuring equal opportunity in education and "fulfill[ing] . . . the provisions of the constitution of this state concerning civil rights."[3]

Petitioner East Meadow Union Free School District ("petitioner") would eradicate these protections for all students in New York public schools, reserving the protections instead for those students who can afford private education. The crux of petitioner's argument is its misguided claim that the term "education corporation or association" as used in § 296(4) of the law does not include public

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[1] Exec. Law § 296(4).

[2] *See id.* §§ 295, 297.

[3] *Id.* § 290.

school districts or other public educational institutions. Amici submit this brief to assist the Court in understanding how the adoption of petitioner's position would contradict the statute's text, disrupt a consensus among state and federal courts favoring application of the NYHRL to public institutions, violate the statute's requirement of liberal construction,[4] thwart the legislature's clearly expressed intent, and produce absurd and unjust results.

Amici are unified in their opposition to discrimination in education based on disability as well as other impermissible factors. The sole purpose of this brief, however, is to address whether the NYHRL, by prohibiting discrimination in "education corporation[s] [and] association[s]," applies to school districts and other public educational institutions. The brief does not take a position on the other issues raised by the parties.

STATEMENTS OF INTEREST

Advocates for Children of New York, Inc.: For over 35 years Advocates for Children of New York, Inc. ("AFC") has been working with low-income families to secure quality and equal public education services for their children. AFC provides a range of direct services, including free individual case advocacy, technical assistance, and trainings, and also works on institutional reform of educational policies and practices. As an advocate for fair treatment and protection

[4] *Id.* § 300.

against discrimination for young people in public schools, AFC joins this *amici* brief to support application of the protections of the NYHRL to public school students.

The Anti-Defamation League: Organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races and to combat racial, ethnic, and religious prejudice in the United States, the Anti-Defamation League ("ADL") is today one of the world's leading organizations fighting hatred, bigotry, discrimination, and anti-Semitism. As part of that mission, ADL is a leading provider of anti-bias education and diversity training programs that help create and sustain inclusive home, school, community and work environments. Further, over the past decade, the League has been recognized as a leading resource on effective responses to violent bigotry, drafting model hate crime statutes for state legislatures and lobbying on behalf of strengthened prevention and deterrence initiatives. The NYHRL provides a crucial recourse for New York's residents to stand up against bigotry, bullying, harassment and discrimination in the community. This case compels the ADL to file as *amicus* to defend particularly the rights of students to challenge an unsafe learning environment.

Canine Companions for Independence: Founded in 1975, Canine Companions for Independence (CCI) is a non-profit organization that enhances the

lives of people with disabilities by providing highly trained assistance dogs and ongoing support to ensure quality partnerships. CCI serves clients who depend on the rulings of the Division of Human Rights by virtue of their use of assistance dogs, among other reasons. While CCI agrees with the substance of the Commissioner's ruling in this case, that "refusing entry to a school facility to that student with her/his guide, hearing, or service dog is unlawful discrimination under Section 296.4," the organization's primary concern is that petitioner, a public entity established under the statutes of the state of New York, has announced it is not subject to the Commissioner's jurisdiction. Therefore, CCI joins this amicus brief.

Disability Advocates, Inc.: Since 1989, it has been Disability Advocates' mission to protect and advance the rights of adults and children who have disabilities. The organization assists persons with disabilities in freely making the decisions that affect their lives, enforcing their rights, and fully participating in community life. Disability Advocates' advocacy and litigation have defeated efforts to exclude persons with disabilities from community housing, assured the accessibility of movie theaters and state operated community residences, established the right to counsel at public expense for indigent persons subject to guardianship proceedings, stopped dangerous experiments on patients in state psychiatric hospitals, and obtained compensation for victims of unnecessary and

unconsented prostate surgery. More information about the organization's past and present advocacy for persons with disabilities is available at www.disability-advocates.org.

A major focus of Disability Advocates' work involves assisting students with disabilities who face discrimination or denial of rights by public school districts. Because the demand for the organization's assistance far exceeds its resources, it frequently refers persons with disabilities to the NYSDHR, which can investigate, mediate and remedy discrimination suffered without the need for a lawyer, and without incurring litigation expenses. If this forum becomes unavailable to students of public schools, there will often be no other forum and no other remedy available to redress the discrimination they have suffered.

The Empire State Pride Agenda: Founded in 1990, the Empire State Pride Agenda is New York's statewide civil rights and advocacy organization committed to winning equality and justice for lesbian, gay, bisexual and transgender (LGBT) New Yorkers and their families. The Pride Agenda has offices in New York City and Albany and is the largest statewide LGBT organization in the country. It is dedicated to ensuring that all New Yorkers are protected from discrimination and bias-motivated harassment and violence, and has as part of its core priorities working to secure measures that protect teachers and other staff from employment discrimination and public school students from bullying and discrimination based

on sexual orientation and gender identity and expression. The organization was instrumental in passage of New York's Sexual Orientation Non-Discrimination Act (SONDA) which amended the NYHRL in 2003 to add sexual orientation, and is currently working to pass the Gender Expression Non-Discrimination Act (GENDA) to similarly add gender identity and expression.

