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Appellate Division–First Department Case No. 2022-02719

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NEW YORK STATE
COURT OF APPEALS

# Court of Appeals
*of the*
# State of New York

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-Respondents*,

– 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,

(*caption continues inside front cover*)

## MOTION BY THE NEW YORK CITY BAR ASSOCIATION FOR LEAVE TO APPEAR AS *AMICUS CURIAE* AND FILE BRIEF IN SUPPORT OF PLAINTIFFS-RESPONDENTS AND AFFIRMANCE

JONATHAN GLATER
LAURA BARBIERI
PATRICIA JENDRASZEK
MELISSA ROOKER
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Dated: March 18, 2025

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*(caption continues from front cover)*

NEW YORK CITY DEPARTMENT OF EDUCATION and MEISHA PORTER,
as Chancellor of the NEW YORK CITY DEPARTMENT OF EDUCATION,
Defendants-Appellants,

– and –

PARENTS DEFENDING EDUCATION,
Intervenor-Defendants-Appellants.

STATE OF NEW YORK
COURT OF APPEALS

| | |
|---|---|
| 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.,<br><br>Plaintiffs-Respondents,<br><br>— against —<br><br>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,<br><br>Defendants-Appellants. | APL-2024-00099<br><br>**NOTICE OF MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE** |

**PLEASE TAKE NOTICE** that, upon the annexed Affirmation of Evan Henley, Esq., dated March 18, 2025, and all the proceedings heretofore and herein, the undersigned will move this Court, at the courthouse thereof, located at 20 Eagle Street, Albany, NY 12207, on April 7, 2025, or as soon thereafter as counsel may be

heard, for an Order granting the New York City Bar Association leave to file a brief as *amicus curiae* in the above-referenced appeal in support of Plaintiffs-Respondents and affirmance of the decision of the Supreme Court, Appellate Division.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to CPLR 2214(b), answering papers, if any, must be served upon the undersigned at least two (2) days before the return date of this motion.

Dated: New York, New York
March 18, 2025

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STATE OF NEW YORK
COURT OF APPEALS

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EVAN HENLEY, 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 co-chair of the Civil Rights Committee of 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 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 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. As set forth in the City Bar'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 A.

5. The City Bar has long concerned itself with the right to fair and equal educational opportunities in New York City and, drawing on its experience, can identify law and arguments arising from public policy that might otherwise escape the Court's consideration. The Brief reflects the thought and expertise of the City

Bar's Committee on Education and the Law and Civil Rights Committee and will be of assistance to this Court. The court below granted the City Bar leave to file a brief as *amicus curiae* in this matter.

6. The lower court's decision is consistent with established precedent, and disparate impact claims brought pursuant to the New York State Human Rights Law will promote efforts to ensure fair access to educational opportunities in New York.

7. No party's counsel contributed content to this brief *amicus curiae* or participated in the preparation of the brief in any other manner; no party or party's counsel contributed money that was intended to fund preparation or submission of the brief; and no person or entity, other than movant or movant's counsel, which includes Pillsbury Winthrop Shaw Pittman LLP, contributed money that was intended to fund preparation or submission of the brief.

WHEREFORE, the City Bar respectfully requests that this Court grant its motion for leave to appear as amicus curiae and file the annexed brief in support of Plaintiffs-Respondents and affirmance.

I affirm this 18th day of March, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: New York, New York
March 18, 2025

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STATE OF NEW YORK
COURT OF APPEALS

INTEGRATENYC INC., et al

Plaintiffs-Respondents,

- against -

THE STATE OF NEW YORK, et al.

Defendants-Appellants,

and

PARENTS DEFENDING EDUCATION,
Intervenor-Defendant-Appellant.

APL-2024-00099

**AFFIRMATION OF SERVICE**

I, Vidhi Barot, admitted to practice law in the State of New York, affirm under the penalty of perjury that the following is true and correct.

1. I am over eighteen years of age and am an attorney at Pillsbury Winthrop Shaw Pittman LLP. I am not a party to this action.

