

ONONDAGA COUNTY INDEX No. 09-7473
APPELLATE DIVISION, FOURTH DEPARTMENT DOCKET No. CA 10-02171

**State of New York
Court of Appeals**

In the Matter of the Application of
NORTH SYRACUSE CENTRAL SCHOOL DISTRICT,
Petitioner-Appellant,

For a Judgment Pursuant to Article 78 of the Civil Practice Law & Rules

– against –

THE NEW YORK STATE DIVISION OF HUMAN RIGHTS,
Respondent-Respondent.

BRIEF OF *AMICI CURIAE* ADVOCATES FOR CHILDREN OF NEW YORK, INC., ANTI-DEFAMATION LEAGUE, DISABILITY ADVOCATES, INC., EMPIRE STATE PRIDE AGENDA, GAY, LESBIAN & STRAIGHT EDUCATION NETWORK, ITHACA LESBIAN GAY BISEXUAL TRANSGENDER TASK FORCE, LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., NAACP LEGAL DEFENSE AND EDUCATION FUND, INC., NEW YORK CIVIL LIBERTIES UNION, AND PARENTS, FAMILIES AND FRIENDS OF LESBIANS AND GAYS IN SUPPORT OF RESPONDENT NEW YORK STATE DIVISION OF HUMAN RIGHTS

Thomas W. Ude, Jr.
Hayley J. Gorenberg
Lambda Legal Defense and Education Fund, Inc.
120 Wall Street, 19th Floor
New York, New York 10005
Tel: (212) 809-8585
Fax: (212) 809-0055

Attorneys for Amici Curiae

Date Completed: October 19, 2011

CORPORATE DISCLOSURE STATEMENT

Pursuant to Court of Appeals Rule 500.1(f), *amici curiae* hereby disclose that they do not have any corporate parents, subsidiaries or affiliates, except as follows: *amici* Gay, Lesbian and Straight Education Network and Parents, Families and Friends of Lesbians and Gays each have local affiliated chapters throughout the United States. *amicus* the New York Civil Liberties Union is the New York State affiliate of the American Civil Liberties Union.

TABLE OF CONTENTS

DISCLOSURE STATEMENTi

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT 1

STATEMENTS OF INTEREST OF AMICI CURIAE.....3

ARGUMENT11

THE HUMAN RIGHTS LAW APPLIES TO PUBLIC
SCHOOL DISTRICTS.....11

A. A public school district is an “education corporation or
association” under § 296(4) of the Human Rights Law.....13

B. Excluding public school districts from § 296(4)’s reach
would violate the rule of liberal construction, thwart the
Human Rights Law’s purposes, and lead to absurd and unjust
results.....22

CONCLUSION30

TABLE OF AUTHORITIES

CASES

300 Gramatan Ave. Associates v. State Division of Human Rights,
45 N.Y.2d 176 (1978).....23

Alexander v. Gardner Denver Co.,
415 U.S. 36 (1974)26

Argyle Realty Associates v. New York State Division of Human Rights,
65 A.D.3d 273 (2d Dep’t 2009)24

Aurecchione v. New York State Division of Human Rights,
98 N.Y.2d 21 (2002).....23

Batavia Lodge No. 196, Loyal Order of Moose v. New York State Division of Human Rights,
35 N.Y.2d 143 (1974).....24

Binghamton GHS Employees Federal Credit Union v. State Division of Human Rights,
77 N.Y.2d 12 (1990).....23

Board of Education of Union Free School District No. 2, East Williston, Town of North Hempstead v. New York State Division of Human Rights,
42 A.D.2d 49 (2d Dep’t 1973), *aff’d*, 35 N.Y.2d 673 (1974)24

Board of Higher Education of City of New York v. Carter,
16 A.D.2d 443 (1st Dep’t 1962), *aff’d as modified on other grounds*, 14 N.Y.2d 138 (1964)17

<i>Bovich v. East Meadow Public Library,</i> 16 A.D.3d 11 (2d Dep’t 2005)	19, 20
<i>Braschi v. Stahl Associates Company,</i> 74 N.Y.2d 201 (1989).....	27
<i>Bulson v. Control Data Corporation,</i> 164 A.D.2d 141 (3d Dep’t 1990)	19
<i>Cahill v. Rosa,</i> 89 N.Y.2d 14 (1996).....	13, 23
<i>Cave v. East Meadow Union Free School District,</i> 480 F. Supp. 2d 610 (E.D.N.Y. 2007), <i>aff’d on other grounds,</i> 514 F.3d 240 (2d Cir. 2008).....	21
<i>City of Schenectady v. State Division of Human Rights,</i> 37 N.Y.2d 421 (1975).....	23
<i>Colin v. Orange Unified School District,</i> 83 F. Supp. 2d 1135 (C.D. Cal. 2000).....	7
<i>D’Amico v. Commodities Exchange Inc.,</i> 235 A.D.2d 313 (1st Dep’t 1997).....	24
<i>DT v. Somers Central School District,</i> 588 F. Supp. 2d 485 (S.D.N.Y. 2008).....	21
<i>Dunn v. Fishbein,</i> 123 A.D.2d 659 (2d Dep’t 1986)	24
<i>East High Gay/Straight Alliance v. Board of Education of Salt Lake City School District,</i> 81 F. Supp. 2d 1166 (D. Utah 1999)	7

<i>East High School PRISM Club v. Seidel</i> , 95 F. Supp. 2d 1239 (D. Utah 2000)	7
<i>Freudenthal v. County of Nassau</i> , 99 N.Y.2d 285 (2003).....	27, 28, 29
<i>Hayut v. State University of New York</i> , 127 F. Supp. 2d 333 (N.D.N.Y. 2000)	21
<i>Henkle v. Gregory</i> , 150 F. Supp. 2d 1067 (D. Nev. 2001)	7
<i>Imperial Diner, Inc. v. State Human Rights Appeal Board</i> , 52 N.Y.2d 72 (1980).....	23
<i>In re Estate of Graves</i> , 171 N.Y. 40 (1902).....	20
<i>Koerner v. State</i> , 62 N.Y.2d 442 (1984).....	23, 24
<i>Lowinger v. State University of New York Health Science Center of Brooklyn</i> , 180 A.D.2d 606 (1st Dep’t 1992).....	22
<i>Martin v. Curran</i> , 303 N.Y. 276 (1951).....	20
<i>Matter of Crucible Materials Corporation v. New York Power Authority</i> , 50 A.D.3d 1353 (2008), <i>aff’d</i> 13 N.Y.3d 223 (2009)	14
<i>East Meadow Union Free School District v. New York State Division of Human Rights</i> , 65 A.D.3d 1342 (2d Dep’t 2009)	18, 20

