APL-2024-00099

To be argued by:
MARK S. GRUBE
20 minutes requested

State of New York
Court of Appeals

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,

v.

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,

Defendants-Appellants,

(*caption continues inside front cover*)

BRIEF FOR STATE APPELLANTS

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Dated: November 1, 2024

Supreme Court, New York County, Index No. 152743/2021
First Department No. 2022-02719

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NEW YORK CITY DEPARTMENT OF EDUCATION, MEISHA PORTER,
as Chancellor of the New York City Department of Education,

Defendants-Appellants,

PARENTS DEFENDING EDUCATION,

Intervenor-Defendants-Appellants.

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PRELIMINARY STATEMENT

Plaintiffs—individual New York City school students and three membership organizations whose members include students and their parents—commenced this action to challenge purported racism in "[n]early every facet of the New York City public education system," including the composition of the teacher workforce, curriculum content, school admissions policies, and diversity training. (*See* Joint Record on Appeal (R.) 15-17.) Plaintiffs sued various City officials tasked with operating the City's public school system, as well as the State and various state agencies and officials charged with general oversight of education policy.[1] Supreme Court, New York County (Nervo, J.) dismissed the complaint as nonjusticiable. The Appellate Division, First Department, reinstated plaintiffs' Education Article and equal protection claims against the State

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[1] This brief is submitted on behalf of the State of New York, the Governor of the State of New York, the New York State Board of Regents, the New York State Education Department, and the New York State Commissioner of Education (together, the "State Defendants"). The Mayor of New York City, the New York City Department of Education, and the Chancellor of the New York City Department of Education (together, the "City Defendants") are separately represented.

Defendants, and all claims against the City Defendants. This Court should reverse and dismiss plaintiffs' claims against the State Defendants.

First, plaintiffs have failed to state an Education Article claim against the State Defendants. Plaintiffs' challenge to nearly every aspect of the operation of City schools goes far beyond the type of funding claims that this Court has previously recognized as properly brought against the State. The City Defendants control the day-to-day operations of the City schools at issue in this suit, including admitting students to specialized schools and educational programs, hiring and training the educator workforce, and choosing curriculum content. Although, as relevant here, the State Defendants offer general policy guidance on promoting diversity, equity, and inclusion in schools, the State is not responsible for the day-to-day implementation of such policies. Imputing liability to the State under the Education Article for policy choices made and executed by local education officials undermines the State's constitutional structure, which entrusts primary responsibility to local school districts serving local needs.

In addition, the sweeping nature of the harms alleged by plaintiffs highlights the ill fit of their Education Article claim. To adjudicate plaintiffs' claim and order the relief plaintiffs seek, a court would need to review numerous overlapping education policy judgments without the benefit of judicially manageable standards or substantive expertise. The State Constitution commits such questions of education policy to the People's elected representatives and not to the courts.

Finally, plaintiffs fail to state an equal protection claim against the State Defendants. They do not allege that the State Defendants play any role in the City's alleged "racialized pipeline to the City's prime educational opportunities" (R. 17), apart from a state statute that requires the City to use a test to determine admission to three specialized high schools out of approximately 700 high schools in New York City. That statutory requirement imposes no restrictions on the City Defendants' ability to use an additional admissions mechanism or to revise the test, and the legislative record is devoid of evidence that the Legislature enacted the statute with discriminatory intent.

QUESTIONS PRESENTED

1. Whether plaintiffs' allegations of systemic racism arising from "nearly every facet" of education policymaking committed to local control and implemented by the New York City school system states a justiciable claim against the State Defendants under the Education Article.

2. Whether plaintiffs' allegations of discriminatory testing and admissions procedures implemented by the New York City school system state an equal protection claim against the State Defendants.

