

HIGHER EDUCATION INFORMATION MEMO

JUNE 29, 2022

Yeshiva University Pride Alliance

On June 14, the New York State Supreme Court, New York County (a trial level court in New York State), ruled that Yeshiva University (YU) and its president must “immediately grant plaintiff YU Pride Alliance the full and equal accommodations, advantages, facilities, and privileges afforded to all other student groups at Yeshiva University.”¹

As Yeshiva had been refusing on religious grounds to recognize the Pride Alliance as an official University LGBTQ student group, plaintiff previously applied for a preliminary injunction to compel the University to do so.² This application was denied in 2021 for failure “to demonstrate a likelihood of success on the merits at that juncture.”³ The University had argued at that time that they were a “religious corporation incorporated under the education law”—and therefore excepted from the New York City Human Rights Law (NYCHRL) under the definition of “Place or Provider of Public Accommodation” at § 8-102 – and thus, since not covered by the NYCHRL, could not have violated it. Further, the University argued, if the NYCHRL does apply, this application is violative of the First Amendment. These two issues remained before the Court in this summary judgment motion that followed “limited discovery.”⁴

I. Religious Corporation/NYCHRL Exception

In addressing the question of whether Yeshiva University is “a religious corporation incorporated under the education law” and thus excepted from the NYCHRL, the Court first considered the statutory language of the exception and the legislative intent underlying it. While the Court acknowledged that the University was incorporated under the state’s education law, in answering the second prong of whether it is a “religious corporation,” it looked to the University’s own documents, including the 1967 Amendment to its Charter, which expressly stated that Yeshiva is “**an educational corporation under the Education Law of the State of New York...**” and “is and continues to be organized and operated **exclusively for educational purposes[.]**”⁵ Additionally, the Court looked to a 2021 letter from faculty members of the University’s Cardozo School of Law to President Berman, criticizing the University’s decision not to recognize the Pride Alliance, and referring to Yeshiva as “**a non-sectarian institution of higher education[.]**”⁶ Finally, the Court cited to a 1995 University Fact Sheet, which states that “Yeshiva University is subject to the human rights ordinance of the City of New York. . . [u]nder this law, YU cannot ban gay student clubs. It must make facilities available to them in the same manner as it does for other student groups.”

¹ *Alliance v. Yeshiva University*, No. 154010/21, 2022 WL 2158381, at *1 (N.Y. Sup. Ct. June 14, 2022).

² The University was represented by a law firm specializing in religious discrimination cases. See: <https://yucommentator.org/2021/06/you-defends-decision-to-reject-lgbtq-club-and-receive-government-funding-in-new-court-documents/>; <https://yuobserver.org/2022/02/pride-alliance-lawsuit-against-yeshiva-university-continues-in-court-hearing/>.

³ *Id.* See also *Alliance v. Yeshiva University*, No. 154010/2021, 2021 WL 3666264, at *1 (N.Y. Sup. Ct. Aug. 18, 2021).

⁴ *Alliance v. Yeshiva University*, No. 154010/21, 2022 WL 2158381, at *1 (N.Y. Sup. Ct. June 14, 2022).

⁵ *Alliance v. Yeshiva University*, No. 154010/21, 2022 WL 2158381, at *1, 3 (N.Y. Sup. Ct. June 14, 2022).

(emphasis in original). The Court further noted that, “Yeshiva’s organizing documents do not expressly indicate that Yeshiva has a religious purpose.”

⁶ *Alliance v. Yeshiva University*, No. 154010/21, 2022 WL 2158381, at *1, *4 (N.Y. Sup. Ct. June 14, 2022) (emphasis in original).

The University tried to argue that the Court should apply a “religious function test” – meaning, to “look beyond [YU’s] own organizing documents, and examine its ‘functions and attributes’” and hold that it is, in fact, a religious corporation within the meaning of the statutory exception. However, the court stated that even if it were to accept this argument, it would “reach the same result,” as “Yeshiva is a university which provides educational instruction, first and foremost.” While the Court acknowledged that “[t]here is no doubt that Yeshiva has an inherent and integral religious character which defines it and sets it apart from other schools and universities of higher education[,]” that does not render it a “religious corporation” excepted from the NYCHRL.⁷ The Court rejected the University’s argument that “[y]ou cannot step onto the campus or into a [*sic*] batei midrash⁸ without recognizing that this is a sacred space for students who are studying there.” Instead, the Court held that “the record shows that the purpose students attend Yeshiva is to obtain an education, not for religious worship or some other function which is religious at its core. Thus, religion is necessarily secondary to education at Yeshiva.”

The Court therefore denied the University’s motion for summary judgment on this issue, and granted Plaintiff’s cross-motion for partial summary judgment “to the extent” that it found that Yeshiva University “is not a religious corporation” excepted under the NYCHRL.⁹

II. First Amendment

The next issue before the Court was whether the NYCHRL as applied violated Yeshiva’s First Amendment rights – specifically, Yeshiva’s religious autonomy, the Free Exercise Clause, the Free Speech Clause, and the Assembly Clause. Noting that “[t]he NYCHRL and the First Amendment are not incompatible” (internal citations omitted), the Court considered each of these arguments.

First, the Court found that “the NYCHRL’s impact on Yeshiva’s exercise of religion is only incidental to the NYCHRL’s ban on discrimination,” as “the NYCHRL is a neutral law of general applicability.”¹⁰ Second, the Court rejected YU’s Free Speech argument, holding that “[f]ormal recognition of a student group does not equate to endorsement with that group’s message.” (internal citations omitted). Finally, the Court likewise did not accept the University’s association argument, “as Yeshiva has not come forward with any evidence that formal recognition of an LGBTQ student group and/or the grant of accommodations, advantages, facilities, and privileges at Yeshiva is inconsistent with the purpose of Yeshiva’s mission and will impermissibly infringe on Yeshiva’s assembly rights.” (internal citations omitted). Accordingly, the Court dismissed the University’s motion to dismiss on First Amendment grounds.

Based on its analysis of the two issues above, the Court, *inter alia*, permanently restrained the University and its President “from continuing their refusal to officially recognize the YU Pride Alliance as a student organization because of the members’ sexual orientation or gender and/or YU Pride Alliance’s status, mission, and/or activities on behalf of LGBTQ students.” As noted above, the Court likewise directed the University “to immediately grant plaintiff YU Pride Alliance the full and equal accommodations, advantages, facilities, and privileges afforded to all other student groups at Yeshiva University.”

⁷ “Yeshiva is a university which provides educational instruction, first and foremost. Yeshiva’s religious character evidenced by required religious studies, observation of Orthodox Jewish law, students’ participation in religious services, etc. are all secondary to Yeshiva’s primary purpose.” *Id.* at *5.

⁸ Houses of Torah/Talmud study

⁹ *Id.* at *6.

¹⁰ The Court “[a]ssum[es] arguendo that Yeshiva’s refusal to recognize an LGBTQ student group is part of its exercise of religion[.]” *Id.* at *7.

Religiously affiliated colleges and universities located within New York City should take note of this decision and review their governance documents, policies and practices. These issues are often complex and nuanced; among other things, as the Court noted, there may be religiously affiliated institutions whose purpose, as articulated in their charters and/or other organizational documents, is religious, in which case a different result might be warranted. As such, seeking the advice of counsel can be helpful.

This case is likely to be appealed as far as possible, potentially up to and including the Supreme Court of the United States, and Bond will continue to monitor it for any new developments.

If you have any questions or would like assistance, please contact [Lisa Feldman](#) or the Bond attorney with whom you are regularly in contact.