<i>Matter of Ithaca City School District v. New York State Division of Human Rights,</i> 87 A.D.3d 268, 926 N.Y.S.2d 686 (3d Dep’t 2011)	13, 14, 15
<i>Matter of Rizzo v. New York State Div. of Housing & Community Renewal,</i> 6 N.Y.3d 104 (2005).....	14, 26
<i>Meehan v. Patchogue-Medford School District,</i> 29 F. Supp. 2d 129 (E.D.N.Y. 1998).....	21
<i>Miotto v. Yonkers Public Schools,</i> 534 F. Supp. 2d 422 (S.D.N.Y. 2008).....	21
<i>Mohonk Trust v. Board of Assessors of Gardiner,</i> 47 N.Y.2d 476 (1979).....	17
<i>Momot v. Rensselaer County,</i> 57 A.D.3d 1069 (3d Dep’t 2008)	21
<i>Nabozny v. Podlesny,</i> 92 F.3d 446 (7th Cir. 1996).....	7
<i>New York Charter Schools Association, Inc. v. DiNapoli,</i> 60 A.D.3d 119 (3d Dep’t 2009)	19
<i>New York State Department of Correction Services v. State Division of Human Rights,</i> 215 A.D.2d 908 (3d Dep’t 1995)	24
<i>New York University v. New York State Division of Human Rights,</i> 84 Misc. 2d 702 (Sup. Ct. N.Y. County 1975).....	26
<i>North Dutchess Rod & Gun Club, Inc. v. Town of Rhinebeck,</i> 29 A.D.3d 587 (2d Dep’t 2006)	27

<i>Oliver Schools, Inc. v. Sobol</i> , 147 Misc. 2d 622 (Sup. Ct. Albany Cnty. 1990).....	19
<i>People v. Garson</i> , 6 N.Y.3d 604 (2006).....	27
<i>Perrenod v. Liberty Board of Education for the Liberty Central School District</i> , 223 A.D.2d 870 (3d Dep’t 1996)	19
<i>Planck v. State University of New York Board of Trustees</i> , 18 A.D.3d 988 (3d Dep’t 2005)	
<i>Pocantico Home & Land Co. v. Union Free School District of the Tarrytowns</i> , 20 A.D.3d 458 (2d Dep’t 2005)	16
<i>Pratt v. Indian River Central School District</i> , No. 7:09-cv-0411, 2011 U.S. Dist. LEXIS 32596 (N.D.N.Y. Mar. 29, 2011)	7, 21
<i>Scaggs v. New York State Department of Education</i> , 06 Civ. 799, 2007 U.S. Dist. LEXIS 35860 (E.D.N.Y. May 16, 2007).....	21
<i>Scheiber v. St. John’s University</i> , 84 N.Y.2d 120 (1994).....	23
<i>State Division of Human Rights v. Board of Cooperative Education Services</i> , 98 A.D.2d 958 (4th Dep’t 1983)	17, 19, 26
<i>State Division of Human Rights v. Xerox Corporation</i> , 102 A.D.2d 543 (4th Dep’t 1984)	24
<i>Tesoriero v. Syosset Central School District</i> , 382 F. Supp. 2d 387 (E.D.N.Y. 2005).....	21

<i>United States Power Squadrons v. State Human Rights Appeal Board,</i> 59 N.Y.2d 401 (1983).....	23
<i>Woods v. Rondout Valley Central School District Board of Education,</i> 466 F.3d 232 (2d Cir. 2006)	19

NEW YORK CONSTITUTIONAL PROVISIONS

N.Y. Const. Art. 10, § 4	17
N.Y. Const. Art. 10, § 5	16

NEW YORK STATUTES AND REGULATIONS

2010 N.Y. Laws 482	25
Cooperative Corporations Law § 61	17
Education Law § 1	16
Education Law § 2	16
Education Law § 112	16
Education Law § 216-a	15, 16, 20
Education Law § 255	19
Education Law § 293	16
Education Law § 313	25, 26
Education Law § 352	19
Education Law § 355	16

Education Law § 501	16
Education Law § 652	19
Education Law § 712	16
Education Law § 1004-a	16
Education Law § 1501	16
Education Law § 1504.....	16
Education Law § 1522.....	16
Education Law § 1618.....	17
Education Law § 1701	19
Education Law § 1804	19
Education Law § 1950	16
Education Law § 2853	19
Education Law § 3201	25, 26
Education Law § 3201-a	25, 26
Education Law § 4404	25
Executive Law § 290.....	<i>passim</i>
Executive Law § 291.....	1, 13, 25
Executive Law § 295.....	1
Executive Law § 296.....	<i>passim</i>

Executive Law § 297.....	1
Executive Law § 300.....	<i>passim</i>
General Construction Law § 66	15, 16, 20
General Construction Law § 110	15
General Obligations Law § 5-521	17
Partnership Law § 2.....	17
Public Authorities Law § 1836-b	17
Real Property Tax Law § 408.....	11
Statutes § 143	27
Statutes § 145	27
Statutes § 146	27
Statutes § 152	29
Tax Law § 1080.....	17
Transportation Law § 2	17

OTHER STATUTES AND LEGISLATIVE MATERIAL

20 U.S.C. § 1400	25
20 U.S.C. § 1681	25

29 U.S.C. § 79425

42 U.S.C. § 2000d25

MISCELLANEOUS

95 N.Y. Jur. 2d Schools § 80019

2000 N.Y. Op. Att’y Gen. 7 (Ap. 7, 2000)19

New York State Division of Human Rights,
How to File a Complaint,
available at [http://www.dhr.state.ny.us/
 how_to_file_a_complaint.html](http://www.dhr.state.ny.us/how_to_file_a_complaint.html).....28