2. On March 18, 2025, I affirm that a true and correct copy of the Motion by the New York City Bar Association for Leave To Appear as *Amicus Curiae* and File Brief in Support of Plaintiff-Respondents and Affirmance along with the Proposed Brief Amicus Curiae by the New York City Bar Association in Support of Plaintiff- Respondents and Affirmance was served on the following parties and in the manner indicated.

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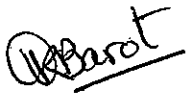
19th day of March, 2025



Vidhi Barot

# EXHIBIT A

APL-2024-00099
New York County Clerk's Index No. 152743/2021
Appellate Division–First Department Case No. 2022-02719

# Court of Appeals
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# State of New York

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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– 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,

*(caption continues inside front cover)*

**PROPOSED BRIEF *AMICUS CURIAE* BY THE NEW YORK CITY BAR ASSOCIATION IN SUPPORT OF PLAINTIFFS-RESPONDENTS AND AFFIRMANCE**


JONATHAN GLATER
LAURA BARBIERI
PATRICIA JENDRASZEK
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Dated: March 18, 2025

*Attorneys for Proposed Amicus Curiae*

*(caption continues from front cover)*

NEW YORK CITY DEPARTMENT OF EDUCATION and MEISHA PORTER, as Chancellor of the NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendants-Appellants,

– and –

PARENTS DEFENDING EDUCATION,

Intervenor-Defendants-Appellants.

## STATUS OF RELATED LITIGATION

Pursuant to Rules of Practice of the New York Court of Appeals 22 NYCRR §500.13 (a), the New York City Bar Association states that it not aware of any related litigation as of the dates of filing of this brief.

## DISCLOSURE STATEMENT PURSUANT TO RULE 500.1(f)

Pursuant to 22 NYCRR §500.1(f), the Association of the Bar of the City of New York, also known as the New York City Bar Association, states that it is a voluntary bar association with no parent corporation or subsidiaries. The New York City Bar Association has one affiliate, the Association of the Bar of the City of New York Fund, Inc.

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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 Civil Rights Committee, respectfully submits this amicus curiae brief to urge the Court to affirm the holding of the court below that the New York State Human Rights Law (NYSHRL) allows for disparate impact discrimination claims in the educational context.

Founded in 1870, the City Bar is one of the oldest bar associations in the United States. It has approximately 23,000 members and 150 committees. The City Bar seeks to promote legal reform and to improve the administration of justice by commenting on proposed legislation, publishing reports on legal issues, and participating as amicus curiae in litigation. In these and other ways, the City Bar serves as a voice for the legal profession in promoting the equitable administration of justice in New York.

The City Bar's Committee on Education and the Law addresses the full range of legal issues surrounding education from pre-K through higher education, including education finance, governance, legislative proposals, and special education; and its Civil Rights Committee addresses issues pertaining to, *inter alia*, combating discrimination and ensuring that New Yorkers have equal opportunity to access state and private institutions. Given the City Bar's legal expertise and interest

in the New York City school system, it is well positioned to submit an amicus curiae brief in this matter.

The Committee on Education and the Law and Civil Rights Committee submit this brief on behalf of the City Bar, as amicus curiae, in support of Plaintiffs-Respondents in this case. No party contributed content to this brief. No party, party's counsel, person, or entity other than the City Bar and its counsel, which includes Pillsbury Winthrop Shaw Pittman LLP, contributed money to fund preparation or submission of the brief.

## PRELIMINARY STATEMENT

It has long been settled that educational opportunities, if provided by the state, "must be made available to all on equal terms" (*Brown v Bd. of Educ.*, 347 US 483, 493 [1954]). In this case, Plaintiffs challenge Defendants' commitment to abide by the United States Supreme Court's clear command. Plaintiffs allege that New York City public schools "[m]aintain[] a racialized pipeline to the City's prime educational opportunities" by using screening mechanisms that disproportionately exclude children of color, "teach[ing] a Eurocentric curriculum that centers white experience, marginalizing the experiences and contributions of people of color," "[f]ailing to recruit, retain, and support a racially diverse educator workforce," and "[f]ailing to provide sufficient training, support, and resources to enable administrators, teachers, and students to identify and dismantle racism" (R. at 17).