Guide Dog Foundation for the Blind, Inc.: Since 1946, the Guide Dog Foundation for the Blind, Inc. has provided guide dogs and service dogs free of charge to people who are blind or have other special needs and are seeking enhanced mobility and independence. The Foundation serves clients who depend on the rulings of the Division of Human Rights by virtue of their use of guide or service dogs, among other reasons. While the Foundation agrees with the substance of the Commissioner's ruling in this case, that "refusing entry to a school facility to that student with her/his guide, hearing, or service dog is unlawful discrimination under Section 296.4," the Foundation's primary concern is that petitioner, a public entity established under the statutes of the state of New York, has announced it is not subject to the Commissioner's jurisdiction. Therefore, the Guide Dog Foundation for the Blind, Inc. joins this amicus brief.

Guiding Eyes for the Blind: Guiding Eyes for the Blind is an internationally accredited, nonprofit guide dog school with a 50-plus year legacy of providing the blind and visually impaired with superior Guiding Eyes dogs, training, and lifetime

support services. The organization serves clients who depend on the rulings of the Division of Human Rights by virtue of their use of guide or service dogs, among other reasons. While Guiding Eyes for the Blind agrees with the substance of the Commissioner's ruling in this case, that "refusing entry to a school facility to that student with her/his guide, hearing, or service dog is unlawful discrimination under Section 296.4," the organization's primary concern is that petitioner, a public entity established under the statutes of the state of New York, has announced it is not subject to the Commissioner's jurisdiction. Therefore, Guiding Eyes for the Blind joins this amicus brief.

Lambda Legal Defense and Education Fund, Inc.: Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work. Advocacy on behalf of students who face discrimination, harassment, violence and censorship at school on the basis of sexual orientation and gender identity has long formed a central part of Lambda Legal's work. *See, e.g.*, *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996); *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001); *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000); *East High Sch. PRISM Club v. Seidel*, 95 F. Supp. 2d 1239

(D. Utah 2000); *E. High Gay/Straight Alliance v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp. 2d 1166, 1184 (D. Utah 1999).

In New York, Lambda Legal has played an active role in controversies surrounding the proper interpretation of the NYHRL's protections for students. In October 2007, for example, a school district in upstate New York publicly noted the influence of Lambda Legal's advocacy when the district decided to abandon a legal challenge to the NYSDHR's jurisdiction that was identical to the challenge presented by petitioner in this case. Because NYHRL § 296(4) specifically prohibits schools from denying the use of their facilities or "permit[ting] the harassment of any student" on the basis of sexual orientation, this Court's interpretation of the statute's scope will have a profound impact on the young people served by Lambda Legal's mission in New York.

NAACP Legal Defense and Educational Fund, Inc.: The NAACP Legal Defense and Educational Fund, Inc. ("LDF") is a non-profit legal organization that assists African Americans and other people of color to secure their civil and constitutional rights. For more than six decades, LDF has worked to dismantle racial segregation and ensure equal educational opportunity. In support of this mission, LDF has played and continues to play a critical role in ensuring that laws prohibiting discrimination are upheld and vigorously applied.

The New York Civil Liberties Union: The New York Civil Liberties Union ("NYCLU") is a non-profit organization deeply devoted to the protection and enhancement of basic rights and liberties. Among the most important of these rights is the right of equal educational opportunity, which embraces the right to obtain a public school education free from discrimination. The NYHRL serves, along with other constitutional and statutory provisions, as a principal vehicle by which the right of equal educational opportunity is protected. Indeed, in enacting the NYHRL, the State Legislature expressly declared the "opportunity to obtain education . . . without discrimination" to be a "civil right" and empowered the NYSDHR to enforce and protect that "civil right." The effort of the petitioner school district to escape the reach of the statute ignores this legislative commitment, ignores the principle that the NYHRL is to be liberally construed to effect its purpose, and ignores judicial precedent on this issue. As an organization deeply devoted to upholding the right of all students to a public education free from discrimination, the NYCLU joins this *amici curiae* brief defending the application of the NYHRL to public schools.

Parents, Families and Friends of Lesbians and Gays: Parents, Families and Friends of Lesbians and Gays (PFLAG) is a national non-profit organization with over 200,000 members and supporters in all 50 states and the Commonwealth of Puerto Rico. PFLAG promotes the health and well-being of gay, lesbian, bisexual

and transgender persons, their families and friends through: support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal civil rights. PFLAG provides the opportunity for dialogue about sexual orientation and gender identity, and acts to create a society that is healthy and respectful of human diversity. The organization works to create a world in which all young people may grow up and be educated with freedom from fear of violence, bullying and other forms of discrimination, regardless of their actual or perceived gender identity or sexual orientation or that of their families. As an advocate for fair treatment and protection against discrimination for young people in public schools, PFLAG joins this *amici* brief to support application of the protections of the NYHRL to public school students.