New York State Education Department of Non-Public School
 Enrollment,
 Table 2, Trends of Nonpublic School Enrollment by
 Affiliation, Grades K-12, New York State 2005-06 to 2009-
 10, *available at* [http://www.emsc.nysed.gov/irts/statistics/
 nonpublic/TABLE2.pdf](http://www.emsc.nysed.gov/irts/statistics/nonpublic/TABLE2.pdf).....12, 27

New York State Education Department of Non-Public School
 Enrollment,
 Table 4, Trends of Public and Nonpublic Enrollment, Grades
 K-12 New York State 1970-71 to 2009-10, *available at*
[http://www.emsc.nysed.gov/irts/statistics/nonpublic/TABLE4.
 pdf](http://www.emsc.nysed.gov/irts/statistics/nonpublic/TABLE4.pdf).....12, 27

PRELIMINARY STATEMENT

The New York State Human Rights Law (“HRL”) provides crucial civil rights protections to the state’s schoolchildren. Far more specific and inclusive than federal antidiscrimination statutes, the HRL bars direct discrimination by schools and also expressly prohibits them from permitting the harassment of any student based on “race, color, religion, disability, national origin, sexual orientation, military status, sex, age or marital status.” Exec. Law § 296(4).¹ And, through the New York State Division of Human Rights (the “Division” or “Respondent”), the HRL provides students with a uniquely affordable and accessible forum in which to seek remedies and redress for violation of their rights. *See id.* §§ 295, 297. These comprehensive protections play a critical role in carrying out the HRL’s express purpose of ensuring equal opportunity in education and “fulfill[ing] . . . the provisions of the constitution of this state concerning civil rights.” *Id.* § 290(2); *see also id.* § 291.

Despite § 296(4)’s plain text and relevant case precedents, Appellant North Syracuse Central School District (“Appellant” or the “School District”) would eradicate these protections for students throughout the state, arguing that, as the supreme court below erroneously concluded, the term “education corporation or association” as used in § 296(4) does not include public school districts or other

¹ The HRL is codified in the state’s Executive Law. *See* Exec. Law §§ 290 to 301.

public educational institutions. Under that interpretation, millions of students who attend public schools – the vast majority of New York’s schoolchildren – would be deprived of the HRL’s protection. The Appellate Division vacated that writ on grounds that did not require it to address the proper interpretation of the HRL, and *amici* recognize that this Court, similarly, may leave the resolution of that question for another day. However, if this Court determines that interpretation of the HRL is necessary or appropriate to the resolution of this appeal, *amici* submit this brief to assist the Court in understanding that the adoption of the School District’s interpretation of the HRL would contradict the statute’s text and this Court’s precedents, be inconsistent with decisions of state and federal courts favoring application of the HRL to public institutions, violate the statute’s mandate of liberal construction, thwart the legislature’s clearly expressed intent, and produce absurd and unjust results.

The sole purpose of this brief is to address whether the HRL’s prohibition of discrimination in and by education corporations and associations applies to school districts and other public educational institutions. This brief takes no position on the other issues raised by the parties, such as the issue identified in Point I of the Division’s brief. *See* Respondent’s Br. at 9-26 (addressing whether the complaint filed with the Division is one “that the [HRL] authorizes the Division to determine, subject to judicial review of the final disposition”). And while *amici* are unified in

their opposition to discrimination and harassment in education, whether based on race or any other impermissible factor, this brief takes no position on the merits of the underlying claims of discriminatory harassment.

STATEMENTS OF INTEREST OF *AMICI CURIAE*

For forty 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 advocates for fair treatment and protection against discrimination for young people in public schools, AFC joins this *amicus* brief to support application of the protections of the HRL to public school students.

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 ADL 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 HRL 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.

Since 1989, it has been Disability Advocates' mission to protect and advance the rights of adults and children who have disabilities. Disability Advocates 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 has 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 Disability Advocates' 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 assistance far exceeds resources, Disability Advocates frequently refers persons with disabilities to the New York State Division for Human Rights, 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.

Founded in 1990, the Empire State Pride Agenda (the "Pride Agenda") is New York's statewide civil rights and advocacy group 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, Albany and Rochester and is one of the largest statewide LGBT organizations in the country. It is dedicated to ensuring that all New Yorkers are protected from discrimination and bias-motivated harassment and violence, and as part of its core priorities has worked 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 Pride Agenda was instrumental in passage of New York's Sexual Orientation

Non-Discrimination Act (“SONDA”), which in 2003 added sexual orientation to the state’s Human Rights Law, and is currently working to pass the Gender Expression Non-Discrimination Act (“GENDA”) to similarly add gender identity and expression. The Pride Agenda was also among the lead groups advocating for the Dignity for All Students Act passed in 2010 to prevent and address bias-based bullying and discrimination in the New York State’s public schools.

The Gay, Lesbian & Straight Education Network (“GLSEN”) is the leading national education organization focused on ensuring safe schools for all students. Established nationally in 1995, GLSEN envisions a world in which every child learns to respect and accept all people, regardless of sexual orientation or gender identity/expression. GLSEN seeks to develop school climates where difference is valued for the positive contribution it makes to creating a more vibrant and diverse community. As an advocate for fair treatment and protection against discrimination for young people in public schools, GLSEN joins this *amicus* brief to support application of the HRL’s protections to public school students.

The Ithaca Lesbian Gay Bisexual Transgender Task Force (“The Task Force”) is a 501(c)(3) nonprofit organization based in Ithaca, New York, and serves the Tompkins County area. The Task Force advocates for the creation of a social and cultural environment that nurtures a wide range of gender, sexuality, and family arrangements. It encourages an awareness of issues affecting LGBT people

by conducting public meetings, informational programs, artistic events, and social activities to work towards the elimination of prejudice and discrimination and to improve relationships and understanding among and between LGBT and heterosexual and cisgender people. The Task Force believes that if the HRL is found to not apply to public school districts, it would have a devastating effect on the safety of LGBT students in New York by stripping away the strongest legal protections available to them against discrimination and harassment in school.

Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") is a national organization, with headquarters in New York, 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); *Pratt v. Indian River Cent. Sch. Dist.*, No. 7:09-cv-0411, 2011 U.S. Dist. LEXIS 32596 (N.D.N.Y. Mar. 29, 2011); *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); *E. 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 (D. Utah 1999).

