New York Supreme Court
Appellate Division – First Department

Appellate Case No. 2022-02719

INTEGRATENYC, INC., COALITION FOR EDUCATION JUSTICE, P.S. 132 PARENTS FOR CHANGE, A.C., H.D. ex rel. W.D., M.G. ex rel. M.G., L.S. ex rel. S.G., C.H. ex rel. C.H., Y.K.J. ex rel. Y.J., A.M., V.M. ex rel. J.M., R.N. ex rel. N.N., M.A. ex rel. F.P., S.S. ex rel. M.S., S.D. ex rel. S.S., K.T. ex rel. F.T. and S.W. ex rel. B.W.,

Plaintiffs-Appellants,

– against –

THE STATE OF NEW YORK, KATHY HOCHUL, as Governor of the State of New York, NEW YORK STATE BOARD OF REGENTS, NEW YORK STATE EDUCATION DEPARTMENT, BETTY A. ROSA, as New York State Commissioner of Education, BILL DE BLASIO, as Mayor of New York City, NEW YORK CITY DEPARTMENT OF EDUCATION and MEISHA PORTER, as Chancellor of the NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendants-Respondents,

– and –

PARENTS DEFENDING EDUCATION,

Intervenor-Defendant-Respondent.

MOTION BY THE NEW YORK CITY BAR ASSOCIATION FOR LEAVE TO APPEAR AS *AMICUS CURIAE* AND FILE BRIEF IN SUPPORT OF APPELLANT AND REVERSAL

Amber Leary
Emily G. Bass
Committee on Civil Rights
Jonathan Glater
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New York City Bar Association
42 W. 44th Street
New York, NY 10036
Amicus Curiae

January 27, 2023

New York County Clerk's Index No. 152743/2021

IAS COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

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INTEGRATENYC INC., COALITION FOR EDUCATIONAL JUSTICE, P.S. 132 PARENTS FOR CHANGE, A.C., H.D. ex rel. W.D., M.G. ex rel. M.G., L.S. ex rel. S.G., C.H. ex rel. C.H., Y.K.J. ex rel. Y.J., A.M., V.M. ex rel. J.M., R.N. ex rel. N.N., M.A. ex rel. F.P., S.S. ex rel. M.S., S.D. ex rel. S.S., K.T. ex rel. F.T. and S.W. ex rel. B.W.,

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Appellate Case No.:
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NOTICE OF MOTION FOR LEAVE TO APPEAR AND FILE BRIEF AS *AMICUS CURIAE*

PLEASE TAKE NOTICE that, upon the annexed Affirmation of Jonathan Glater, Esq., dated January 27, 2023, and the supporting exhibits thereto, and all the proceedings heretofore had herein, the undersigned will move this Court, at the courthouse thereof, located at 27 Madison Avenue, New York, New York 10010, on January 13, 2023, at 10:00 a.m., or as soon thereafter as counsel may be heard, for an Order granting the New York City Bar Association leave file a brief as *amicus curiae* in the above-referenced appeal in support of reversal of the decision of the IAS Court.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering papers, if any, must be served upon the undersigned at least seven (7) days before the return date of this motion.

Dated: New York, New York
January 27, 2023

IAS COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

--x

INTEGRATENYC INC., COALITION FOR EDUCATIONAL JUSTICE, P.S. 132 PARENTS FOR CHANGE, A.C., H.D. ex rel. W.D., M.G. ex rel. M.G., L.S. ex rel. S.G., C.H. ex rel. C.H., Y.K.J. ex rel. Y.J., A.M., V.M. ex rel. J.M., R.N. ex rel. N.N., M.A. ex rel. F.P., S.S. ex rel. M.S., S.D. ex rel. S.S., K.T. ex rel. F.T. and S.W. ex rel. B.W.,

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Appellate Case No.:
2022-02719

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AFFIRMATION OF JONATHAN GLATER IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AND FILE BRIEF AS *AMICUS CURIAE*

Amber Leary, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following to be true under the penalty of perjury:

1. I am a member of the Committee on Civil Rights at the New York City Bar Association (the "City Bar"). I am familiar with the facts as set forth in this affirmation.

2. I respectfully submit this affirmation in support of the City Bar's motion for an Order granting leave to appear and file a brief as amicus curiae in the above-referenced appeal (the "Appeal").