* * *

ARGUMENT

NEW YORK HUMAN RIGHTS LAW § 296(4) APPLIES TO PUBLIC SCHOOL DISTRICTS

A plain-language reading of the NYHRL, the General Construction Law and the Education Law makes clear – particularly when considered in view of state and federal case law – that public school districts are both "education corporations" and "education associations" for purposes of NYHRL § 296(4). Petitioner's contrary position rests on a strained and confused reading of the relevant statutes and the decisions that have interpreted them.

More fundamentally, petitioner's proposed construction would thwart an extremely strong and longstanding state policy in favor of equal educational opportunities for all of the state's children – including and especially those children educated in the state's own schools. The NYHRL's provisions, including § 296(4), embody the state's unwavering commitment to this policy, and expressly call on courts to liberally construe the statute's provisions to accomplish its broad remedial purposes. Petitioner, without even once acknowledging this fundamental state policy or the statutory mandate of liberal construction, asks that the court limit NYHRL § 296(4)'s protections to private school students only. This unsupported and absurdly unjust interpretation of the law threatens school children throughout the state and should be rejected.

A. The Term "Education Corporation" Encompasses Public School Districts

General Construction Law § 66(6) defines "education corporation" to include all "corporation[s] . . . formed under" the Education Law.[5] Because public school districts in New York are defined by both statute and the state constitution as "corporations,"[6] and because they are "formed under" the Education Law,[7] there is no question that they are "education corporations."

In the context of the NYHRL, moreover, the term "education corporation" must be "liberally construed" to effectuate the NYHRL's broad antidiscriminatory purposes,[8] which include "eliminat[ing] discrimination by the state or any agency

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[5] Gen. Constr. Law § 66(6) (incorporating by reference the definition in Educ. Law § 216-a(1)); *see also* note 20, *infra*, and accompanying text. Education Law § 216-a, in addition to defining "education corporation" to include corporations "formed under" the Education Law, provides that the Not-For-Profit Corporation Law (NPCL) shall apply to education corporations in certain circumstances. The NPCL "shall not apply" to education corporations, however, where the NPCL's provisions "conflict[] with a provision of [the Education Law]." Educ. Law § 216-a(4)(a). Section 216-a's provisions regarding the NPCL are not incorporated into the General Construction Law's definition of "education corporation." *See* Gen. Constr. Law § 66(6) (incorporating only subdivision one of Education Law § 216-a).

[6] N.Y. Const. Art. 10 § 5; Gen. Constr. Law § 66(6).

[7] *See, e.g.*, Educ. Law §§ 1501, 1504, 1522; *Pocantico Home & Land Co. v. Union Free Sch. Dist. of Tarrytowns*, 20 A.D.3d 458, 461 (2d Dep't 2005) ("School districts in this State are creatures of statute, which can only be formed, dissolved, or altered in accordance with . . . the Education Law."); *Silver v. Bd. of Educ. of W. Canada Valley Ctr. Sch. Dist.*, 46 A.D.2d 427, 429 (4th Dep't 1975) ("Union free school districts were established under article 35 of the Education Law."). Even school districts pre-dating the Education Law or originally formed pursuant to a different statute are deemed "formed under" the Education Law pursuant to Education Law § 1501, which provides that "all school districts organized either by special laws or pursuant to the provisions of a general law are hereby continued."

[8] Exec. Law § 300; *Cahill v. Rosa*, 89 N.Y.2d 14, 20 (1996); *see also* note 50, *infra*.

or subdivision of the state,"[9] and "eliminat[ing] and prevent[ing] discrimination in . . . educational institutions."[10] The Court of Appeals applies this rule of liberal construction not only to determine *what* the NYHRL prohibits, but also to determine *to whom* and *to what institutions* its provisions apply.[11] Thus, even if there were any ambiguity in the statutory definition of "education corporation" – which there is not – the rule of liberal construction would compel a broad understanding of the term to include public school districts in the context of NYHRL § 296(4).

Petitioner suggests that the term "education corporation" refers only to private nonprofit organizations and cannot include public "municipal corporations" such as school districts. There is nothing in New York law, however, that limits the term "education corporation" to private entities. On the contrary, many public entities are "education corporations" for purposes of New York law, including school districts, charter schools,[12] state universities,[13] boards of cooperative

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[9] *Bd. of Higher Educ. of City of N.Y. v. Carter*, 16 A.D.2d 443, 447 (1st Dep't 1962) (citation and internal quotation marks omitted), *aff'd as modified on other grounds*, 14 N.Y.2d 138 (1964).

[10] Exec. Law § 290.

[11] *Cahill*, 89 N.Y.2d at 20.