STATEMENT OF JURISDICTION

On July 18, 2024, the Appellate Division, First Department certified the following question of law to this Court: "Was the [May 2, 2024,] order of this Court, which modified the Order of the Supreme Court, New York County, properly made?" (R. 579-580.) The Court has jurisdiction under C.P.L.R. 5602(b)(1). All arguments raised in this appeal were presented to, and addressed by, the courts below, and are therefore preserved for this Court's review. (*See* R. 7-8, 582-608.) *See* Br. for Resp'ts (May 24, 2023), 1AD

NYSCEF No. 26. (*See* Mem. of Law in Supp. of State Defs.' Mot. to Dismiss the Am. Compl. (Sept. 13, 2021), Sup. Ct. NYSCEF No. 160; Reply Mem. of Law in Further Supp. of State Defs.' Mot. to Dismiss the Am. Compl. (Jan. 24, 2022), Sup. Ct. NYSCEF No. 185.)

STATEMENT OF THE CASE

A. New York City's Primary Role in Operating Its Public School System

State statutes establish a general framework and minimum standards for public education, including compulsory education laws requiring a basic education for the children of the State, *see* Education Law §§ 3201-3234, prescriptions related to the minimum duration of the school year, *see id.* §§ 1704(2), 3204(4), certain required courses, *see, e.g.*, *id.* §§ 801, 804, 806, 808, and qualifications of teachers and nonteaching personnel, *see, e.g.*, *id.* §§ 3001, 3003, 3004. At the same time, the State vests localities with considerable discretion in how they operate their public-school systems. *See id.* § 2590-h; *Aristy-Farer v. State*, 29 N.Y.3d 501, 511 (2017); *see also Board of Educ., Levittown Union Free School Dist. v. Nyquist*, 57 N.Y.2d 27, 46-47 (1982).

In general, localities implement "instructional program[s] (within standards fixed by the State) perceived by the local board of education to be responsive to the needs and desires of the community." *Levittown*, 57 N.Y.2d at 45. The State's long history of local control over education reflects the considered judgment that "the most informed, intelligent and responsive decision-making as to the financing and operation of those schools is generated by giving citizens direct and meaningful control over the schools that their children attend." *Id.* at 46 (quotation marks omitted).

"Nowhere in the State has the principle of giving citizens direct and meaningful control over the schools been more meaningfully practiced than in the City of New York . . . ." *Gulino v. New York State Educ. Dept.*, 460 F.3d 361, 366 (2d Cir. 2006) (quotation marks and citation omitted). As relevant to this case, state law grants the City Defendants the general power and duty to create "city-wide programs . . . preventing and addressing unlawful discrimination" in City schools, Education Law § 2590-h(1)(d), and to promote "equal educational opportunity for all students in the schools of the city district" as well as "educational equity," *id.*

§ 2590-h. Pursuant to this authority, the City Defendants exercise control over three distinct aspects of their public school system that are relevant to this appeal.

First, the City Defendants control the composition of the City school system's workforce and its training. They are the "public employer" of New York City teachers and are responsible for recruiting and hiring teachers. Education Law § 2590-g(2); *see Matter of Frasier v. Board of Educ. of City School Dist. of City of N.Y.*, 71 N.Y.2d 763, 766 (1988). The City Defendants negotiate contracts with unions representing teachers and other school employees. *See* Education Law § 3011; Civil Service Law §§ 200, 201. They also develop and implement training programs for educators and administrators. Education Law § 2590-h(14). And they are expressly charged with proposing a policy "that promotes the recruitment and retention of a workforce . . . that considers the diversity of the students attending the public schools within the city district," and issuing an annual report on "initiatives taken to enhance diversity and equity in recruitment and retention." *Id.* § 2590-h(51).

Second, the City Defendants are required to "[p]romulgate minimum clear educational standards, curriculum requirements and frameworks, and mandatory educational objectives" and to periodically reexamine them. *Id.* § 2590-h(8). Local authorities similarly "authorize the general courses of study" and "determine the textbooks to be used in the schools under [their] jurisdiction." *Id.* § 2554(11)-(12).

Third, the City Defendants control the admissions processes to specialized schools and gifted and talented (G&T) programs. Local schools generally "regulate the admission of pupils," *id.* § 1709(3), and are "empowered to determine the circumstances where instruction shall be given to meet the special needs of gifted pupils," *id.* § 3204(2-b). Indeed, plaintiffs acknowledge that the City Defendants are responsible for the selection of students placed in G&T programs. (R. 20-21, 49-51.)