These are weighty allegations that challenge New York City's management of one of this State's most important responsibilities: the education of our children.

The court below correctly recognized the gravity of Plaintiffs' claims and the importance of judicial review thereof and consequently reversed the trial court, which had dismissed the complaint as nonjusticiable on the ground that it "improperly [sought] this Court to make education policy." This brief addresses the additional holding by the court below that New York City's use of discriminatory tests in determining access to better educational opportunities violated the New York State Human Rights Law, Executive Law § 296 [4] [hereinafter "NYSHRL"] (*Integrate NYC, Inc. v State,* 228 AD3d 152, 173-174 [1st Dept 2024]).

The court below was correct to rule that Plaintiffs needed only allege that the policies and practices of New York City had a disparate effect, although—as that court noted—Plaintiffs also separately alleged that Defendants acted with discriminatory intent (*id.* at 173). However, the court below found no prior case that included analysis of allegations of disparate impact discrimination in education (*id.* at 174).

We argue that the plain meaning of the NYSHRL dictates that a prima facie claim of discrimination in education may be based on allegations of disparate impact. This is neither novel nor controversial. This position is consistent with New York courts' longstanding practice when assessing claims of employment

discrimination under the NYSHRL, and the language of the NYSHRL's provisions prohibiting discrimination in employment and in education do not differ materially from each other. Courts weighing claims of discrimination in education have routinely looked to analogous claims of employment discrimination, and this Court's jurisprudence has consistently recognized that employment discrimination claims may be based on allegations of disparate impact (*see infra* Section I.B). As the court below reasoned, the analysis of a claim of disparate impact discrimination "should be the same whether the alleged discriminatory testing is required to secure employment or whether it is required to secure admission to the City's prime educational opportunities which leads to employment" (*id.* at 174). While federal courts have adopted a narrower interpretation of federal law regarding discrimination in education, the Legislature has expressly stated that the protection afforded by the NYSHRL is more expansive. Indeed, the legislative history of the NYSHRL makes clear that lawmakers intended the law to afford more protection. Narrowing the scope of NYSHRL would erect a significant barrier to valid claims of discrimination.

Accordingly, this Court should affirm the well-reasoned decision below that a disparate impact claim constitutes a viable cause of action in education, just as it does in employment. As required by Rule 500.23(a)(4)(i), this question has not been

extensively briefed by the parties, and our goal is to present arguments and legislative history that might otherwise escape the Court's consideration.

## ARGUMENT

### I. A DISPARATE IMPACT DISCRIMINATION CLAIM IS CONSISTENT WITH THE PLAIN MEANING, LEGISLATIVE INTENT, AND JUDICIAL INTERPRETATION OF THE NEW YORK STATE HUMAN RIGHTS LAW.

The First Department held that a disparate impact claim under the New York State Human Rights Law (NYSHRL) "applies to education cases" (*Integrate NYC*, 228 AD3d at 174). This Court should affirm that holding because the recognition of disparate impact claims under Executive Law § 296(4) both comports with the statute's plain meaning and vindicates the legislative purposes underlying the NYSHRL, and because New York courts have long recognized disparate impact claims under the law.

#### A. The plain meaning of the NYSHRL permits a claim of discrimination based on alleged disparate impact.

When interpreting a statute, a court's "primary consideration is to ascertain and give effect to the intention of the [l]egislature" (*Matter of Lynch v City of New York*, 40 NY3d 7, 13 [2023]). The starting point for this inquiry is the language of the statute itself, and "the literal language of a statute controls unless the plain intent and purpose of [the] statute would otherwise be defeated" (*id.* [citation and internal

quotation marks omitted]). The plain meaning of NYSHRL expresses the breadth of the protection it affords against unlawful discrimination. The law states:

> It shall be an unlawful discriminatory practice for an educational institution to deny the use of its facilities to any person otherwise qualified, or to permit the harassment of any student or applicant, by reason of his race, color, religion, disability, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, age, marital status, or status as a victim of domestic violence . . .