In New York, Lambda Legal has played an active role in controversies surrounding the proper interpretation of the HRL's protections for students. Because § 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 in New York served by Lambda Legal's mission.

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") is a non-profit legal organization that assists African Americans and other people of color in securing 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 ("NYCLU"), an affiliate of the American Civil Liberties Union, is a non-profit, non-partisan membership organization whose mission is to defend and promote federal and state constitutional rights, as well as statutory rights that protect core civil rights and liberties. Defending and enhancing the constitutional and statutory rights of all students to obtain a public education free from discrimination, harassment, and bullying is a core part of the NYCLU's work. The NYCLU routinely represents and advocates on behalf of public school students who are the victims of

discrimination and harassment by public school administrators, teachers, or their peers in both judicial and administrative fora. The NYCLU also frequently appears before this Court as a party or *amicus* in cases that raise civil rights and civil liberties questions with widespread import. Because this case implicates every New York public school student's right to equal educational opportunity, and because its resolution will impact a group of New Yorkers the NYCLU frequently serves and advocates for, we join this *amicus curiae* brief defending the application of the NYHRL to public schools.

Parents, Families and Friends of Lesbians and Gays ("PFLAG") National is a nonprofit organization with over 200,000 members and supporters in all fifty states and the Commonwealth of Puerto Rico. PFLAG promotes the health and well-being of lesbian, gay, 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. PFLAG 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 advocates for fair treatment and

protection against discrimination for young people in public schools, PFLAG joins this *amicus* brief to support application of the protections of the HRL to public school students.

ARGUMENT

THE HUMAN RIGHTS LAW APPLIES TO PUBLIC SCHOOL DISTRICTS.

Under New York’s HRL, a nonsectarian and tax-exempt “education corporation or association” may not deny the use of its facilities to – and may not permit the harassment of – any student based on “race, color, religion, disability, national origin, sexual orientation, military status, sex, age or marital status.” Exec. Law § 296(4). A public school district is both an “education corporation” and an “education association” for purposes of the HRL, and therefore may neither discriminate nor permit discriminatory harassment.² That conclusion is supported by this Court’s holdings and by decisions of other New York state and federal courts.

This Court should not underestimate the significance of an interpretation excluding public schools from § 296(4)’s scope. The New York State Department of Education reports that during the 2007-2008 academic year (when the complaint at issue in this case was filed), more than three million students attended elementary, middle and high school in New York. Approximately 2.7 million of those schoolchildren—nearly eighty-six percent of the total—attended public

²There can be no serious dispute that a public school district meets § 296(4)’s only other two conditions of applicability: that the entity be nonsectarian; and that it be exempt from taxation under Article 4 of the Real Property Tax Law. *See* Real Prop. Tax Law § 408.

schools.³ Of the children attending nonpublic schools, more than 380,000 attended religiously affiliated schools that are beyond the reach of § 296(4), which applies only to entities that are “nonsectarian.” Under the interpretation advocated by the School District and adopted by the supreme court below, the HRL would protect a scant number of students – barely two percent of New York’s school-age population.⁴

The School District seeks – and the supreme court below erroneously adopted – a construction of § 296(4) placing public school districts and their students beyond the HRL’s reach, which would thwart the extremely strong and longstanding state policy of equal educational opportunities for all of the state’s children. Instead, equal educational opportunity would be offered to only the small number of students attending non-religious private schools. The HRL embodies New York’s unwavering commitment to a policy of equal opportunity – including

³ The data in this paragraph is drawn from tables compiled by the New York State Education Department, reporting on public and non-public school enrollment. Table 2, Trends of Nonpublic School Enrollment by Affiliation, Grades K-12, New York State 2006-07 to 2010-11, *available at* <http://www.p12.nysed.gov/irs/statistics/nonpublic/TABLE2.pdf>; Table 4, Trends of Public and Nonpublic Enrollment, Grades K-12 New York State 1970-71 to 2010-11, *available at* <http://www.p12.nysed.gov/irs/statistics/nonpublic/TABLE4.pdf>.

⁴ The data for enrollment during other academic years is similar. For example, during the 2010-2011 academic year, 3,053,621 students attended elementary, middle and high school in New York State. Of those, 2,637,578 (more than 86%) attended public schools, and nearly 350,000 attended religiously-affiliated schools – with less than 68,000 (or about 2%) attending schools that are both private and nonsectarian. Table 2, Trends of Nonpublic School Enrollment by Affiliation, Grades K-12, New York State 2006-07 to 2010-11, *available at* <http://www.p12.nysed.gov/irs/statistics/nonpublic/TABLE2.pdf>; Table 4, Trends of Public and Nonpublic Enrollment, Grades K-12 New York State 1970-71 to 2010-11, *available at* <http://www.p12.nysed.gov/irs/statistics/nonpublic/TABLE4.pdf>.

educational opportunity – and expressly calls on courts to liberally construe its provisions to accomplish its broad remedial purposes. *See* Exec. Law §§ 290, 291, 296(4), 300; *see also Cahill v. Rosa*, 89 N.Y.2d 14, 20 (1996). Appellant and, respectfully, the supreme court below acknowledged neither this fundamental policy of equal education opportunity nor the liberal construction mandate of the HRL itself. Appellant’s argument on that point, if adopted, would undermine the safety of schoolchildren throughout the state by improperly restricting the HRL’s protection to only a tiny percentage of student population – those attending schools that are not only private but also nonsectarian. *Amici* respectfully submit that if this Court determines that resolution of this appeal requires it to interpret the HRL, the proper conclusion is that § 296(4) protects students against discrimination and harassment in public schools, as the Third Department recently held in *Matter of Ithaca City School District v. New York State Division of Human Rights*, 87 A.D.3d 268, 926 N.Y.S.2d 686 (3d Dep’t 2011), and the contrary conclusion of the supreme court below should be rejected.