[12] *See* Educ. Law § 2853 (referring to charter schools as both "education corporation[s]" and "public school[s]"); *Matwijko v. Bd. of Trustees of Global Concepts Charter Sch.*, No. 04-CV-663A, 2006 WL 2466868, at *5 (W.D.N.Y. Aug. 24, 2006); 2000 N.Y. Op. Atty. Gen. 7, 2000 WL 420375 (Apr. 7, 2000).

[13] Educ. Law § 352.

educational services,[14] public libraries,[15] and the New York State Higher Education Services Corporation.[16] This Court, moreover, has rejected the argument that "municipal corporations" cannot also be "education corporations," holding in *Bovich v. East Meadow Public Library* that "[w]hile there is authority for the proposition that a public library is an 'education corporation,' this does not mean that it cannot also be a municipal corporation."[17]

Applying the statute's rule of liberal construction, the Human Rights Commissioner properly held in this case that public school districts were "education corporation[s]" for purposes of the NYHRL. However, she declined to rely on the statutory definition of "education corporation" found in General Construction Law § 66(6), holding that its definition had "no application" to the matter.[18] While amici agree with the ultimate result of the Commissioner's decision – that public school districts are education corporations – we submit that

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[14] *State Div. of Human Rights v. Bd. of Coop. Educ. Servs.*, 98 A.D.2d 958, 958-59 (4th Dep't 1983).

[15] Educ. Law § 255; *Bovich v. E. Meadow Pub. Library*, 16 A.D.3d 11, 17 (2d Dep't 2005).

[16] N.Y. Educ. Law § 652; *Bulson v. Control Data Corp.*, 164 A.D.2d 141 (3d Dep't 1990); N.Y. Jur. 2d Schools § 800.

[17] 16 A.D.3d at 17 (citations omitted); *see also Beers v. Inc. Village of Floral Park*, 262 A.D.2d 315, 315 (2d Dep't 1999) ("A public library is an educational corporation chartered by the New York State Board of Regents.").

[18] *N.Y. State Div. of Human Rights v. E. Meadow Union Free Sch. Dist.*, Case No. 10115533, slip op. at 10 (Comm'r of Human Rights Mar. 10, 2008) ("Comm'r Decision").

she erred in interpreting General Construction Law § 66(6) not to include such schools.

This error in the Commissioner's otherwise cogent analysis appears to be based on a misreading of the statutory text, which her opinion misstates. Though General Construction Law § 66(6) – through its incorporation of Education Law § 216-a(1) – defines "education corporation" to include all "corporation[s] . . . formed under *this chapter*",[19] thereby referring to all corporations formed under the *Education Law*,[20] the Commissioner's quotation of the statute replaces the words "this chapter" with the words "Section 216 of the Education Law," thereby narrowing significantly the scope of the definition.[21] There is nothing to justify this alteration of the statute's text.[22]

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[19] Educ. Law § 216-a(1) (emphasis added).

[20] Section 1 of the Education Law provides that "[t]his chapter shall be known as the 'Education Law.'" Educ. Law § 1. Other subsections of Education Law § 216-a similarly use the word "chapter" to refer to the Education Law. *See, e.g.*, N.Y. Educ. Law § 216-a(4)(d)(8) (referring to Educ. Law § 216-b as "section two hundred sixteen-b of this chapter"). *Cf. Kelly v. Xerox Corp.*, 256 A.D.2d 311, 311 (2d Dep't 1998) (relying on Labor Law § 1's provision that "this chapter shall be known as the 'Labor Law'" to conclude that the term "this chapter" as used in Labor Law § 215 referred to "any provision of the Labor Law."); *Rossi v. Metropolitan Transp. Auth.*, 249 A.D.2d 307, 308 (2d Dep't 1998) (engaging in a similar analysis with respect to the term "this chapter" as used in the Criminal Procedure Law).

[21] Comm'r Decision at 10.

[22] *See* note 20, *supra*, and accompanying text. Assuming *arguendo*, however, that General Construction Law § 66(6)'s definition does not encompass public school districts, the Commissioner is correct that the General Construction Law may not be applied to thwart the clearly intended purpose of the NYHRL. *See* Gen. Constr. § 110 (providing that the General Construction Law does not apply where the "general object" of the statute being applied "or the context of the language" being construed "indicate[s] that a different meaning or application was intended" from that provided by the General Construction Law).

Petitioner erroneously claims that the Commissioner of Education has "expressly held that a City school district is not an education corporation."[23] In the decision to which petitioner refers – which did not involve claims of discrimination or the NYHRL – the Commissioner dismissed as moot a complaint brought against a board of education.[24] (The school district itself was not even a named party to the dispute.)[25] Though the Commissioner commented in dicta that the city school district was not an "education corporation," it is abundantly clear from context that the Commissioner was *not* making a point about whether school districts are corporations "formed under" the Education Law; the Commissioner's point was rather that the Not-For-Profit Corporation Law (NPCL) could not properly be applied to defeat the purposes of the Education Law.[26] This is, in fact, precisely what subdivision four of § 216-a provides.[27] The Commissioner's dicta has no bearing on the issue of whether school districts are "education corporations" as a general matter or in the context of an NYHRL claim.

