

New York Court of Appeals Holds that the Division of Human Rights Lacks Jurisdiction over Discrimination and Harassment Complaints Filed by Public School Students

On June 12, 2012, the New York Court of Appeals held, in two cases that were consolidated on appeal, that the New York State Division of Human Rights (“Division”) does not have jurisdiction over discrimination and harassment complaints filed by public school students under the New York Human Rights Law (“NYHRL”). The two cases are Matter of Ithaca City School District v. New York State Division of Human Rights and Matter of North Syracuse Central School District v. New York State Division of Human Rights. Bond, Schoeneck & King represented the Ithaca City School District (“ICSD”) in this case.

The Ithaca City School District case began in 2006, when a parent of a middle school student filed a complaint with the Division, alleging that her daughter had been subjected to racial harassment by other middle school students. The complainant alleged that ICSD was liable for the harassment under Section 296(4) of the NYHRL, which provides:

It shall be an unlawful discriminatory practice for 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 . . . to permit the harassment of any student or applicant, by reason of his race, color, religion, disability, national origin, sexual orientation, military status, sex, age or marital status

ICSD commenced a proceeding in Supreme Court, Tompkins County, under Article 78 of the Civil Practice Law and Rules, seeking an order prohibiting the Division from exercising jurisdiction over the complaint on the ground that a public school district is not an “education corporation or association” under Section 296(4) of the NYHRL. The court denied ICSD’s petition, and held that the Division could conduct a hearing regarding the complaint.

A hearing was held on December 19 and 20, 2007, before a Division Administrative Law Judge (“ALJ”). The ALJ issued a recommended decision finding ICSD liable for the harassment of the student by other middle school students. The Commissioner of Human Rights adopted the ALJ’s recommended decision regarding liability, but reduced the amount of the ALJ’s recommended damages award to the student and her mother.

ICSD appealed the Commissioner’s decision on several grounds, including the same jurisdictional ground upon which the initial Article 78 proceeding had been based. This time, the Supreme Court, Tompkins County, granted ICSD’s appeal and annulled the determination of the Commissioner. The court held that ICSD was not an “education corporation or association” under the NYHRL and that the Division therefore lacked jurisdiction over the complaint.

The Division appealed the decision to the Third Department Appellate Division, which reversed and held that the term “education corporation or association” should be interpreted broadly to include public school districts such as ICSD. The Third Department’s decision was contrary to a decision previously issued by the Second Department Appellate Division in Matter of East Meadow Union Free School District v. New York State Division of Human Rights. In the East Meadow case, the Second Department concluded that a public school district is not an “education corporation or association” under the NYHRL.

ICSD appealed the Third Department's decision to the New York Court of Appeals. In a 4-3 decision, the Court of Appeals reversed the Third Department and held that a public school district is not an "education corporation or association" under the NYHRL and that the Division does not have jurisdiction over complaints filed by public school students for alleged discrimination or harassment. The Court of Appeals thoroughly analyzed the legislative history of the term "education corporation or association," and determined that the legislature never intended that term to include public school districts.

The Court of Appeals rejected the Division's argument that the term "education corporation or association" should be liberally construed, stating that "it is evident from the legislative history that the term 'education corporation or association,' the origins of which can be traced to the Tax Law, refers to only private, non-sectarian entities that are exempt from taxation under [article four of the real property tax law]." The Court of Appeals also observed that a public school district would never need to "hold itself out to the public to be non-sectarian and exempt from taxation" as stated in Section 296(4) of the NYHRL because all public school districts are non-sectarian and all public school districts are exempt from taxation by virtue of the fact that they are public entities.

Although the Division does not have jurisdiction to investigate and adjudicate complaints of discrimination and harassment filed by public school students, the Court of Appeals recognized that public school students are not left without a remedy if they are subjected to such alleged conduct. For example, public school students can file complaints with the U.S. Department of Education's Office for Civil Rights, alleging violations of various federal laws that prohibit discrimination in programs or activities that receive federal financial assistance from the U.S. Department of Education. Public school students can also file appeals to the Commissioner of Education under Section 310 of the Education Law. The Court of Appeals also noted that the Dignity for All Students Act ("DASA"), which takes effect on July 1, 2012, protects public school students from harassment or discrimination that occurs on school property or at school functions.

DASA requires public school districts to implement policies that are intended to create a school environment that is free from discrimination and harassment. DASA also requires public school districts to develop guidelines to be used in school training programs to discourage discrimination and harassment, to raise the awareness and sensitivity of school employees to potential discrimination and harassment, and to enable employees to prevent and respond to discrimination and harassment. Accordingly, all public school districts should ensure that their policies, codes of conduct, training programs, guidelines, and procedures are updated to comply with DASA no later than July 1, 2012, and that all alleged incidents of harassment or discrimination are thoroughly investigated and addressed appropriately.

If you have any questions or need any assistance regarding your school district's obligations under DASA or other discrimination and harassment laws, please contact:

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