A. A public school district is an “education corporation or association” under § 296(4) of the Human Rights Law.

The HRL protects students from discrimination by, and discriminatory harassment in, any “education corporation or association.” Exec. Law § 296(4).⁵

⁵As explained in section B below, the HRL is to be construed liberally to effectuate its broad purposes. Exec. Law § 300. The HRL’s purposes include “eliminat[ing] and prevent[ing]

Recently, in a decision squarely addressing § 296(4)'s scope, the Third Department held that public school districts are encompassed within its protections. *Ithaca City Sch. Dist.*, 87 A.D.3d 268, 926 N.Y.S.2d 686. In rejecting a challenge by the school district in that case to the Division's HRL-based jurisdiction over the complaint, the Third Department "conclude[d] that public school districts are among the 'educational institutions' over which [the Division] has jurisdiction and that Executive Law § 296(4) is the statutory mechanism by which it can seek to eliminate any discrimination by such school districts." *Id.* at 273, 690.

The Third Department explained that (consistent with this Court's repeated admonitions, summarized in Section B below) the HRL "must be liberally construed to accomplish its beneficial purposes – one of which is to eliminate discrimination in 'educational institutions' (Exec. L. § 290, 300) – 'and to spread its beneficial results as widely as possible.'" *Id.* at 273, 689-690 (citing *Matter of Rizzo v. New York State Div. of Hous. & Cmty. Renewal*, 6 N.Y.3d 104, 114 (2005); *Matter of Crucible Materials Corp. v. New York Power Auth.*, 50 A.D.3d 1353, 1355-56 (2008), *aff'd* 13 N.Y.3d 223 (2009)). It held that it would be "clearly contrary to the express purpose of the [HRL]" to limit its protection "to only a minuscule percentage of students whose families can afford to send them to

discrimination in . . . educational institutions," *id.* § 290(3), and "eliminat[ing] . . . discrimination by the state or any agency or subdivision of the state." *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).

private, non-religious schools, relegating public school students to other more onerous and/or less comprehensive remedies.” *Id.* at 273, 690. In reaching that conclusion, the Third Department rejected arguments that a different conclusion was required based on definitions in the General Construction Law (“GCL”) – without deciding the correct interpretation of the GCL definitions – because a construction of § 296(4)’s terms that would exclude public school districts from the HRL’s coverage would be “inappropriate and unreasonable,” *id.*, and GCL § 110 provides that its definitions are not intended to apply if the “general object, or the context of the language construed, or other provisions of law indicate that a different meaning or application was intended from that required to be given by the [GCL].” *Ithaca City Sch. Dist.*, 926 N.Y.S.2d at 689 (quoting GCL § 110).

Although the Third Department deemed it unnecessary to address the proper construction of the GCL’s definitions of “education corporation” and “education association,” those definitions, properly construed, do encompass public school districts. The GCL incorporates the definition of “education corporation” set forth in § 216-a(1) of the Education Law – a definition that expressly includes all “corporation[s] . . . formed under” the Education Law. GCL § 66(6).⁶ Public

⁶Other subsections of Education Law § 216-a provide that the Not-for-Profit Corporation Law (“NPCL”) shall apply to education corporations in certain circumstances. But the NPCL “shall not apply” to education corporations where the NPCL’s provisions “conflict[] with a provision of [the Education Law].” Educ. Law § 216-a(4)(a). And § 216-a’s provisions regarding the NPCL are not incorporated into the GCL’s definition of “education corporation.” *See* Gen. Constr. Law

school districts in New York are defined as “corporations” both in the state constitution and in statute. Const. Art. 10, § 5; Gen. Constr. Law § 66(2). And public school districts are “formed under” the Education Law. *See, e.g.*, Educ. Law §§ 1501, 1504, 1522. *See also Pocantico Home & Land Co. v. Union Free Sch. Dist. of the 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.”).⁷ Therefore, public school districts are “education corporations.”⁸

Furthermore, independent of its existence as an “education corporation,” a school district is an “education . . . association” governed by the HRL. Exec. Law § 296(4). The term “association” is interpreted “broad[ly]” under New York law

§ 66(6) (incorporating only subdivision one of Education Law § 216-a). *See also* footnote 7 below.

⁷Even school districts pre-dating the Education Law or originally formed pursuant to a different statute are deemed “formed under” the Education Law, because Education Law § 1501(1) provides that “[a]ll school districts organized either by special laws or pursuant to the provisions of a general law are hereby continued.”

⁸In its brief in this appeal, the Division does not rely on GCL § 66(6) or Education Law § 216-a in reaching the conclusion that public school districts are “education corporations.” Respondent Br. at 29. *Amici* respectfully urge incorporation of analyses of both of these provisions, and in any case agree with the Division’s ultimate conclusion, namely, that public school districts are “education corporations” for purposes of § 296(4). Specifically, the Commissioner’s otherwise cogent analysis does not account for the fact that GCL § 66(6) – through its incorporation of Education Law § 216-a(1) – defines “education corporation” to include all “corporation[s] . . . formed under this chapter.” The term “this chapter” refers to the Education Law in its entirety. *See* Educ. Law § 1 (“This chapter shall be known as the ‘Education Law.’”). Hundreds of provisions in the Education Law – including other subdivisions of § 216-a – use the word “chapter” to refer to the entire Education Law. *See id.* § 216-a(4)(a); *see also, e.g., id.* §§ 2, 112, 293, 355, 501, 712, 1004-a, 1501, 1950.

“to include a wide assortment of differing organizational structures . . . , depending on the context.” *Mohonk Trust v. Bd. of Assessors of Gardiner*, 47 N.Y.2d 476, 483 (1979). Numerous provisions of New York law, including the state constitution, recognize in a variety of contexts that the terms “corporation” and “association” can – and do – overlap. *See, e.g.*, Const. Art. 10, § 4 (defining “corporations” under §§ 1-4 of Article 10 of the state constitution to include certain “associations”); Coop. Corp. Law § 61 (referring to “associations, incorporated or otherwise”); P’ship Law § 2 (defining “person” to include “corporations[] and other associations”); Pub. Auths. Law § 1836-b(4) (referring to “corporation[s] or other association[s]”); *see also* Educ. Law § 1618; Gen. Oblig. Law § 5-521(1); Tax Law § 1080(b)(2); Transp. Law § 2(11).