The City Defendants also have a specific charge to "[c]ontrol and operate" the City's specialized high schools. Education Law § 2590-h(1)(b). They have discretion over the content of the admissions test for specialized high schools: they hire a testing company

to formulate the test, administer the test, decide whether and how to revise the test, and decide whether to designate or undesignate schools as specialized high schools. *See id.* §§ 2590-g, 2590-h. (*See* R. 125.) The City Defendants' power and duty over specialized high schools also includes expansive discretion to promote diversity by maintaining a "discovery program" for admission of disadvantaged students to the specialized high schools. See *infra* at 13-14.

B. The State's Limited Role in the Operation of Local Public School Systems

The Education Article of the New York State Constitution requires the Legislature to "provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." N.Y. Const. art. XI, § 1. The "primary aim" of the drafters of the Education Article was "to constitutionalize the established system of common schools rather than to alter its substance." *Reform Educ. Fin. Inequities Today (R.E.F.I.T.) v. Cuomo*, 86 N.Y.2d 279, 284 (1995). Accordingly, the Education Article is rooted in the State's long history of public funding of schools

and mandates only that "an education might be available to all the State's children." *Levittown*, 57 N.Y.2d at 48.

The State's role in the actual operation of local public schools is substantially limited. The New York State Education Department (SED), which is organized under the New York State Board of Regents, *see* N.Y. Const. art. V, § 4, is "charged with the general management and supervision of all public schools," Education Law § 101. The Board of Regents appoints the SED Commissioner, *id.*, who has "general supervision over all schools . . . [and] advise[s] and guide[s] the school officers of all districts and cities of the state in relation to their duties and the general management of the schools under their control," *id.* § 305(2). Although the Board of Regents and SED provide general policy guidance for local school districts to implement, "[n]either the Regents nor the SED is responsible . . . for the day-to-day operation of [local] schools." *Campaign for Fiscal Equity v. State*, 100 N.Y.2d 893, 904 (2003) ("*CFE II*").

One of the SED guidelines at issue in this case is a 2019 document entitled *Culturally Responsive-Sustaining Education Framework* ("*Education Framework*"), which is aimed at encourag-

ing the advancement of diversity, equity, and inclusion in local schools. (*See* R. 15, 191-254.) The education experts who drafted the document recognize that education providers have "strived and struggled to meet the diverse needs of American children and families" for more than a century, and that "[a] complex system of biases and structural inequities is at play, deeply rooted in our country's history, culture, and institutions." (R. 196.) To help meet these challenges, *Education Framework* provides a series of aspirational recommendations on a range of subjects including (1) teaching an inclusive curriculum that affirms student identities; (2) improving recruitment and retention of a diverse teacher workforce; (3) providing teachers with diversity, equity, and inclusion training; (4) creating learning environments that affirm racial, linguistic, and cultural identities; and (5) empowering students as agents of social change. (R. 191-254.)

More recently, in August 2023, the Board of Regents in conjunction with the Office of the New York State Attorney General issued guidance materials concerning efforts to promote diversity, equity, and inclusion in schools. As relevant here, the guidance

encourages local schools to revisit *Education Framework* and "continuously evaluate, monitor, revise, and improve their policies, procedures, and curricular choices to ensure diversity, equity, and inclusion." New York State Off. of the Attorney Gen., with New York State Educ. Dept., Dear Colleague Letter at 4 (Aug. 9, 2023). The guidance also explains that local schools cannot ban "curricular materials that accurately portray and critically analyze topics related to protected classes such as race, national origin, gender (including gender identity and expression), or sexual orientation." *Id.* at 3. On other hand, curricula that "accurately portray and analyze historical information in a culturally appropriate manner is lawful and encouraged." *Id.* at 3. The guidance also emphasizes that disciplinary policies should be designed and implemented in a nondiscriminatory manner. *See id.* at 4-6.