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[23] Pet'r's Br. 8-9.

[24] *See Appeal of Stayton*, Comm'r of Educ. Decision No. 13,788 (July 18, 1997), *available at* http://www.counsel.nysed.gov/Decisions/volume37/d13788.htm (last visited Sept. 8, 2008).

[25] *Id.*

[26] *Id.*

[27] *See* Educ. Law § 216a-(4) (providing that the NCPL applies to education corporations only to the extent that the NCPL is consistent with provisions of the Education Law).

B. The Term "Education Association" Includes Public School Districts

Independent of the fact that school districts are "education corporations," they are also subject to NYHRL § 296(4) as "education . . . association[s]." The term "association" is interpreted "broad[ly]" under New York law "to include a wide assortment of differing organizational structures . . . , depending on the context."[28] The "broad" nature of the term "association," considered in the context of the NYHRL's rule of liberal construction,[29] supports the Commissioner's holding that public school districts are "education . . . association[s]" under NYHRL § 296(4).

Petitioner complains that the Commissioner's characterization of the District as an "education association" is "not justifiable," but makes no effort to challenge the Commissioner's accurate description of the District as nine associated schools governed by a single board.[30] Though petitioner again emphasizes that the school district is a "municipal corporation" under the General Construction Law, petitioner never explains why such a corporation cannot also be an "education association" under NYHRL § 296(4).[31] Petitioner concludes this portion of its argument with the irrelevant assertion that school districts are "political

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[28] *Mohonk Trust v. Bd. of Assessors of Town of Gardiner*, 47 N.Y.2d 476, 483 (1979).

[29] Exec. Law § 300; *see* note 8, *surpa*; note 50, *infra.*

[30] Pet'r's Br. 11.

[31] *Id.*

subdivision[s] of the State," and a citation to two cases that do not even use the word "association."[32] Nowhere does petitioner mention, much less account for, the NYHRL's rule of liberal construction.

C. Case Law Supports Application of NYHRL § 296(4) to Public Educational Institutions, Including School Districts

Case law supports applying the NYHRL to student discrimination claims against public schools. In *State Division of Human Rights v. Board of Cooperative Educational Services* (BOCES), the Fourth Department specifically rejected the argument that § 296(4) applied only to private organizations.[33] The Court held that the respondent BOCES, a public institution, was "an education corporation organized and existing under section 1950 of the Education Law, nonsectarian and exempt from real property taxes under section 408 of the Real Property Tax Law," and therefore subject to NYHRL § 296(4).[34]

Though other courts have not found it necessary to specifically analyze the meaning of "education corporation or association" under the NYHRL, their holdings indicate a broad consensus that the NYHRL protects students from discrimination by school districts and other public educational institutions. Federal

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[32] *Id.*; *see Koch v. Webster Cent. Sch. Dist. Bd. of Educ.*, 112 Misc. 2d 10 (Sup. Ct. Monroe County 1981); *Bd. of Educ. of Cent. Sch. Dist. No. 1, Town of Somers, Westchester County v. Stoddard*, 49 N.Y.S.2d 38 (Sup. Ct. Albany County 1944).

[33] 98 A.D.2d at 958-59.

[34] *Id.*

courts in the Northern, Eastern and Southern Districts of New York have allowed discrimination claims brought by students under the NYHRL to proceed against public schools and their employees.[35] The Third Department, moreover, relied in part on NYHRL § 296(4) to hold that the state's "explicit and compelling public policy to protect children . . . in the educational setting" required the rejection of an arbitration decision as unduly lenient in a case involving misconduct by a public school teacher.[36] It is telling as well that while several published decisions from state and federal courts have rejected § 296(4) claims against school districts and other public institutions on various grounds, none of these decisions rested their holdings on an argument that § 296(4) applies only to private organizations; indeed, the courts appear not to have even considered the possibility that the statute would be so limited.[37]

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[35] *Miotto v. Yonkers Pub. Schs.*, 534 F. Supp. 2d 422, 429 (S.D.N.Y. 2008); *Hayut v. State Univ. of N.Y.*, 127 F. Supp. 2d 333, 340-41 (N.D.N.Y. 2000); *Meehan v. Patchogue-Medford Sch. Dist.*, 29 F. Supp. 2d 129, 134 (E.D.N.Y. 1998); *see also Scagg v. N.Y. State Dep't of Educ.*, 06 Civ. 799, 2007 WL 1456221, at *21 n.18 (E.D.N.Y. May 16, 2007) (granting plaintiff leave to file an amended complaint against various defendants, including public education corporations).

[36] *In re Binghamton City Sch. Dist. (Peacock)*, 33 A.D.3d 1074, 1076-77 (3d Dep't 2006).

