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October 9, 2009

VIA FASCIMILE AND U.S. MAIL

The Honorable Anthony V. Cardona
The Honorable Thomas E. Mercure
The Honorable Edward O. Spain
The Honorable E. Michael Kavanagh
The Honorable Elizabeth A. Garry
State of New York
Supreme Court, Appellate Division
Third Judicial Department
P.O. Box 7288, Capitol Station
Albany, New York 12224-0288

**Re: *Newfield Cent. Sch. Dist. v. N.Y. State Div. of Human Rights*, No. 506944 (argued Sept. 8, 2009).**

Dear Your Honors:

We write on behalf of amici curiae Advocates for Children of New York, Inc., Anti-Defamation League, Disability Advocates, Inc., Empire State Pride Agenda, the Gay, Lesbian and Straight Education Network, the Ithaca Lesbian Gay Bisexual Transgender Task Force, Lambda Legal Defense and Education Fund, Inc., NAACP Legal Defense and Educational Fund, Inc., and Parents, Families and Friends of Lesbians and Gays ("Amici"), to respectfully urge this Court to reject the analysis recently adopted by the Second Department in *East Meadow Unified Free School District v. New York State Division of Human Rights*, 2009 N.Y. Slip Op. 6840, 2009 N.Y. App. Div. LEXIS 6675 (2d Dep't Sept. 29, 2009) ("*East Meadow*") (attached). Amici request that the Court consider this letter as a supplement to the brief submitted by Amici in the above-captioned matter on May 14, 2009 ("Amici Br.").

The Second Department held in *East Meadow* that a public school district is not an "education corporation or association" for purposes of New York Human Rights Law ("NYHRL") § 296(4), *see* N.Y. Exec. Law § 296(4); *East Meadow*, 2009 N.Y. App. Div. LEXIS 6675, at **5. The ruling deprives all public school students of the NYHRL's protections, reserving these shields against discrimination for students in private schools. In its analysis of the issues, however, the court did not acknowledge the consequences of its decision; nor did the court recognize New York's fundamental public policy prohibiting discrimination in education – a policy expressly incorporated into the NYHRL. *See* NYHRL §§ 290, 291(2). The court also failed to acknowledge in any way the statutory requirement that courts liberally construe the NYHRL to effect its remedial purposes. *See id.* § 300. The court's decision thus marks a dramatic and unwarranted departure from the approach taken by the Court of Appeals, which has repeatedly emphasized the rule of liberal construction as a central guiding principle in cases under the NYHRL. *See Cahill v. Rosa*, 89 N.Y.2d 14, 20 (1996) ("*Analysis starts* by recognizing that the provisions of the Human Rights Law must be liberally construed to accomplish the purposes of the statute." (emphasis added)); *Scheiber v. St. John's Univ.*, 84 N.Y.2d 120, 125-126 (1994) ("The Human Rights Law effects this State's fundamental public policy against discrimination by establishing equality of opportunity as a civil right. . . . We are mandated to read the [statute] in a manner that will accomplish its strong antidiscriminatory purpose." (citations omitted)); *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 Aurecchione v. N.Y. State Div. of Human Rights*, 98 N.Y.2d 21, 26 (2002); Amici Br. at 1-2, 9-12, 14, 23-26.

The *East Meadow* court also disregarded and misapplied various provisions of the General Construction Law ("GCL"). For example, while the court indicated that it would rely on the GCL to determine the meaning of "education corporation," it did not actually cite or acknowledge the definition of that term provided by GCL § 66(6). *See East Meadow*, 2009 N.Y. App. Div. LEXIS 6675, at **3. If the court had examined that definition, it would have found that "education corporation" includes all corporations "formed under" the Education Law, and thus includes school districts. *See* GCL § 66(6) (incorporating the definition of N.Y. Educ. Law § 216-a(1)); *see also* Amici Br. at 11-12.

The court also erred in its reading of GCL § 65(c), which provides that a "corporation formed other than for profit" shall be either an "education corporation" or one of four other corporation types therein specified. The court mistakenly interpreted this provision to mean that *all* education corporations *must* be classified as "corporation[s] formed other than for profit" (and therefore cannot be "public corporations," like school districts). *See East Meadow*, 2009 N.Y. App. Div. LEXIS 6675, at **4. This is a simple "converse error" of logic, whereby one incorrectly assumes that if a given statement is true (*e.g. All squares are rectangles*), then the converse must also be true (*All rectangles are squares*). *See also* Amici Br. at 14 & n.11. Moreover, even assuming *arguendo* that the classification provisions create ambiguity, other controlling provisions, including GLC § 66(6)'s definition of "education corporation," and the rule of liberal construction governing application of that definition to an NYHRL case – neither of which the court considered – make clear that "education corporation" includes school districts.[1]

In any event, even if the GCL did define "education corporation" to exclude school districts – which it does not – such a restrictive definition could not apply to NYHRL § 296(4) because it would thwart the NYHRL's clear antidiscriminatory purpose. *See* GCL § 110 (providing that the GCL does not apply where the "general object" of the statute being considered "or the context of the language construed . . . indicate that a different meaning or application was intended"). The *East Meadow* court did not consider this limitation on the GCL's scope. *See also* Amici Br. at 19-20 & n.13.