Finally, state law imposes one requirement on the operation of City schools particularly relevant to plaintiffs' claims: that applicants to three specialized high schools (Stuyvesant High School, Bronx High School of Science, and Brooklyn Technical High School) must take an admissions test. Specifically, the Hecht-Calandra Act

provides that admission to these three schools "shall be solely and exclusively by taking a competitive, objective and scholastic achievement examination." Ch. 1212, § 1, 1971 N.Y. Laws 3134, 3134. The examination "shall be open to each and every child in the city of New York in either" eighth or ninth grade. *Id.* A student is to be admitted to the enumerated schools only if the student scores "above the cut-off score for the openings in the school for which he [or she] has taken the examination." *Id.*

The sponsor's memorandum explains that the Act affords the City discretion to choose the organization retained to prepare the examination and to change the type of examination given and its contents, so long as the examination is "a competitive, objective, scholastic achievement examination." (R. 125.) The Act also provides the City broad discretion to offer an alternative means of admission for students who do not achieve a sufficiently high score on the examination. Specifically, the Act provides that the specialized high schools "shall be permitted to maintain a discovery program to give disadvantaged students of demonstrated high potential an opportunity to try the special high school program without in any manner

interfering with the academic level of these schools." Ch. 1212, 1971 N.Y. Laws at 3134-35.

C. Plaintiffs' Complaint and Proceedings Below

In March 2021, plaintiffs—various New York City school students and three membership organizations whose members include students and their parents (R. 31-43)—commenced this action for declaratory and injunctive relief in Supreme Court, New York County. Plaintiffs allege that "[n]early every facet of the New York City public education system operates not only to prop up, but also to affirmatively reproduce . . . artificial racial hierarchies." (R. 15-16.) In particular, plaintiffs allege that the New York City school system (1) maintains "a racialized pipeline to the City's prime educational opportunities, including its Gifted & Talented (G&T) programs and screened middle and high schools" (R. 17; *see* R. 49-60); (2) permits schools to "teach a Eurocentric curriculum that centers white experience, marginalizing the experiences and contributions of people of color" (R. 17; *see* R. 65-75); (3) fails to "recruit, retain, and support a racially diverse educator workforce" (R. 17; *see* R. 75-84); and (4) fails to "provide sufficient training, support,

and resources to enable administrators, teachers, and students to identify and dismantle racism" (R. 17; *see* R. 85-89). According to plaintiffs, the New York City public education system thereby deprives students of "a sound basic education" (R. 15) and "exacerbate[s] pernicious racial inequality in the City" (R. 16).

The complaint names as defendants both New York City officials and agencies—the Mayor of New York City, the New York City Department of Education, and the Chancellor of the New York City Department of Education—and New York State and state agencies and officials—the Governor of New York, the Board of Regents, SED, and the SED Commissioner.[2] (R. 30-31.) As against all defendants, plaintiffs assert claims under the Education Article and the Equal Protection Clause of the New York State Constitution and the New York State Human Rights Law (NYSHRL). (R. 89-95.)

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[2] In June 2021, Supreme Court granted a motion permitting a membership organization named Parents Defending Education (PDE) to intervene as a defendant. The court explained that PDE's members include parents whose children attend schools and school programs with competitive entry requirements, and that they have an interest in the outcome of this action. (R. 9-12.)

As relief, plaintiffs seek an injunction requiring defendants to "eliminate and remedy any intentional discrimination and disparate impacts, and to ensure that Plaintiffs receive a sound basic education." (R. 95.) More specifically, plaintiffs request that the injunctive relief include, but not be limited to: (1) eliminating the G&T and middle and high school admissions screens currently in use; (2) adopting "evidence-based programs to improve recruitment and retention of school leaders, administrators, teachers, social workers, and guidance counselors of color"; (3) monitoring and enforcing compliance with SED's *Education Framework*; (4) enforcing a system that monitors and intervenes in conditions that allegedly deny students a sound basic education; and (5) requiring the preparation of a plan, subject to court approval, to cure defendants' alleged violations. (R. 95-96.) Plaintiffs' requested relief would effectively place the judiciary in control of nearly every facet of the day-to-day operations of City schools.

