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HIGHER EDUCATION INFORMATION MEMO

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Yeshiva University Pride Alliance: Case Update

On Dec. 15, 2022, a New York appellate court unanimously affirmed a lower court's order, entered June 24, 2022 (discussed [here](#)), which had permanently enjoined Yeshiva University (YU) from refusing to recognize the Yeshiva Pride Alliance as an official student organization. The New York Appellate Division, First Department issued its decision after the United States Supreme Court's September denial of the University's application for a stay pending appeal of the permanent injunction, discussed [here](#).

The Appellate Division held that the lower court had correctly determined that the University is not excepted from the New York City Human Rights Law. First, the University is not a "religious corporation incorporated under the education law or the religious corporation law," which would have rendered the school "distinctly private,"¹ and thus not covered under the law's definition of place or provider of public accommodation, where such discrimination is prohibited. In so deciding, the Court focused on a plain read of the education law and religious corporation law's definitions,² and noted YU's "proffered statements to public authorities contained in the record" as evidencing that it does not fit within this exception.³ Further, the Court noted, exceptions to New York City's Human Rights Law (NYCHRL) should be "construed narrowly"; and, taken together, the Court concluded that the University does not meet this exception.

Likewise, the Court held, YU does not meet the religious principles exception under the NYCHRL,⁴ which permits "'any religious or denominational institution or organization or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization,' to 'limit[] employment or sales or rentals of housing accommodations or admissions to or giv[e] preference to persons of the same religion or denomination' or. . . mak[e] such selection as is calculated by such organization to promote the religious principles for which it is established or maintained."⁵ This exception, the Court explained, is limited to "employment, housing, and student admissions," and should not be extended "to every decision made concerning enrolled students."

Next, the Court considered YU's First Amendment arguments, including the right to decide matters of "faith and doctrine," the free exercise clause, and freedom of expression and association.

Here, the Court rejected YU's contention that recognizing the Pride Alliance would encroach upon its First Amendment right "to decide matters of 'faith and doctrine.'" Of central importance to the Court was that YU, through three of its graduate schools, has been officially recognizing LGBTQ+ student groups for more than 25 years (and that these graduate schools are also part of YU's legal corporation), and that beginning in 1995, YU expressed that such recognition does not equate with their "endorsement or

1 N.Y.C. Admin. Code §8-102.

2 "Under the Education Law, a '[r]eligious or denominational educational institution' is 'an educational institution which is operated, supervised or controlled by a religious or denominational organization and which has certified to the state commissioner of education that it is a religious or denominational educational institution.' The Religious Corporations Law uses the term 'religious corporation' to describe "a corporation created for religious purposes," that is, "created to enable its members to meet for divine worship or other religious observances[.]" (internal citations omitted).

3 Most internal citations omitted from this memo.

4 Nor under the New York State Education Law §313(3)(a).

5 N.Y.C. Admin. Code §8-107(12).

acceptance.” When considering the above in concert with YU’s “corporate purpose as an institution of higher education,” the Court dismissed YU’s “faith and doctrine” argument, holding that “denial of recognition for the Pride Alliance is not ‘essential’ to the University’s ‘central mission.’”

Moving to YU’s free exercise argument, the Court held that the City’s “HRL’s public accommodations provision is ‘both neutral and generally applicable,’” and therefore YU’s free exercise of religion would not be infringed upon by officially recognizing the Pride Alliance. The Court explained that the exception to this provision is not related to sexual orientation or religion, and is not subject to strict scrutiny. Likewise, the “benevolent organizations” exemption does not have any effect, as YU is a “place[] where business activity is prevalent.”

Finally, the Court rejected YU’s argument that recognizing the Pride Alliance would be violative of its First Amendment right to freedom of expression and association, emphasizing that YU “has made clear that it does not endorse or accept the views of its already-existing LGBTQ+ student groups,” and likewise noting, the NYC “HRL does not require any such endorsement or compel speech.” Additionally, the Court stressed that YU’s associational rights are not being infringed upon, since the members of the Pride Alliance “are already enrolled students”; YU has “engaged in many discussions with the Pride Alliance about sexual orientation and gender identity issues,” and expressed interest in “foster[ing] diversity and inclusion in association with Pride Alliance members when denying official recognition;” and that YU was taking actions to create a space where students, faculty, and” YU’s religious leadership could “continue this conversation.

This case is likely to be appealed - and a YU spokesperson has indicated YU’s intent to do so. Additionally, as the United States Supreme Court denied YU’s application for a stay without prejudice, the case could be heard, if certiorari is granted, by the Supreme Court once again, this time on its merits.

Bond will continue to closely monitor this case for updates and bring them to you in a timely manner. If you have any questions about implications this case may have for your institution, please contact [Lisa Feldman](#) or any attorney in Bond’s [higher education practice](#) or the attorney at the firm with whom you are in regular contact.