(Executive Law § 296 [4]). The plain language of the statute does not imply a requirement that a plaintiff establish discriminatory intent: that is, that a defendant intended to discriminate against a person or class of persons on the basis of a protected characteristic. Rather, the "discriminatory practice" occurs when there is a "den[ial]... by reason of" such a characteristic. "By reason of" means "because of" or "due to" (*By Reason Of Definition*, Merriam-Webster.com, available at https://www.merriam-webster.com/dictionary/by%20reason%20of [last accessed Feb. 22, 2025]). A showing of discriminatory intent, necessary to support a claim of disparate *treatment* by a defendant, is unnecessary when the claim is that a defendant's policy or practice, even if not motivated by hostile animus, has an unfair, illegal, disparate *effect* on members of a protected class. In such a case, the policy or practice negatively affects these individuals *because of* or *due to* the protected characteristic. Plaintiffs allege just such a policy or practice and disparate effect.

### B. New York courts have long recognized that the plain meaning of the NYSHRL permits disparate impact claims in the context of employment, and it is well settled that courts look to employment law doctrine when assessing claims of discrimination in education.

Courts interpreting the NYSHRL have concluded that the plain meaning of the law permits a plaintiff to make out a prima facie claim of discrimination based on allegations that an employer's policy or practice has a disparate impact. It is also well settled that when assessing claims of discrimination in education, courts look to employment law doctrine for guidance, and courts have long recognized the viability of disparate impact claims of employment discrimination. Consequently, this Court should endorse the conclusion of the court below that the NYSHRL also recognizes claims of discrimination in education based on disparate impact.

#### 1. New York courts have long recognized the viability of claims of employment discrimination based on allegations of disparate impact.

The NYSHRL prohibits an employer, "because of an individual's [membership in a protected class] to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment" (Executive Law § 296 [1][a]). This Court recognized over fifty years ago that disparate impact claims alleging discrimination in employment may be brought pursuant to the NYSHRL

(*see Matter of Sontag v Bronstein*, 33 NY2d 197, 201 [1973] ["[W]hen a hiring standard, although neutral on its face or even neutral in terms of intent, adversely affects equal employment opportunity for a protected class of persons, judicial scrutiny of that hiring criterion is warranted"]). This is because an employment policy or practice that, for example, systematically excludes women from a job opportunity and serves no job-related purpose discriminates against them *because of* their sex, and the NYSHRL prohibits such policies and practices (*Sanbonmatsu v Boyer*, 45 AD2d 249, 252 [4th Dept 1974], *affd* 39 NY2d 914 [1976]).

In decisions after *Matter of Sontag*, this Court emphasized the rationale for the disparate impact theory of discrimination under the NYSHRL: "[a] permitted practice can result in a[n] undesirable condition which conflicts with the objectives of the Human Rights Law . . . .The crucial test is whether there is established in practice a pattern of employment policy which encourages or permits conduct which runs counter to the expressed purpose of the statute" (*State Div. of Human Rights v Kilian Mfg. Corp.*, 35 NY2d 201, 208 [1974]). In other words, the NYSHRL prohibits employment practices that may not have been instituted with discriminatory intent but are discriminatory in operation (*People v New York City Transit Auth.*, 59 NY2d 343, 348-349 [1983], quoting *Connecticut v Teal*, 457 US

440, 446 [1982]).[1] This is necessary to achieve equality of employment opportunity (*see* Executive Law § 291 [1]; *Kilian Mfg. Corp.*, 35 NY2d at 204; *cf. Griggs v Duke Power Co.*, 401 US 424, 425 n 1, 429 [1971] ["The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities . . . ."]).