3. The City Bar is a professional organization of over 23,000 attorneys and law students who practice in the New York City metropolitan area, as well as across the United States and internationally. The City Bar seeks to promote legal reform and improve the administration of justice through its more than 150 standing and special committees. As an organization committed to access to justice, the City Bar supports interpretations of law that preserve the availability of remedies for unlawful conduct.

4. On May 25, 2022, the Hon. Frank P. Nervo of the New York State IAS Court, County of New York, issued a Decision and Order, dated May 25, 2022, dismissing the instant action (the "Decision"). A true and correct copy of the Decision is annexed hereto as Exhibit A.

5. By this Appeal, Appellant seeks to reverse the Decision, thereby permitting this action challenging the unequal and unfair educational opportunities to New York City public school students to continue. True and correct copies of the Notice of Appeal, dated June 24, 2022, are annexed hereto as Exhibit B.

6. As set forth in the Association's proposed *amicus curiae* brief (the "Brief"), this Court's determination of the issue on appeal implicates concerns of considerable import to the City Bar and its members. A copy of the Brief is annexed hereto as Exhibit C.

7. Affirmance of the decision below will break with established precedent and hamper efforts to promote fair access to educational opportunity in New York.

8. Therefore, on behalf of the City Bar, I respectfully request that the Court grant leave to appear as *amicus curiae*, and if granted, permission to file an *amicus curiae* brief in support of Plaintiffs-Appellants, to ensure that the Court has the benefit of a full analysis of the law and the implications of the ruling below that warrant reversal of the IAS Court's Decision.

Dated: New York, New York
January 27, 2023

____

Amber Leary
Committee on Civil Rights
New York City Bar Association
42 W. 44th Street
New York, NY 10036
Amicus Curiae

EXHIBIT A

EXHIBIT B

EXHIBIT C

New York IAS Court
Appellate Division – First Department

Appellate Case No. 2022-02719

INTEGRATENYC, INC., COALITION FOR EDUCATION JUSTICE, P.S. 132 PARENTS FOR CHANGE, A.C., H.D. ex rel. W.D., M.G. ex rel. M.G., L.S. ex rel. S.G., C.H. ex rel. C.H., Y.K.J. ex rel. Y.J., A.M., V.M. ex rel. J.M., R.N. ex rel. N.N., M.A. ex rel. F.P., S.S. ex rel. M.S., S.D. ex rel. S.S., K.T. ex rel. F.T. and S.W. ex rel. B.W.,

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BRIEF FOR THE NEW YORK CITY BAR ASSOCIATION IN SUPPORT OF APPELLANTS AND REVERSAL

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STATEMENT OF INTEREST

The New York City Bar Association (the "City Bar"), through its Committee on Education and the Law and its Committee on Civil Rights, submits this brief *amicus curiae* in support of plaintiffs in their appeal of the May 25, 2022 Decision and Order of the New York State IAS Court, County of New York, dismissing this action.

The City Bar is a professional organization of more than 23,000 attorneys and law students who practice in the New York City metropolitan area, as well as across the United States and internationally. The City Bar seeks to promote legal reform and improve the administration of justice through its more than 150 standing and special committees. As an organization committed to access to justice, the City Bar supports interpretations of law that preserve the availability of remedies for unlawful conduct.

The City Bar's Committee on Education and the Law addresses legal and policy issues in the area of education, including the interests of students attending under-resourced schools. The Committee addresses the full range of legal issues surrounding education from pre-K through higher education, including education finance, governance, legislative proposals, and special education.

The Committee on Civil Rights addresses both civil rights and civil liberties matters. The Committee's civil rights concerns include issues affecting racial, ethnic

and religious minorities, the rights of people with disabilities, and the scope and enforcement of anti-discrimination laws. The Committee's civil liberties concerns include protecting First Amendment and Due Process rights, as well as other constitutional rights, against overreach by state actors.