Like the Third Department, the Fourth Department has interpreted § 296(4) to include public educational entities. In *State Division of Human Rights v. Board of Cooperative Educational Services (“BOCES”)*, the court rejected the argument that the term “education corporation” refers exclusively to private entities. 98 A.D.2d 958, 958-59 (4th Dep’t 1983). The court held that *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 § 296(4). *Id.* at 958-959.

In its arguments below, the School District relied primarily on only one case to support its argument that the HRL does not protect students against discrimination and harassment in public schools: the nonbinding ruling in *Matter of East Meadow Union Free School District v. New York State Division of Human Rights*, 65 A.D.3d 1342 (2d Dep’t 2009). But *amici* respectfully submit that the reasoning in *East Meadow* is not persuasive and should be rejected. In marked contrast to the Third Department’s *Ithaca City* decision, the Second Department did not acknowledge, much less fulfill, the HRL’s mandate of liberal construction, *see* Exec. Law § 300, when it held that the term “education corporation” cannot include public school districts.⁹ Its decision omits any reference to that term’s definition in GCL § 66(6) and focuses instead on 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. *E. Meadow*, 65 A.D.3d at 1343. The court 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 corporation[s],” like school districts. *Id.* But this reasoning mistakenly assumes that if a given statement is true (*e.g. all squares are rectangles*), the converse must also be true (*all rectangles are squares*). Nothing in New York law limits the term “education corporation” to private entities, and in

⁹*Amici* discuss the HRL’s liberal construction mandate in more detail in Section B, below.

addition to school districts, many public corporations are education corporations under New York law, including:

- boards of education; *see* Educ. Law §§ 1701, 1804;¹⁰
- charter schools; *see id.* § 2853(1)(a), (c);¹¹
- state universities; *see id.* § 352;
- public libraries; *see id.* § 255;¹²
- the New York State Higher Education Services Corporation; *see id.* § 652;¹³ and
- boards of cooperative educational services. *See BOCES*, 98 A.D.2d at 958-59.

Indeed, the Second Department itself has recognized that the GCL’s definitions of “education corporation” and “municipal corporation” are not mutually exclusive, and it explained in a related context that “[w]hile there is authority for the proposition that a public library is an ‘education corporation’, this

¹⁰*See also Perrenod v. Liberty Bd. of Educ. for the Liberty Cent. Sch. Dist.*, 223 A.D.2d 870, 870-71 (3d Dep’t 1996) (noting that a board of education is a “municipal corporation organized under” the Education Law); *cf. Woods v. Rondout Valley Cent. Sch. Dist. Bd. of Educ.*, 466 F.3d 232, 243-44 (2d Cir. 2006).

¹¹*See also N.Y. Charter Schs. Ass’n, Inc. v. DiNapoli*, 13 N.Y.3d 120, 125 (2009) (explaining that, under the Education Law, a charter school is both an “education corporation” and “an independent and autonomous public school” supervised and overseen by “public agents”—the school’s charter entity and the State Board of Regents (citations and internal quotation marks omitted)); 2000 N.Y. Op. Att’y Gen. 7 (Apr. 7, 2000).

¹²*See also Bovich v. E. Meadow Pub. Library*, 16 A.D.3d 11, 17 (2d Dep’t 2005).

¹³*See also Bulson v. Control Data Corp.*, 164 A.D.2d 141 (3d Dep’t 1990); *Oliver Schs., Inc. v. Sobol*, 147 Misc. 2d 622, 623 (Sup. Ct. Albany Cnty. 1990); 95 N.Y. Jur. 2d Schools § 800.

does not mean that it cannot also be a municipal corporation.” *Bovich v. E. Meadow Pub. Library*, 16 A.D.3d 11, 17 (2d Dep’t 2005) (citations omitted). School districts, as municipal corporations “formed under” the Education Law, fit the definition of both “municipal corporation” and “education corporation.” See GCL §§ 66(2) (“municipal corporation”), (6) (incorporating the definition of “education corporation” in Educ. Law § 216-a(1) (““education corporation’ . . . means a corporation (a) chartered or incorporated by the regents *or otherwise formed under this chapter*”) (emphasis added)).

The Second Department’s faulty logic reasoned that if public school districts are municipal “corporation[s],” they cannot also be “association[s]” – asserting that a “corporation” and an “association” are necessarily “different things.” *E. Meadow*, 65 A.D.3d at 1343. But as explained above, other provisions of law make clear that the two are not necessarily “different things,” and the two cases cited by the court in *East Meadow* do not support so sweeping a premise. Rather, one of those cases explains only that not all associations *are* incorporated. See *In re Estate of Graves*, 171 N.Y. 40, 47 (1902). The other case explains that *unincorporated* associations are not corporations. See *Martin v. Curran*, 303 N.Y. 276, 280 (1951). Moreover, those cases do not control, because they did not involve the HRL and its express mandate of liberal construction. See Exec. Law § 300.

While other courts have not found it necessary to analyze the meaning of “education corporation or association,” their holdings reflect a consensus that the HRL protects students in public schools. Federal courts in the Northern, Eastern and Southern Districts of New York have allowed discrimination claims brought by students under the HRL to proceed against public schools and their employees. *See 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 Scaggs v. N.Y. State Dep’t of Educ.*, No. 06 Civ. 799, 2007 U.S. Dist. LEXIS 35860, at *75 n.18 (E.D.N.Y. May 16, 2007). And it is telling that prior to *East Meadow*, the published decisions of state and federal courts that rejected § 296(4) claims against school districts and other public institutions did so on *other* grounds and never held, or even suggested, that § 296(4) applies only to private organizations.¹⁴ *See, e.g., Cave v. E. Meadow Union Free Sch. Dist.*, 480 F. Supp. 2d 610, 643 (E.D.N.Y. 2007), *aff’d on other grounds*, 514 F.3d 240, 250 (2d Cir. 2008); *DT v. Somers Cent. Sch. Dist.*, 588 F. Supp. 2d 485, 500-01 (S.D.N.Y. 2008); *Tesoriero v. Syosset Cent. Sch. Dist.*, 382 F. Supp. 2d 387, 399-400 (E.D.N.Y. 2005); *Momot v. Rensselaer Cnty.*, 57 A.D.3d 1069 (3d Dep’t

¹⁴ Subsequent to *East Meadow* and before *Ithaca City*, at least one federal court has expressed reservations about the correctness of *East Meadow*’s interpretation of § 296(4), but deferred to its conclusion in the absence of other appellate authority. *See Pratt v. Indian River Cent. Sch. Dist.*, No. 7:09-cv-0411, 2011 U.S. Dist. LEXIS 32596 (N.D.N.Y. Mar. 29, 2011).