**2. The provisions of the NYSHRL addressing discrimination in employment and in education do not differ meaningfully from each other.**

There are no meaningful differences between the two provisions of the NYSHRL that apply to employment and education, respectively, and the similarity strongly suggests that they do not contemplate different causes of action. The NYSHRL defines illegal discrimination in employment as adverse employment actions taken "because of" a protected characteristic (Executive Law § 296 [1]), while the provision defining illegal discrimination in education refers to conduct that denies opportunity "by reason of" a protected characteristic (Executive Law §296 [4]). The phrases "by reason of" and "because of" have virtually identical, if not identical, meanings (*see Roberts v Tischman Speyer Props., L.P.*, 13 NY3d 270, 289 [2009]). An unnecessary and artificial barrier to admission may discriminate against students "by reason of" their membership in a protected class just as much as such a

[1] Courts have also recognized that the NYSHRL gives rise to housing-related disparate impact claims (*see, e.g.*, *New York State Div. of Human Rights v Town of Oyster Bay*, 177 AD3d 893, 895 [2d Dept 2019])

barrier may discriminate against employment applicants "because of" their membership in a protected class. A disparate impact claim is therefore firmly grounded in the text of Executive Law § 296(4) (*see Matter of McCabe v 511 W. 232nd Owners Corp.*, 2024 NY LEXIS 1991, *8 [Dec. 14, 2024], quoting *Doe v Bloomberg L.P.*, 36 NY3d 450, 462 [2021]).[2]

### 3. Courts weighing claims of education discrimination routinely look to and apply employment law doctrine.

Unlike federal antidiscrimination statutes, which are separated by subject matter in different sections of the United States Code, the NYSHRL prohibits discrimination in different settings in the same section of the Executive Law. Notwithstanding this structural difference, because federal antidiscrimination statutes provide the floor for protections under the NYSHRL (Executive Law § 300), federal courts' application of federal antidiscrimination statutes can provide useful guidance to New York courts (*see, e.g.*, *Stephenson v Hotel Empls. & Rest. Empls. Union Local 100 of AFL-CIO*, 6 NY3d 265, 270 [2006]; *Macchio v Michaels Elec. Supply Corp.*, 149 AD3d 716, 719 [2d Dept 2017]; *Matter of Aurecchione v New York State Div. of Human Rights*, 98 NY2d 21, 25-26 [2002]). Federal courts

[2] Another textual difference between Executive Law §§ 296(1) and 296(4) is that Executive Law § 296(4) prohibits discrimination against any person who is "otherwise qualified." However, even federal anti-discrimination laws that contain "otherwise qualified" language allow disparate impact discrimination claims (*E.g.*, 5 USC § 794; *B.C. v Mount Vernon Sch. Dist.*, 837 F3d 152, 158 [2d Cir 2016]).

applying federal antidiscrimination law in the context of education regularly look to other, similarly worded statutes, and the caselaw interpreting those statutes, for guidance. For example, in *Sharif v New York State Education Department*, the court noted that "courts examining Title IX questions have looked to the substantial body of law developed under Title VI, 42 USC § 2000d, which prohibits race discrimination in federally-funded programs, and Title VII" (709 F Supp 345, 360 [SD NY 1989]), demonstrating how federal anti-discrimination statutes are often interpreted in tandem to achieve common principles of equality (*see Yusuf v Vassar College*, 35 F3d 709, 714 [2d Cir 1994] ["Title IX was enacted to supplement the Civil Rights Act of 1964's bans on racial discrimination in the workplace and in universities. Because the statutes share the same goals . . . courts have interpreted Title IX by looking to the body of law developed under Title VI, as well as the caselaw interpreting Title VII."]). While *Sharif* and *Yusuf* specifically address the relationship among federal statutes, they underscore a broader judicial practice of referencing employment discrimination law to inform the analysis of education discrimination claims (*see, e.g.*, *Campaign for Fiscal Equity v State*, 86 NY2d 307, 322-323 [1995]). All these cases reflect a well-established principle: anti-discrimination protections in education and employment are mutually reinforcing, and courts interpret these statutory frameworks consistently to ensure robust enforcement of civil rights. The consistent judicial approach, which illustrates that