PRELIMINARY STATEMENT

Education is "perhaps the most important function of state and local governments." *Brown v. Bd. of Ed. Of Topeka*, 347 U.S. 483, 493 (1954). In a single paragraph, the IAS Court rejected serious and far-reaching allegations of the failure of New York City's public schools to fulfill the promise to students of a "sound basic education" guaranteed by the New York State Constitution. *See Campaign for Fiscal Equity v. State of New York*, 86 N.Y.2d 307, 315 (1995) (hereinafter *CFE I*). The IAS Court summarily concluded that "[i]t is beyond cavil that the Court lacks jurisdiction" to hear the claims of constitutional violations alleged by the plaintiffs. *Decision and Order on Motion, IntegrateNYC, Inc. v. New York*, Index No. 152742/21 (N.Y. Sup. Ct. May 25, 2022) (hereinafter *Order*). Contrary to long-standing jurisprudence governing justiciability, the IAS Court reasoned that the remedies the plaintiffs sought were too diverse, potentially involving the judiciary to an excessive degree in the details of "educational policy," and therefore that a court's involvement would trespass on the prerogative of the legislature. Order. By erroneously focusing on the implications of possible *remedies*, the IAS Court mistakenly refused to consider the plaintiffs' properly stated *claims* that the defendants had violated the constitutional rights of its schoolchildren.

The justiciability of a claim does not rest on the nature of the relief requested nor on the potential relief called for based on a court's ultimate determination.

Rather, the "judiciary is empowered to declare the individual rights . . .even if the ultimate determination is that the individual has no rights." *Klosterman v. Cuomo*, 61 N.Y.2d 525, 530-531 (1984). In other words, justiciability turns not on the *answer* a court may give but on the *question* that a claim presents. "[C]laims do not present a nonjusticiable controversy merely because the activity contemplated on the State's part may be complex and rife with the exercise of discretion." *Id*.

This is not the first instance in which the courts have confronted a challenge to the operation or effects of New York's public school system. Time and again, courts have considered these challenges. *See, e.g.*, *Bd. of Ed., Levittown Union Free Sch. Dist., Nassau Cnty. v. Nyquist*, 57 N.Y.2d 27, 48-49 (1981) (holding that challenges to the State's chosen method for allocating educational resources are justiciable and that refusal to consider such claims would be "an abdication of [the Court's] constitutional duties"); *see also CFE I*, 86 N.Y.2d at 315 (recognizing the duty of the legislature to provide the "constitutional floor with respect to educational adequacy" and finding that courts are "responsible for adjudicating the nature of that duty"); *accord Davids v. State*, 159 A.D.3d 987, 991 (2018) (denying a motion to dismiss claims that ineffective teaching denied students the right to a sound basic education protected by the New York State Constitution). Plaintiffs' claims fall within this tradition. Further, the judicial branch has not shied from ordering remedies responsive to claims comparable in breadth to those in plaintiffs'

complaint. *See, e.g.*, *Campaign for Fiscal Equity v. State*, 100 N.Y.2d 893, 930 (2003) (hereinafter *CFE II*) (ordering the State to determine the cost of providing sound basic education in New York City and to "enact[] appropriate reforms" thereafter).

The plaintiffs should have the opportunity to make their case that the public education provided by the defendants does not comply with the New York State Constitution and the New York Human Rights Law. The IAS Court erred in assessing the justiciability of the plaintiffs' claims based solely on the potential remedy sought rather than the constitutional violation alleged. The plaintiffs' allegations, which must be taken as true at this stage of proceedings, are justiciable, and properly state claims of constitutional violations sufficient to withstand a motion to dismiss. We respectfully submit that dismissal at this stage was in error and the decision of the IAS Court should be reversed.

ARGUMENT

The IAS Court Erroneously Concluded that the Case Is Not Justiciable Based on Potential Remedies Rather than on the Nature of the Action

Although defining justiciability (which can encompass diverse obstacles to jurisdiction including mootness, the prohibition on advisory opinions, and the political question doctrine) can be complex, here the question is not difficult. The plaintiffs have asked the judiciary to consider allegations like those made in suits deemed justiciable in other cases and in no way ask the IAS Court to violate the separation of powers by taking up consideration of an issue more properly within the purview of the legislature. Stated plainly, the plaintiffs asked the IAS Court to adjudicate their constitutional right to a sound basic education, which is squarely within the power of the IAS Court to consider. *See Klosterman*, 61 N.Y.2d at 537 (holding that a controversy is justiciable when the cause of action alleges that a defendant failed to comply with constitutional directives).