Defendants separately moved to dismiss the complaint. (R. 99-101, 108-109, 182-183.) In May 2022, Supreme Court, New York County (Nervo, J.) consolidated and granted defendants' motions.

(R. 7-8.) The court explained that it lacks jurisdiction "to make educational policy by directing [defendants to] take certain actions regarding curriculum content, testing content, employment diversity, employment policies, admission policies, and disciplinary policies, among others." (R. 8.) The court thus concluded that plaintiffs' complaint "presents a nonjusticiable controversy" that is properly directed to "[t]he legislature, not the judiciary." (R. 8.) Plaintiffs then appealed. (R. 3-5.)

In May 2024, the Appellate Division, First Department affirmed in part and reversed in part the dismissal of plaintiffs' claims against the State Defendants. As a threshold matter, the court concluded that the claims were justiciable because even if "a court could not grant the full panoply of injunctive relief sought by plaintiffs," the judiciary is responsible for adjudicating claims of racial discrimination and educational adequacy and noted that plaintiffs also sought declaratory relief. (R. 590-592.)

On the merits of the Education Article claim, the court held that plaintiffs' complaint "tersely but adequately" states a cause of action based on allegations that State and City policies lead to

minority students attending segregated schools with inadequate teaching materials; large class sizes; inadequate opportunities for sports, arts, and other extracurricular programs; and inadequate physical facilities. (R. 594.) The court did not identify any specific actionable conduct by the State Defendants, but simply observed that the City Defendants are "creatures or agents of the State," and the State Defendants thus remain responsible for the City Defendants' conduct. (R. 597 (quotation marks omitted).)

The court also concluded that, "[w]hile a close question," plaintiffs adequately pleaded an equal protection claim against the State Defendants based on allegations challenging the use of a standardized admissions test for certain specialized high schools. (R. 600-602.) At the same time, the court acknowledged that the facts supporting an inference of discriminatory intent in the Hecht-Calandra Act were "thin." (R. 601-602.)

In July 2024, the Appellate Division certified the following question of law: "Was the order of this Court, which modified the Order of the Supreme Court, New York County, properly made?" (R. 579-580.)

ARGUMENT

POINT I

PLAINTIFFS FAIL TO STATE AN EDUCATION ARTICLE CLAIM AGAINST THE STATE DEFENDANTS

The Appellate Division erred in reinstating plaintiffs' Education Article claim against the State Defendants. Plaintiffs' claim suffers from a threshold defect: it fails to provide a clear articulation of the State's role in the alleged constitutional violation. Instead, plaintiffs' complaint asserts deficiencies in a variety of policy matters committed to local control and implicitly requests that the State Defendants develop a plan to remedy those defects. This Court has held that such allegations are inadequate to state an Education Article claim against the State.

In any event, regardless of whether the complaint adequately alleges the State Defendants' involvement in the alleged violations, the complaint does not allege educational inadequacies that are redressable by the judiciary through an Education Article claim. This Court has never recognized an Education Article claim based on alleged educational inadequacies that arise solely from discretionary local policymaking—for example, the allegation that local

curricula are too Eurocentric. The justiciability doctrine counsels against extending the reach of the Education Article to the alleged violations. Judicial intervention here would usurp the roles of local elected officials and policymakers who are directly accountable to the residents served by their schools.

A. The State Defendants Are Not Responsible for the Alleged Deficiencies in New York City's Public Schools.

This Court has long recognized that the State has an interest in "the preservation and promotion of local control over education." *Levittown,* 57 N.Y.2d at 44. The adoption of the Education Article gave a constitutional dimension to this preexisting "state-local partnership," in which local communities "make the basic decisions on funding and operating their own schools," in accordance with local needs. *Aristy-Farer*, 29 N.Y.3d at 511 (quotation marks omitted).