courts should apply the same process when assessing state-level education discrimination claims, informs courts' reading of antidiscrimination statutes and ensures that anti-discrimination protections remain effective. This Court should endorse the conclusion that the NYSHRL contemplates a claim of discrimination in education based on allegations of disparate impact, just as the law recognizes a claim of employment discrimination based on disparate impact.

#### 4. The NYSHRL is not limited by interpretations of federal antidiscrimination laws.

Although New York courts occasionally refer to federal analogues in interpreting state civil rights claims, a comparison used to limit the NYSHRL is inappropriate. Critically, Title VI and Title IX are not analogous to the NYSHRL in the context of determining whether the NYSHRL permits a disparate impact claim in education. Indeed, the Legislature has instructed that federal law constitutes a floor, not a ceiling, for protection against discrimination in New York. The 2019 amendments to the NYSHRL directed courts to construe the law "liberally" to accomplish its "remedial purposes . . . regardless of whether federal civil rights laws . . . have been so construed" (Executive Law § 300). "Exceptions to and exemptions from" the NYSHRL "shall be construed narrowly in order to maximize deterrence of discriminatory conduct" (*id.*).

In other words, the NYSHRL explicitly prohibits courts from applying to state antidiscrimination law any judicial interpretations of analogous federal laws that have been construed more narrowly—like the Supreme Court's interpretations of Title VI and Title IX. There is now a "one-way ratchet": federal antidiscrimination laws only provide a floor below which the NYSHRL's protections cannot fall, not a ceiling that limits their reach (*Loeffler v Staten Island Univ. Hosp.*, 582 F3d 268, 278 [2d Cir 2009]).[3] The City's argument that the NYSHRL should be limited by federal courts' interpretations of Title VI and Title IX violates the statute's clear directive to interpret the NYSHRL independently from federal civil rights laws. This mandate fatally undermines the City's assertion that a disparate impact claim is not viable because federal courts have found that "analogous" federal statutes, specifically Title VI (42 USC § 2000d) and Title IX (20 USC § 1681 [a]), do not allow for disparate impact claims in education (City Br. at 58-59).

### C. The legislative history of the NYSHRL demonstrates the intent to permit claims based on evidence of disparate impact.

[3] For that reason, the Supreme Court's decision in *Alexander v Sandoval*, which held that Title VI of the Civil Rights Act of 1964 ("Title VI") did not create a right of action for private litigants seeking to bring disparate impact claims, is wholly inapposite (532 US 275 [2001]). That case rested on the underlying, undisputed premise that Title VI, the federal anti-discrimination statute that prohibits discrimination on the basis of race, color, and national origin in educational institutions that receive federal funds (42 USC § 2000d et seq.), only prohibits intentional discrimination (*Sandoval*, 532 US at 280 ["[I]t is similarly beyond dispute—and no party disagrees—that § 601 prohibits only intentional discrimination"]). But, as discussed above, this Court held more than fifty years ago that the NYSHRL indeed provides for disparate impact claims (see *Matter of Sontag*, 33 NY2d at 201).