[37] *See Cave v. E. Meadow Union Free Sch. Dist.*, 480 F. Supp. 2d 610, 643 (E.D.N.Y. 2007), *rev'd on other grounds*, 514 F.3d 240, 250 (2d Cir. 2008); *Tesoriero v. Syosset Ctr. Sch. Dist.*, 382 F. Supp. 2d 387, 399-400 (E.D.N.Y 2005); *Planck v. SUNY Bd. of Trustees*, 18 A.D.3d 988 (3d Dep't 2005); *Lowinger v. State Univ. of N.Y. Health Sci. Ctr. of Brooklyn*, 180 A.D.2d 606 (1st Dep't 1992). As discussed below, one unreported and unpersuasive decision from a state supreme court in Tompkins County did express the view that § 296(4) does not apply to public schools. *See infra* note 41 (discussing *Newfield Cent. Sch. Dist. v. N.Y. State Div. of Human Rights*, No. 2008-0460 (Sup. Ct. Tompkins County June 19, 2008)).

While this Court questioned the NYSDHR's jurisdiction over a public college in *Student Press, Inc. v. New York State Human Rights Appeal Board*, that decision does not properly guide resolution of the issues in the present case.[38] The *Student Press* Court did not explain the legal or factual basis for its statement doubting the Division's jurisdiction under § 296(4); nor did it cite any authority.[39] In any event, the complaint in that case was "untenable" on constitutional grounds.[40] Most importantly, even assuming *arguendo* that the Court's doubt regarding the Division's jurisdiction was based on an unstated belief that a public educational institution cannot be an "education corporation or association" under NYHRL § 296(4), that aspect of the Court's analysis has been superseded by statute. The legislature enacted the current definition of "education corporation" – which includes all corporations formed under the Education Law – after the facts giving rise to the *Student Press* case took place, and the new language did not take effect until after the *Student Press* Court issued its decision.[41]

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[38] *See* 44 A.D.2d 558 (2d Dep't 1974).

[39] *Id.*

[40] *Id.* at 558.

[41] The Second Department decided *Student Press* on March 4, 1974, and the facts giving rise to the case took place no later than January 4, 1972. *See id.* The amendment to the General Construction Law defining "education corporation" was approved in 1973 and took effect in September 1974, several months after the *Student Press* decision. *See* 1973 N.Y. Laws ch. 451 § 3.

Petitioner also relies on the Tompkins County Supreme Court's unreported decision in *Newfield Central School District v. New York State Division of Human Rights*, No. 2008-0460 (Sup. Ct. Tompkins County June 19, 2008), which held that a school district is not an "education

D. Petitioner's Arguments Based on the Real Property Tax Law Lack Merit

Lacking any support for its unduly restrictive interpretation of "education corporation or association," petitioner resorts to a confusing and misleading argument regarding the NYHRL's relationship to the New York Real Property Tax Law (RPTL). The statutes are indeed related, because NYHRL § 296(4) limits its antidiscrimination requirements to institutions which, like petitioner, are tax-exempt under RPTL Article Four.[42] Petitioner's brief, however, concocts a new theory of the laws' relationship, first by falsely claiming that RPTL Article Four "modifies the term 'education corporation and associations [sic].'"[43] Of course, petitioner fails to cite any provision containing such a modification, because no such provision exists.

Petitioner's brief then fixates on a single provision of RPTL Article Four – RPTL § 420-a – that grants tax exemptions to certain corporations organized for

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corporation or association" under NYHRL § 296(4). The court in *Newfield Central School District*, however, relied primarily on *Student Press*, which for reasons already explained should not control the analysis here. The *Newfield Central School District* court also relied on its own analysis in an earlier case, *Ithaca City School District v. New York State Division of Human Rights,* No. 07-0785 (Sup. Ct. Tompkins County Sept. 11, 2007), which had questioned the NYSDHR's jurisdiction over public school districts under NYHRL § 296(4). The *Ithaca City School District* opinion, however, failed to analyze the statutory definition of "education corporation," and appears to have erroneously assumed that a municipal corporation cannot also be classified as an "education corporation" under New York law. *Id.* at 2-3; *see also* note 17, *supra*, and accompanying text. Neither the *Ithaca City School District* decision nor the *Newfield Central School District* decision offered any analysis of the term "association."

[42] Exec. Law § 296(4).