The *East Meadow* court's analysis is further – and fatally – undermined by its acknowledgment that NYHRL § 296(4) applies to boards of cooperative educational services ("BOCES"). *See East Meadow*, 2009 N.Y. App. Div. LEXIS 6675, at **4-5 (accepting as correct the Fourth Department's holding in *State Div. of Human Rights v. Board of Coop. Educ. Servs.*, 98 A.D.2d 958 (4th Dep't 1983), that NYHRL § 296(4) applies to BOCES). BOCES, established by Education Law § 1950, are public corporations. *See, e.g., Hinton v. New Paltz Cent. Sch. Dist.*, 50 A.D.3d 1414, 1415-16 (3d Dep't 2008) (applying General Municipal Law § 50-e's provisions regarding claims against a public corporation to a BOCES); *Cordero v. County of Nassau*, 2 A.D.3d 567, 568-69 (2d Dep't 2003) (same). In accepting that NYHRL § 296(4) applies to BOCES, the *East Meadow* court recognized that § 296(4) can apply to public corporations – directly contradicting the court's analysis earlier in the opinion.[2]

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[1] The court's holding that a municipal corporation cannot be an education corporation also contradicts *Bovich v. East Meadow Public Library*, 16 A.D.3d 11 (2d Dep't 2005). *See id.* at 17 ("While 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." (citations omitted)); *see also Grasso v. Schenectady County Pub. Library*, 30 A.D.3d 814, 817 (3d Dep't 2006).

[2] The court also attempted to distinguish the Fourth Department's holding on the ground that BOCES are "created pursuant" to the Education Law. *See East Meadow*, 2009 N.Y. App. Div. LEXIS 6675, at **2. But as the Second

The *East Meadow* decision also concluded that school districts, as "public corporations," could not be education "association[s]" for purposes of the NYHRL, because a corporation and an association, in the court's view, are "different things." *East Meadow*, 2009 N.Y. App. Div. LEXIS 6675, at **3. The court then cited two cases, but neither supports its holding or pertains in any way to the NYHRL. *See Martin v. Curran*, 303 N.Y. 276, 280 (1951) (observing in the context of General Associations Law § 13 that a "voluntary, unincorporated membership association" is distinct from a corporation); *In re Estate of Graves*, 171 N.Y. 40, 47 (1902) (noting in the context of a transfer-tax dispute under a former Tax Law provision that not all associations are incorporated). The *East Meadow* court's sweeping declaration that a "corporation" and an "association" are necessarily "different things" also fails to account for numerous provisions of New York law – including the New York State Constitution – that recognize in a variety of contexts that the terms "corporation" and "association" may overlap. *See, e.g.*, N.Y. Const. Art. 10 § 4; N.Y. Educ. Law § 1618; N.Y Gen. Oblig. § 5-521(1); N.Y. Tax Law § 1080(2); *Mohonk Trust v. Bd. of Assessors of Town of Gardiner*, 47 N.Y.2d 476, 482-83 (1979) (explaining that "'association' is a broad term which may be used to include a wide assortment of differing organizational structures . . . depending on the context"). Applying the "broad" word "association," *see id.*, and the rule of liberal construction, this Court should interpret "education . . . association" as used in NYHRL § 296(4) to include school districts. *See also* Amici Br. at 14-15.

Finally, the *East Meadow* court failed to recognize decisions from this Court and others that support application of NYHRL § 296(4) to public schools. *See* Amici Br. at 15-21 (collecting cases).[3]

For the foregoing reasons, as well as those discussed in Amici's original brief, Amici respectfully urge this Court to reject the *East Meadow* analysis and hold that NYHRL § 296(4) applies to public schools.

Sincerely,

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Department itself has explained, school districts are created pursuant to the Education Law as well. *See Pocantico Home & Land Co., LLC v. Union Free Sch. Dist. of Tarrytowns*, 20 A.D.3d 458, 461 (2d Dep't 2005); *see also* Educ. Law §§ 1501, 1504, 1522; Amici Br. at 10-11 & n.5.

[3] Last month, yet another court interpreted NYHRL § 296(4) as applying to public schools, though it dismissed the NYHRL claim on other grounds . *See JG & PG v. Card*, No. 08 Civ. 5668, 2009 U.S. Dist. LEXIS 85372, *32 & n.5 (S.D.N.Y. Sept. 17, 2009).

LEXSEE 2009 NY APP DIV LEXIS 6675

**Matter of East Meadow Union Free School Dist. v New York State Div. of Human Rights**

**2008-04815**

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT**

***2009 NY Slip Op 6840*; *2009 N.Y. App. Div. LEXIS 6675***

**September 29, 2009, Decided**

**NOTICE:**

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

**COUNSEL:** [**1] Jaspan Schlesinger Hoffman LLP, Garden City, N.Y. (Stanley A. Camhi of counsel), for petitioner/cross respondent.