Legislative action to amend the NYSHRL also demonstrates lawmakers' intention that disparate impact discrimination in education be prohibited. In 2019, the Legislature amended the NYSHRL in two ways relevant to application of that law to this case. First, the Legislature amended the NYSHRL to establish that its provisions applied to public schools (Executive Law §296 [4]; Assembly Mem in Support of 2019 NY Assembly Bill A3425). In so doing, the Legislature repudiated a Court of Appeals decision that had concluded that the NYSHRL did not apply to public schools, *Matter of North Syracuse Cent. Sch. Dist. v New York State Div. of Human Rights* (19 NY3d 481 [2012]) (Assembly Mem in Support of 2019 NY Assembly Bill A3425). Second, the Legislature added Section 300, which emphasized that "this article shall be construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of this article, have been so construed" (Executive Law § 300). The goal of the instruction that the NYSHRL be construed liberally to accomplish its remedial purposes is the maximum deterrence of discriminatory conduct (*cf. Williams v New York City Hous. Auth.*, 61 AD3d 62, 68 [1st Dept 2009] [describing objectives of the New York City Human Rights Law]). Indeed, state and federal courts have consistently concluded that, after the 2019 amendment to Executive Law § 300, the NYSHRL should be construed similarly to the New York City Human Rights Law

(NYCHRL) (*see, e.g.*, *Doolittle v Bloomberg L.P.*, 2023 US Dist LEXIS 194764, *20 [SDNY, Oct. 31, 2023, No. 22-cv-09136]; *see also Syeed v Bloomberg L.P.*, 41 NY3d 446, 451 [2024] [noting similarities between Executive Law § 300 and Administrative Code § 8-130]; *Hosking v Memorial Sloan-Kettering Cancer Ctr.*, 126 NYS3d 98, 102 n*1 [1st Dept 2020] [same]; *Cannizaro v City of New York*, 206 NYS3d 868, 885 [1st Dept 2023] [observing that the "amended NYSHRL adopts the same standard as the NYCHRL"]). This means that courts should also construe the NYSHRL "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible" (*see Albunio v City of New York*, 16 NY3d 472, 477-478 [2011]).

### D. All indicia support recognition of claims of discrimination in education based on allegations of disparate impact.

In sum, the legislative text, purpose, history, as well as judicial precedents, support the conclusion that the NYSHRL permits disparate impact claims in the educational context, just as in employment and housing. A policy or practice that invidiously bars members of a protected class from accessing educational facilities frustrates the objectives of the NYSHRL and undermines equality of opportunity in the same way (*see* Executive Law §§ 291 [2], 296 [4], 300). The prohibitions on discrimination exist together in the same section of the Executive Law, and the liberal construction mandate applies to each. The New York City defendants argue by bald assertion that an allegation of discrimination in education—but not in

employment or housing—requires establishing discriminatory intent, but the defendants "point[] to no cases… holding that education discrimination claims under the State HRL may [not] be based solely on disparate impact" (City Br. at 51). Rather, the statute's plain language, legislative intent, judicial commitment to consistency of application of New York antidiscrimination law, and overall interest in fairness all weigh *against* exceptional treatment of claims of discrimination in education. In education, just as in employment and housing, the legislative intent is to create equality of opportunity: the opportunity to obtain employment, housing, and education without discrimination is a civil right (Executive Law § 291). Indeed, as the First Department noted, equal access to educational opportunities today is necessary for future employment opportunities (*Integrate NYC*, 228 AD3d at 174).

## II. TO MAKE OUT A CLAIM OF DISPARATE IMPACT DISCRIMINATION, THE PLAINTIFFS NEED SIMPLY ALLEGE A *POLICY OR PRACTICE*, A *DISPARITY* ADVERSE TO MEMBERS OF A PROTECTED CLASS, AND *CAUSATION* LINKING THE TWO.

It is well settled that, to establish a *prima facie* claim of disparate impact discrimination, a plaintiff must do three things:

> (1) identify a specific … practice or policy;
> (2) demonstrate that a disparity exists; and
> (3) establish a causal relationship between the two.