[43] Pet'r's Br. 9.

exclusively educational, religious, hospital or other charitable purposes. Section 420-a, however, is completely irrelevant to the present dispute. While petitioner emphasizes that § 420-a appears in Article Four's Title Two, which pertains to private property, petitioner does not explain why this matters. Contrary to what petitioner seems to imply, NYHRL § 296(4) does not mention or cite RPTL § 420-a, but refers rather to RPTL Article Four in its entirety. Petitioner does not contest the only fact about Article Four that is relevant here; namely, that public school districts fall within one of Article Four's tax-exemption provisions – RPTL § 408 – thereby triggering NYHRL § 296(4)'s antidiscrimination requirements.[44]

Indeed, in a footnote to the argument focusing on RPTL § 420-a, petitioner not only acknowledges, but emphasizes RPTL § 408's grant of tax-exempt status to school districts. The footnote argues that because school districts are *always* tax-exempt (and always nonsectarian), NYHRL § 296(4)'s inclusion of language limiting its reach to nonsectarian, tax-exempt institutions demonstrates that the legislature intended the provision to govern only private schools. This argument defeats itself. It would turn the statute on its head – and at a minimum violate the rule of liberal construction – to hold that language excluding religious and non-tax-

[44] *See* Exec. Law § 296(4); RPTL § 408. Moreover, to the extent petitioner suggests that a public corporation cannot be considered a "corporation . . . organized . . . exclusively for . . . educational . . . purposes," RPTL § 420-a, petitioner's argument has been rejected by the Court of Appeals. *See Bd. of Coop. Educ. Servs., Second Supervisory Dist. Westchester County v. Buckley*, 15 N.Y.2d 971, 973 (1965) (holding that a board of cooperative education services was entitled to a tax-exemption under RPTL § 420, the tax-exemption provision later re-numbered as RPTL § 420-a).

exempt schools from the statute's coverage should be construed also to exclude *nonreligious* and *tax-exempt* institutions such as petitioner. Furthermore, the mere fact that the qualifying descriptive language plays no significant role in some disputes, such as those involving public schools, does not render the language redundant or superfluous, because it still acts to restrict the universe of private schools within the provision's reach.

E. Excluding Public School Districts from § 296(4)'s Reach Would Violate the Rule of Liberal Construction, Thwart the NYHRL's Purposes, and Lead to Absurd and Unjust Results

The NYHRL exists to "protect[] . . . the public welfare, health and peace of the people of the state" and to "fulfill[] . . . the provisions of the constitution of this state concerning civil rights."[45] As a "function of the equal protection guarantee,"[46] it embodies the state's "extremely strong" policy against discrimination[47] – discrimination that is "all the more invidious . . . when it is practiced by the State."[48]

The eradication of discrimination in education lies at the heart of the NYHRL's concerns. In its opening provisions, the statute declares that the

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[45] Exec. Law § 290.

[46] *Bd. of Educ. of Union Free Sch. Dist. No. 2, East Williston, Town of North Hempstead v. N.Y. State Div. of Human Rights*, 42 A.D.2d 49, 52 (2d Dep't 1973).

[47] *Batavia Lodge No. 196, Loyal Order of Moose v. N.Y. State Div. of Human Rights*, 35 N.Y.2d 143, 146 (1974).

[48] *Koerner v. State,* 62 N.Y.2d 442, 448 (1984); *see also Scheiber v. St. John's Univ.*, 84 N.Y.2d 120, 125 (1994) ("The Human Rights Law effects this State's fundamental public policy against discrimination by establishing equality of opportunity as a civil right." (citation omitted)).

"opportunity to obtain education . . . without discrimination" is a "civil right," and expressly describes the purposes of the law to include the "eliminat[ion] and prevent[ion] of discrimination in . . . educational institutions" and "public services."[49] As discussed above, the statute requires that courts construe its provisions "liberally for the accomplishment" of the law's purposes.[50]

In view of the NYHRL's strong policy against state-sponsored discrimination, its special concern with protecting equal opportunities in education, and its requirement of liberal construction, it is simply preposterous to argue – as petitioner does – that courts should interpret the law to protect *private* school students from discrimination while leaving students in the state's own schools entirely without recourse to the Division of Human Rights. Adopting petitioner's strained construction of NYHRL § 296(4) would render the statute's broad statements of purposes an empty promise for the vast majority of the state's youth, and set New York apart as perhaps the only state that reserves its strongest school civil rights protections for children whose families can afford private education. It

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[49] Exec. Law §§ 290, 291.

[50] *Id.* § 300; *Scheiber*, 84 N.Y.2d at 126 ("We are mandated to read the Human Rights Law in a manner that will accomplish its strong antidiscriminatory purpose."); *City of Schenectady v. State Div. of Human Rights*, 37 N.Y.2d 421, 428 (1975) ("[I]t is the duty of courts to make sure that the Human Rights Law works and that the intent of the Legislature is not thwarted by a combination of strict construction of the statute and a battle with semantics."); *see also Braschi v. Stahl Assocs.*, 74 N.Y.2d 201, 207-208 (1989) ("It is fundamental that in construing the words of a statute '[t]he legislative intent is the great and controlling principle.' Indeed, 'the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down.'" (citations omitted)).

is well established that courts must interpret statutes to avoid such absurd and unjust results.[51]