Caroline J. Downey, Bronx, N.Y. (Michael K. Swirsky of counsel), for respondent/cross petitioner.

Michael D. B. Kavey and Hayley J. Gorenberg, New York, N.Y., for Advocates for Children of New York, Inc., Anti-Defamation League, Canine Companions for Independence, Disability Advocates, Inc., Empire State Pride Agenda, Guide Dog Foundation for the Blind, Inc., Guiding Eyes for the Blind, Lambda Legal Defense and Educational Fund, Inc., New York Civil Liberties Union, and Parents, Families and Friends of Lesbians and Gays, amici curiae (one brief filed).

Jay Worona and Aileen Abrams, Latham, N.Y., for New York School Boards Association, Inc., amicus curiae (one brief filed).

**JUDGES:** ROBERT A. SPOLZINO, J.P., FRED T. SANTUCCI, ANITA R. FLORIO, RUTH C. BALKIN, JJ. SPOLZINO, J.P., SANTUCCI, FLORIO and BALKIN, JJ., concur.

**OPINION**

DECISION & JUDGMENT

Proceeding pursuant to *Executive Law § 298* to review a determination of the Commissioner of the New York State Division of Human Rights dated March 10, 2008, which confirmed the recommendation of an administrative law judge, made after a hearing, and [**2] found that the petitioner engaged in an unlawful discriminatory practice on the basis of disability insofar as the petitioner prevented the use of guide, hearing, and service dogs in a public school by students with disabilities, and the New York State Division of Human Rights cross-petitions pursuant to *Executive Law § 298* to enforce the determination.

ADJUDGED that the petition is granted and the cross petition is denied, without costs or disbursements, the determination is annulled, and the administrative complaint is dismissed.

In this proceeding pursuant to *Executive Law § 298*, the petitioner, East Meadow Union Free School District (hereinafter the School District), challenges the determination of the New York State Division of Human Rights (hereinafter the SDHR) that the School District has a policy of discriminating against students on the basis of disability insofar as the School District prevented the use of guide, hearing, [*2] and service dogs in school, in violation of Executive Law (Human Rights Law) *§ 296(14)*. We agree with the School District that the statutory provision upon which the SDHR's finding is based does not apply to it. We, therefore, grant the petition, deny the [**3] SDHR's cross petition, and

vacate the SDHR's determination, without reaching the issue of whether the School District had a discriminatory policy.

*Executive Law § 296(14)* prohibits discrimination "against a . . . hearing impaired person . . . on the basis of his or her use of a . . . hearing dog or service dog." The prohibition applies to "any person engaged in any activity covered by" *Executive Law § 296*. The SDHR predicates the School District's obligation to comply with *Executive Law § 296(14)* on the language of *section 296(4)*, which prohibits various forms of discrimination by "*an education corporation or association* which holds itself out to the public to be non-sectarian and exempt from taxation pursuant to the provisions of article four of the real property tax law" (emphasis supplied).

The terms "education corporation" and "education association" are not defined by the Executive Law. The General Construction Law, which establishes the meaning of terms not otherwise defined by statute (see *General Construction Law § 110*), does not define the term "education association." A corporation and an association, however, are different things (*see Martin v Curran, 303 NY 276, 280, 101 N.E.2d 683*; *Matter of Graves, 171 NY 40, 47, 63 N.E. 787*). [**4] Since a School District is a corporation (*see General Construction Law § 66[2]*), it is not an association.

Although the General Construction Law does define both "education corporation" and "school district," it establishes that they are mutually exclusive. Pursuant to *General Construction Law § 65(a)*, a corporation is either a public corporation, a corporation formed other than for profit, or a corporation formed for profit (*see General Construction Law § 65[a][1]*); it cannot be more than one of these. An "education corporation" is a type of corporation formed other than for profit (*General Construction Law § 65[c]*). A "school district," by contrast, is a type of "municipal corporation" (*General Construction Law § 66[2]*). Since a "municipal corporation" is a public corporation (*General Construction Law § 66[1]*), a school district is a public corporation. Hence, a school district cannot be an "education corporation" *within the meaning of Human Rights Law § 296(4)*.

We adopted this logic, without discussion, in *Matter of Student Press v New York State Human Rights Appeal Bd. (44 AD2d 558, 352 N.Y.S.2d 674)*, in which we held that Queens College of the City University of New York was not subject to the jurisdiction [**5] of the SDHR under *Executive Law § 296. State Div. of Human Rights v Board of Coop. Educ. Servs. (98 AD2d 958, 470 N.Y.S.2d 209)* is not to the contrary. The board of cooperative educational services at issue there was created pursuant to *Education Law former § 1950* (*id. at 958*) and, thus, was subject to *Executive Law § 296(4)*.

Since the School District thus is not an "education corporation or association" within the meaning of *Executive Law § 296(4)*, the petition must be granted, the cross petition must be denied, and the determination of the SDHR must be annulled.

SPOLZINO, J.P., SANTUCCI, FLORIO and BALKIN, JJ., concur.