In considering only potential relief to justify dismissal of the plaintiffs' claims, the IAS Court misapplied New York courts' long-standing jurisprudence on justiciability. New York courts have routinely held that claims challenging legislative policies or programs—including educational policies and programs—are justiciable without regard to possible remedies. The Court of Appeals has ruled that the judicial branch is the "appropriate forum to determine the respective rights

and obligations" of individuals who "claim that they hold certain rights under the pertinent statutes and are seeking to enforce those rights." *Klosterman*, 61 N.Y.2d at 536 (holding that claims challenging the adequacy of hospital patients' care were justiciable). More directly, courts have held that claims challenging "gross and glaring inadequac[ies]" in educational opportunity in violation of the New York State Constitution and laws of New York are justiciable. For example, in *Board of Educ., Levittown Union Free Sch. Dist. v. Nyquist*, the Court of Appeals recognized that claims alleging violations of the Education Article of the New York State Constitution are justiciable. 57 N.Y.2d at 48-49. The Court of Appeals reaffirmed this holding a few years later in *CFE I*. Significantly, in *CFE I*, in which a coalition of community school boards, nonprofit advocacy organizations, and individuals argued that New York's method of school financing violated the New York State Constitution, the Court of Appeals concluded that while the "Education Article imposes a duty on the legislature to ensure the availability of a sound basic education to all the children of the state," it is the courts that "are responsible for adjudicating the nature of that duty." *CFE I*, 86 N.Y.2d at 312-313, 315. In *CFE II*, the Court of Appeals again reiterated that "it is the province of the Judicial branch to define, and safeguard, rights provided by the New York State Constitution, and order redress for violation of them." *CFE II*, 100 N.Y.2d at 925. The Court in *CFE II* went on to state that the judicial branch is "well suited to interpret and safeguard constitutional rights

and review challenged acts of our co-equal branches of government—not in order to make policy but in order to assure the protection of constitutional rights." *Id.* at 930.

Other courts have also endorsed this conception of the role and responsibility of the judicial branch in New York. *See, e.g.*, *Hussein v. State*, 81 A.D.3d 132, 137 (3d Dep't 2011) (holding that parents' claims alleging that underfunding schools deprived children of a sound basic education were justiciable); *see also Hernandez v. State*, 173 A.D.3d 105, 110 (3d Dep't 2019) (holding that a constitutional challenge to the exclusion of farm laborers from a law allowing organizing and collective bargaining presented justiciable controversy); *Palm v. Tuckahoe Union Free School District*, 95 A.D.3d 1087, 1090 (2d Dep't 2012) (holding that condominium owners seeking a declaration that they could designate their school district presented justiciable controversy sufficient to survive a motion to dismiss); *New York County Lawyers' Association v. State*, 294 A.D.2d 69, 72-73 (1st Dep't 2002) (holding that a legal association's claim that the compensation for assigned counsel was too low was justiciable). The universe of justiciable claims recognized by these cases encompasses those brought by plaintiffs here.

Here, the IAS Court failed to follow these well-established precedents. The initial and principal task of the IAS Court was to determine whether the plaintiffs adequately alleged a violation of New York City students' education and equal

protection rights protected by law sufficient to withstand a motion to dismiss. It was *not* to ponder all the possible remedies responsive to the plaintiffs' claims in order to ascertain whether relief could be granted without invading the domain of a coequal branch of government. Recognition of the wrong must come first, crafting of a remedy comes after.

Moreover, the New York Civil Practice Law & Rules (the "CPLR") explicitly empowers the judicial branch to exercise its judgment to provide "relief within its jurisdiction appropriate to the proof whether or not demanded, imposing such terms as may be just." N.Y. CPLR § 3017(a). In other words, if a complaint establishes a redressable violation, the court may fashion a just remedy whether or not it is a remedy requested by the complainants. It is inconsistent with the judicial role to require that, in order to survive a motion to dismiss, the complainant specify the remedy the court must provide. *See Mintz v. Am. Tax Relief, LLC*, 837 N.Y.S.2d 841, 847 (Sup. Ct. N.Y. Cnty. 2007) (noting that arguments concerning remedies are "irrelevant to determination of this motion to dismiss. . . . As set forth in one treatise, where the pleader has stated a good cause of action, the complaint will not be subject to dismissal if the demand asks for relief to which the plaintiff is not entitled, or relief that is inconsistent with the cause of action stated. . . . Accordingly, the demand normally is not considered in determining the character or nature of the action or the sufficiency of the pleading.").