The injustice that would result from adoption of petitioner's interpretation is made even more apparent when one considers the enormous procedural and financial benefits of the NYHRL's administrative enforcement mechanisms. As the Court of Appeals noted in *Freudenthal v. County of Nassau*, a proceeding before the NYSDHR is "designed to be affordable; it allows a complaint to avoid filing fees and other expenses related to commencement of a civil action and facilitates prosecution of the claim without hiring an attorney."[52]

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[51] *People v. Garson*, 6 N.Y.3d 604, 614 (2006) ("[W]e must interpret a statute so as to avoid an unreasonable or absurd application of the law." (citation and internal quotation marks omitted)); *Braschi*, 74 N.Y.2d at 208 ("Statutes are ordinarily interpreted so as to avoid objectionable consequences and to prevent hardship or injustice."); *N. Dutchess Rod & Gun Club, Inc. v. Town of Rhinebeck*, 29 A.D.3d 587, 590 (2d Dep't 2006) ("[I]t is well-settled law that the words of a statute should not be interpreted to achieve an absurd result."); *see also* Stat. Law §§ 143, 145, 146.

[52] 99 N.Y.2d 285, 291 (2003). The *Freudenthal* court rejected the judicial imposition of procedural requirements on NYHRL complainants (specifically, the requirement to bring a notice of claim), noting that such requirements would be inconsistent "with the Legislature's intent to provide aggrieved parties a simplified alternative to litigation as a means to resolve discrimination claims." *Id.*

Indeed, the "user-friendliness" of the NYSDHR is readily apparent from perusing its website, which invites aggrieved parties to file complaints – without a filing fee or the need for an attorney – via any regional office or by simply downloading an online document and mailing the filled-out, notarized form to the agency. *See* http://www.dhr.state.ny.us/how_to_file_a_complaint.html (last visited Sept. 8, 2008). Investigative procedures are similarly user-friendly, which may be especially important to young people who may be having a first encounter with discrimination. In the course of investigating, the NYSDHR assumes the burden of notifying respondents; may copy the complaint to other relevant agencies; can direct written inquiries, field investigation, or investigatory conferences; and, if probable cause is determined, will assign a division attorney or agent to present the case in support of the complaint. *Id.* Obviously, these procedures and supports differ significantly from typical court processes.

Petitioner's construction of the statute would also deny to public school students – and to the public at large[53] – the benefit of having discrimination complaints involving school districts resolved by an agency with significant expertise and unique flexibility to craft appropriate remedies – remedies that are unavailable through traditional litigation. As the *Freudenthal* court observed, the NYSDHR has "decades of special experience in weighing the merit and value of [Human Rights Law] claims," and the Commissioner of Human Rights has "greater discretion in effecting an appropriate remedy than under strict common-law principles."[54] As a result, "[t]he administrative forum offers a complainant remedies not available from a court."[55] Among these remedies is the the agency-run "conciliation" attempt that follows a preliminary finding of probable cause. As the Court of Appeals noted, "because conciliation efforts are an integral part of the administrative process, it provides a unique vehicle—effective in some instances—to resolve claims expeditiously."[56]

For a quarter of a century, New York's public school students have benefited from the affordable, accessible, specially designed resources provided by the

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[53] "A construction of a statute which tends to sacrifice or prejudice the public interests will be avoided." Stat. Law § 152.

[54] 99 N.Y.2d at 290.

[55] *Id.* at 291.

[56] *Id.*

NYHRL and the executive agency that enforces it.[57] Petitioner's request that the Court now strip public school students of these resources, reserving them only for students receiving private education, should be rejected.

CONCLUSION

In view of the NYHRL's plain language, the relevant case law, the state's powerful policy against state-sponsored discrimination in education, and the many public and private interests served by making the NYDHR's resources available to public schools students, this Court should reject petitioner's jurisdictional challenge and hold that NYHRL § 296(4) prohibits discrimination by school districts.

Dated: New York, New York
September 8, 2008

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[57] *See* Respond.'s Br. 23-24.

CERTIFICATE OF COMPLIANCE
PURSUANT TO 22 NYCRR § 670.10.3(f)

The foregoing Brief was prepared on a computer. A proportionally spaced typeface was used as follows:

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CERTIFICATE OF SERVICE

I, Michael D. B. Kavey, hereby certify that on September 8, 2008, I served two true copies of the annexed **BRIEF OF *AMICI CURIAE* ADVOCATES FOR CHILDREN OF NEW YORK, INC., THE ANTI-DEFAMATION LEAGUE, CANINE COMPANIONS FOR INDEPENDENCE, DISABILITY ADVOCATES, INC., THE EMPIRE STATE PRIDE AGENDA, GUIDE DOG FOUNDATION FOR THE BLIND, INC., GUIDING EYES FOR THE BLIND, LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., THE NEW YORK CIVIL LIBERTIES UNION, AND PARENTS, FAMILIES AND FRIENDS OF LESBIANS AND GAYS** by forwarding the same in a sealed envelope with postage prepaid via overnight Federal Express to:

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