(*Cannizaro*, 206 NYS3d at 885, citing *Chin v Port Auth. of New York & New Jersey*, 685 F3d 135, 151 [2d Cir 2012]). These are the same factors that federal courts

consider in assessing claims alleging violations of Title VII of the federal Civil Rights Act but, under New York law, "claims are construed more liberally than those under Title VII or the previous [pre-amendment in 2019] NYSHRL" (*id.*). In a case alleging employment discrimination, then, "to survive a motion to dismiss, the plaintiff must merely allege sufficient facts to support a plausible claim that an employer's facially neutral practice or policy disproportionately affects a particular protected group" (*id.*). Plaintiffs in the instant case have made claims of discrimination in education that are subject to, and easily clear, this standard. For example, Plaintiffs allege that the factors used to allocate students to highly desirable, "competitive" middle schools, which include grades and scores on standardized English and math tests, are facially neutral mechanisms that nevertheless place students of color "at a severe disadvantage relative to their more privileged counterparts" (R. at 54; *see also* R. at 49-52 [alleging disparate impact of "Gifted & Talented" program criteria on Black and Latinx students]). Similarly, Plaintiffs allege that conditioning admission to New York City's highly desirable, specialized high schools on student performance on one standardized test—a facially neutral device—directly results in "immense inequities" evident in the extreme underrepresentation of Black and Latinx students at these schools and provide specific factual allegations to support these claims (*e.g.*, R. at 59-60 ["Although students from District 2 in Manhattan comprised only approximately four percent of

public school eighth graders, they received nearly 13 percent of admissions offers, whereas [t]he 10 districts that are home to the most black and Hispanic students made up about 4 percent of admissions offers." [internal quotation marks and citation omitted]).

## III. THE COURT BELOW CORRECTLY FOUND THE PLAINTIFFS' CLAIMS TO BE JUSTICIABLE.

Given the viability of Plaintiffs-Respondents' allegations of disparate impact discrimination in education, among other claims, this Court should affirm the finding of the court below that their claims are justiciable. As the above discussion has shown, there are important questions of fact and law to be resolved through application of the test applicable to disparate impact claims. Consequently, we briefly reiterate our argument made to the court below that the trial court committed an error in dismissing the Complaint.

The trial court's mistake, as recognized by the court below (and as we argued in our amicus brief in that court), lay in its emphasis on the nature of the potential remedy sought by the Plaintiffs. The trial court ruled that "[i]t is beyond cavil that the Court lacks jurisdiction to grant the relief sought and that the petition improperly seeks, inter alia, this Court to make educational policy by directing [that] respondents take certain actions regarding curriculum content, testing content, employment diversity, employment policies, admission policies, and disciplinary

policies, among others" (R. at 8). However, as we argued below, the nature of a potential *remedy* does not determine the justiciability of a plaintiff's *claim*. Our brief in the Appellate Division described several cases establishing the breadth and variety of justiciable claims. (Br. of the NYC Bar Assn., *IntegrateNYC, Inc., et al. v State of New York, et al.*, 2022-02719 [Jan. 31, 2023], at 6-8).[4] As we argued below, "[r]ecognition of the wrong must come first, crafting of a remedy comes after" (*id.* at 9).

Accordingly, we urge this Court to affirm the decision and reasoning of the court below in reversing the trial court and permit this action to continue.

[4] Available at https://www.nycbar.org/reports/integratenyc-inc-v-the-state-of-new-york-and-parents-defending-education/ [last accessed Mar. 7, 2025).

## CONCLUSION

For the foregoing reasons, amicus curiae the New York City Bar Association urges the Court to affirm the conclusion of the First Department that claimants asserting discrimination in education under the New York State Human Rights Law need not allege that the defendants acted with discriminatory intent. Rather, as the First Department found, claims of NYSHRL violations may be based on a disparate impact theory of liability. For this reason, the court below correctly concluded that this action should be allowed to proceed, and we urge this Court to affirm its decision.

March 18, 2025
New York, NY

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to 22 NYCRR §§ 500.13(c)(1) and (c)(3), I hereby certify that, according to the word count feature of the word-processing system used to prepare the brief, the total word count for all printed text in the body of the brief, inclusive of point headings and footnotes and exclusive of the statement of related litigation, disclosure statement, the table of contents, the table of cases and authorities, this certificate of compliance, and the proof of service, contains 4,492 words.

Dated: March 18, 2025

Evan Henley