The plaintiffs commenced this action seeking, among other things, a declaration that defendants' actions violated (i) the Education Article of the New York State Constitution, (ii) the equal protection clause of the New York State Constitution, and (iii) the New York State Human Rights Law. At the motion to dismiss stage, the court's role is to "determine only whether the facts as alleged fit within any cognizable legal theory." *CFE I*, 86 N.Y.2d at 318. In making this determination, the trial court is required to draw all inferences in favor of the plaintiff, taking as true all facts alleged in the complaint. *Id.* The Court of Appeals has recognized the right of plaintiffs to seek redress, and not have the courthouse doors closed at the very inception of an action, when the pleading meets the minimal standard necessary to withstand a motion to dismiss. *Armstrong v. Simon & Schuster*, 85 NY2d 373, 379 (1995); *see also Leon v. Martinez*, 84 NY2d 83, 87-88, (1994) (holding that a court must "determine only whether the facts as alleged fit within any cognizable legal theory."). The plaintiffs here have alleged facts showing that the defendants (i) failed to provide a sound basic education as mandated by the State Constitution, (ii) adopted policies that have a disparate, adverse impact on members of a suspect class in violation of the equal protection article of the State Constitution, and (iii) discriminated on a prohibited basis in violation of the New York State Human Rights Law. Taking the plaintiffs' factual allegations as true, the plaintiffs have clearly and properly stated a cognizable and justiciable claim.

In ignoring the factual allegations and focusing instead on potential remedies sought, the IAS Court placed itself at odds with the long-standing method New York courts have used to determine whether a pleading states a cause of action capable of surviving a motion to dismiss. Although a remedy could "necessitate the appropriation of funds and perhaps, . . . some reordering of legislative priorities[,]… this does not amount to an argument upon which a court might be relieved of its essential obligation to provide a remedy for violation of a fundamental constitutional right." *Hurrell-Harring v. State*, 15 N.Y.3d 8, 26 (2010) (quoting *Marbury v. Madison*, 5 U.S. 137, 147 (1803) ("[E]very right, when withheld, must have a remedy, and every injury its proper redress.")). The Court of Appeals has consistently held that "enforcement of a clear constitutional or statutory mandate is the proper work of the courts." *Id.* (internal citations omitted). In reaching its conclusion, the IAS Court did not—and indeed could not—find that the plaintiffs' *claims* were not justiciable (which they are) because the IAS Court based its decision on its assessment of potential *remedies*.

The IAS Court should have begun and ended its evaluation of the defendants' motion to dismiss with a determination of whether the plaintiffs adequately alleged a violation of rights protected by the New York State Constitution and laws of the State of New York. Because the plaintiffs' allegations, taken as true, meet this standard, dismissal was improper.

CONCLUSION

Courts have been and should be mindful of the fundamental value of education in our democratic society. Education provides the very foundation of good citizenship, and is "a principal instrument in awakening the child to cultural values, in preparing [students] for later professional training, and in helping [them] to adjust normally to [their] environment. It is doubtful that any child may reasonably be expected to succeed in life if denied the opportunity of an education." *San Antonio School Dist. v. Rodriguez*, 411 US 1, 30 (1973) (quoting *Brown*, 347 U.S. at 493). Given the importance of education, educational opportunities "must be made available to all on equal terms." *Brown*, 347 U.S. at 493. In granting the defendants' motion to dismiss, the IAS Court gave short shrift to these important values and, in a single paragraph, erroneously dismissed the action based on the mistaken premise that jurisdiction can be defeated by potential relief implicated. The IAS Court further erred in failing to recognize that the allegations in the plaintiffs' complaint, taken as true for purposes of the motion to dismiss, adequately described violations of rights protected by New York law. This action should not have been dismissed.

For the reasons set forth above, *amicus* respectfully requests that this Court reverse the judgment of the IAS Court.

Dated: January 27, 2023

Respectfully submitted,

NEW YORK CITY BAR ASSOCIATION

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PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR § 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:
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Dated: New York, New York
January 27, 2023