2008); *Planck v. State Univ. of N.Y. Bd. of Trs.*, 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).

Properly construed, therefore, a public school district is an “education corporation or association” subject to liability under the HRL for discrimination against, or permitting harassment of, its students.

B. Excluding public school districts from § 296(4)'s reach would violate the rule of liberal construction, thwart the Human Rights Law's purposes, and lead to absurd and unjust results.

The HRL's strong policy against state-sponsored discrimination, its special concern with protecting equal opportunity in education, its unusually broad and inclusive nature, and its explicit mandate of liberal construction would all be thwarted by interpreting § 296(4) to protect only the relatively few students who attend nonsectarian private schools from discrimination and harassment – leaving public school students entirely without recourse to the Division of Human Rights.

The HRL expressly mandates that courts construe its provisions “liberally for the accomplishment of the [statute's] purposes . . .” Exec. Law § 300. The HRL's purposes include “eliminat[ing] and prevent[ing] discrimination in . . . educational institutions,” *id.* § 290(3), and “eliminat[ing] . . . discrimination by the state or any agency or subdivision of the state.” *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).

This Court has repeatedly emphasized the rule of liberal construction as a guiding principle in HRL cases. *See, e.g., Cahill*, 89 N.Y.2d at 20 (“*Analysis starts by recognizing that the provisions of the [HRL] must be liberally construed to accomplish the purposes of the statute.*” (emphasis added and citation omitted)); *see also Aurecchione v. N.Y. State Div. of Human Rights*, 98 N.Y.2d 21, 26 (2002) (“[A] liberal reading of the statute is explicitly mandated to effectuate the [HRL’s] intent.”); *Scheiber v. St. John’s Univ.*, 84 N.Y.2d 120, 125-126 (1994) (“The [HRL] 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)); *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 [HRL] 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.”).¹⁵

¹⁵*See also Binghamton GHS Emps. Fed. Credit Union v. State Div. of Human Rights*, 77 N.Y.2d 12, 18 (1990) (applying the rule of liberal construction in a case under the HRL); *Koerner v. State*, 62 N.Y.2d 442, 449 (1984) (same); *U.S. Power Squadrons v. State Human Rights Appeal Bd.*, 59 N.Y.2d 401, 411-12 (1983) (same); *Imperial Diner, Inc. v. State Human Rights Appeal Bd.*, 52 N.Y.2d 72, 77 (1980) (same); *300 Gramatan Ave. Assocs. v. State Div. of Human Rights*, 45 N.Y.2d 176, 183 (1978) (same). Consistent with these precedents, every Department of the Appellate Division has applied the rule of liberal construction in matters involving the HRL; the Second Department itself has done so in cases both pre-dating and post-

The HRL 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.” Exec. Law § 290. As a “function of the equal protection guarantee,” *Bd. of Educ. of Union Free Sch. Dist. No. 2, E. Williston, Town of N. Hempstead v. N.Y. State Div. of Hum. Rights*, 42 A.D.2d 49, 52 (2d Dep’t 1973), *aff’d*, 35 N.Y.2d 673 (1974), the statute embodies the state’s “extremely strong” policy against discrimination. *See Batavia Lodge No. 196, Loyal Order of Moose v. N.Y. State Div. of Hum. Rights*, 35 N.Y.2d 143, 146 (1974). As this Court has recognized, discrimination is “all the more invidious . . . when it is practiced by the State.” *Koerner v. State*, 62 N.Y.2d 442, 448 (1984); *see also Scheiber*, 84 N.Y.2d at 125 (“The Human Rights Law effects this State’s fundamental public policy against discrimination by establishing equality of opportunity as a civil right.” (citations omitted)).

Ending discrimination in education is at the heart of the HRL. Its opening provisions declare that the “opportunity to obtain education . . . without discrimination” is a “civil right[,]” and expressly describe the purposes of the law to include the “eliminat[ion] and prevent[ion of] discrimination in . . . educational

dating its ruling in *East Meadow*. *See Argyle Realty Assocs. v. N.Y. State Div. of Human Rights*, 65 A.D.3d 273, 282-83 (2d Dep’t 2009); *Dunn v. Fishbein*, 123 A.D.2d 659, 660 (2d Dep’t 1986); *see also D’Amico v. Commodities Exch. Inc.*, 235 A.D.2d 313, 314 (1st Dep’t 1997); *N.Y. State Dep’t of Corr. Servs. v. State Div. of Human Rights*, 215 A.D.2d 908, 909 (3d Dep’t 1995); *State Div. of Human Rights v. Xerox Corp.*, 102 A.D.2d 543, 550 (4th Dep’t 1984).

institutions” and “public services.” Exec. Law §§ 290, 291. To carry out its strong anti-discriminatory purpose, the HRL employs broader and more inclusive language than that found in other state and federal civil rights protections for students that are currently in effect. In addition to barring discrimination in access to educational facilities, § 296(4) explicitly prohibits schools and universities 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[.]” Exec. Law § 296(4). Student civil rights protections under federal law do not enumerate as many prohibited bases of discrimination and do not expressly bar schools from “permit[ting] . . . harassment.” *See, e.g.*, 20 U.S.C. § 1681 *et seq.*; *id.* § 1400 *et seq.*; 29 U.S.C. § 794; 42 U.S.C. § 2000d *et seq.*

Many of the state’s laws, similarly, do not expressly address harassment, and/or their scope is limited to institutions of higher education. *See, e.g.*, Educ. Law §§ 313, 3201, 3201-a, 4404. The recently enacted Dignity for All Students Act is comprehensive and, by requiring schools to undertake specific actions to address bullying, does expressly address harassment based on a broad range of traits.¹⁶ But that law is not yet in effect and, while courts have not yet been called

¹⁶ The Dignity for All Students Act requires proactive measures by public school districts to address discrimination and harassment based on – but not limited to – one’s actual or perceived race, color, national origin, ethnicity, sexual orientation, religious practice, disability, weight, gender or sex. 2010 N.Y. Laws 482 § 12. Its enactment left other protections for students, such as the HRL, intact. *Id.* at § 17 (providing that “nothing in [the Dignity for All Students Act] shall

upon to address the vehicles for that law’s enforcement, the statute’s terms do not expressly afford those complaining of violations with access to remedies through the Division. And as for other state statutory protections, courts have not recognized a right to recover compensatory damages through a court action under several of them.¹⁷

In any event, regardless of what other statutes provide, neither the School District nor any court has explained why the legislature would enact a statute for the express purposes of, *inter alia*, eliminating discrimination by the state and its subdivisions and preventing discrimination in “educational institutions” and “public services,” and then drastically limit the statute’s protections to cover only students in certain private schools.¹⁸ As this Court has explained, the HRL is to be interpreted so as “to spread its beneficial results as widely as possible[.]” *Rizzo*, 6 N.Y.3d at 114 .

. . .preclude or limit any right or cause of action provided under any local, state or federal ordinance, law or regulation”).

¹⁷*E.g.*, Educ. Law §§ 313, 3201, 3201-a.

¹⁸Courts have long rejected the argument that nondiscrimination provisions in the Education Law somehow divest the Division of Human Rights of jurisdiction to investigate and remedy HRL violations. *See, e.g., N.Y. Univ. v. N.Y. State Div. of Human Rights*, 84 Misc. 2d 702, 707 (Sup. Ct. N.Y. Cnty. 1975) (holding that Education Department and Division of Human Rights had concurrent jurisdiction, and observing that “[l]egislative enactments in this area have long evinced a general intent to accord parallel or overlapping remedies against discrimination” (quoting *Alexander v. Gardner Denver Co.*, 415 U.S. 36, 47 (1974))); *accord BOCES*, 98 A.D.2d at 959.

Construing § 296(4) to exclude public schools would leave only two percent of the student population protected by the HRL, making its promise of equal educational opportunity an empty one for nearly all of the state's youth. *See* footnotes 3 and 4, *supra*. Such an interpretation would set New York apart as perhaps the only state that reserves its strongest school civil rights protections for a privileged few of its children. That is precisely the type of absurd and unjust result that courts seek to avoid. *See, e.g., 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 v. Stahl Assocs. Co.*, 74 N.Y.2d 201, 208 (1989) (“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. §§ 143, 145, 146.

The injustice that would result from adopting the School District’s interpretation is even more apparent when one considers the enormous procedural and financial benefits of the HRL’s administrative enforcement mechanisms. As this Court noted in *Freudenthal v. County of Nassau*, 99 N.Y.2d 285 (2003), a proceeding before the Division is “designed to be affordable; it allows a complainant to avoid filing fees and other expenses related to commencement of a

civil action and facilitates prosecution of the claim without hiring an attorney.”

Id. at 291.¹⁹ Indeed, the Division’s “user-friendliness” is readily apparent from its website, which invites aggrieved parties to file complaints—without a filing fee or the need for an attorney—through any regional office or by simply downloading an online document and mailing the filled-out, notarized form to the agency. *See* Division, *How To File a Complaint*, http://www.dhr.state.ny.us/how_to_file_a_complaint.html (last visited October 18, 2011). Investigative procedures are similarly user-friendly, which may be especially important to young people (and their parents) who may be having a first encounter with discrimination. In the course of investigating, the Division 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. *Freudenthal*, 99 N.Y.2d at 290. Obviously, these procedures and supports differ significantly from typical court processes.

¹⁹ In *Freudenthal*, this Court rejected the judicial imposition of procedural requirements on HRL complainants (specifically, the requirement to bring a notice of claim), noting that those types of procedural 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.* at 292.

A construction of the HRL that excludes public school districts would also deny to public school students, and to the public at large,²⁰ 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 this Court observed in *Freudenthal*, the Division has “decades of special experience in weighing the merit and value of [HRL] claims,” and the Commissioner of Human Rights has “greater discretion in effecting an appropriate remedy than under strict common-law principles[.]” 99 N.Y.2d at 290-91 (citations and internal quotation marks omitted). As a result, “the administrative forum offers a complainant remedies not available from a court.” *Id.* at 291 (citation and internal quotation marks omitted). Among these remedies is the agency-run “conciliation” attempt that follows a preliminary finding of probable cause. And as the Court further observed, “because conciliation efforts are an integral part of the administrative process, it provides a unique vehicle – effective in some instances – to resolve claims expeditiously.” *Id.*

New York’s public school students have long benefited from the affordable, accessible, specially designed resources provided by the HRL and the executive agency that enforces it. Reserving those resources solely for students receiving

²⁰“A construction of a statute which tends to sacrifice or prejudice the public interests will be avoided.” Stat. § 152.

private non-religious education would diminish students' rights and protections throughout New York State, and would thwart, not serve, the HRL's purposes.

CONCLUSION

All of the relevant tools of statutory interpretation—the text of the HRL itself, the relevant case law interpreting and applying it, the state's powerful policy against state-sponsored discrimination in education, and the many public and private interests served by making the resources of the Division of Human Rights available to public school students—point to one conclusion: Exec. Law § 296(4) prohibits discrimination by public school districts. Respectfully, if this Court determines that this appeal's resolution requires it to interpret that provision, it should so hold.

Dated: New York, New York
October 19, 2011

ADVOCATES FOR CHILDREN OF NEW YORK, INC.,
ANTI-DEFAMATION LEAGUE, DISABILITY
ADVOCATES, INC., EMPIRE STATE PRIDE AGENDA,
GAY, LESBIAN & STRAIGHT EDUCATION NETWORK,
ITHACA LESBIAN GAY BISEXUAL TRANSGENDER
TASK FORCE, LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC., NAACP LEGAL DEFENSE
AND EDUCATIONAL FUND, INC., NEW YORK CIVIL
LIBERTIES UNION, AND PARENTS, FAMILIES AND
FRIENDS OF LESBIANS AND GAYS

By: _____

Thomas W. Ude, Jr.
Hayley J. Gorenberg
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, NY 10005
Tel: (212) 809-8585
Fax: (212) 809-0055
Attorneys for Amici Curiae