Given the historical deference to localities in matters of education policy, this Court has required a plaintiff alleging an Education Article claim against the State to provide "a clear articulation of the asserted failings of the State." *New York Civ. Liberties Union v. State*, 4 N.Y.3d 175, 180 (2005) ("*NYCLU*"). Accordingly,

this Court has not permitted plaintiffs to merely allege deficiencies in public schools and then "charge the State with the responsibility to determine the causes of the schools' inadequacies and devise a plan to remedy them." *Id.* Such allegations are insufficient to state an Education Article claim against the State, especially when, as here, plaintiffs' claim is based entirely on alleged failures by local officials.

First, localities, not the State, decide which teachers to employ in their schools and how to train them and thereby exercise control over the diversity of their teacher workforce. *See Matter of Frasier*, 71 N.Y.2d at 766. See *supra* at 7. The City Defendants are also responsible for developing and implementing training programs for educators and administrators. Education Law § 2590-h(14). While the SED Commissioner has a statutory duty to "make recommendations on . . . policies that may be implemented by schools . . . to improve teacher diversity," *id.* § 305(58)(iii), the complaint concedes that the SED Commissioner has made the required recommendations (*see* R. 75-76, 300-505). The City Defendants are ultimately charged with implementing and monitoring such policies. *See*

Education Law § 2590-h(51). As this Court observed in *CFE II*, allegations that public schools are failing to meet aspirational state standards or guidelines that "exceed notions of a minimally adequate or sound basic education" are insufficient by themselves to state an Education Article claim against the State. 100 N.Y.2d at 907 (quotation marks omitted).

Second, localities control the selection of local curricula, courses of study, and textbooks. While the State establishes general standards for "basic curricula such as reading, writing, mathematics, science, and social studies," *Campaign for Fiscal Equity v. State*, 86 N.Y.2d 307, 317 (1995) ("*CFE I*"), and encourages culturally appropriate teaching curricula, *see* Dear Colleague Letter at 3, specific "school curriculum matters are the province of school boards," *Silano v. Sag Harbor Union Free Sch. Dist. Bd. of Educ.*, No. 93-cv-1924, 1993 WL 762110, at *5 (E.D.N.Y. Dec. 10, 1993) (emphasis omitted), *aff'd*, 42 F.3d 719 (2d Cir. 1994). In particular, the City Defendants are required to "[p]romulgate minimum clear educational standards, curriculum requirements and frameworks, and mandatory educational objectives," periodically reexamine

them, Education Law § 2590-h(8), "authorize the general courses of study," and "determine the textbooks to be used in the schools under [their] jurisdiction,"[3] *id.* § 2554(11)-(12).

Third, the City Defendants control which students to admit to G&T programs and select schools. See *supra* at 8-9. Local schools generally "regulate the admission of pupils," Education Law § 1709(3), and determine when "instruction shall be given to meet the special needs of gifted pupils," *id.* § 3204(2-b). Indeed, plaintiffs acknowledge that the City is responsible for the selection of students placed in G&T programs. (R. 20-21, 49-51.)

The Appellate Division correctly noted that "the City controls public school admissions, hires and trains the educators, and develops curriculum and testing content" (R. 597), but nonetheless

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[3] The history of State deference to local control is particularly pronounced in this context. In the 19th century, the Legislature was frequently asked to prescribe textbooks for use in schools, but it declined the invitation to micromanage school curricula on that level. While the Legislature did on one occasion recommend the use of Washington Irving's biography of Christopher Columbus in public schools, the Legislature notably chose to recommend its use by concurrent resolution, rather than to prescribe its use by statute. *See* Charles Z. Lincoln, 3 *Constitutional History of New York* 513 (1905).

erroneously held that plaintiffs pleaded an Education Article claim against the State Defendants. The Appellate Division's holding (R. 597) places no discernible limitation on the State's liability for the conduct of local schools and "subvert[s] local control and violate[s] the constitutional principle that districts make the basic decisions on funding and operating their own schools," *see NYCLU*, 4 N.Y.3d at 182.

Contrary to the reasoning of the Appellate Division (*see* R. 597), this Court's observation that "the Board of Education and the City are creatures or agents of the State, which delegated whatever authority over education they wield," *CFE II*, 100 N.Y.2d at 922 (quotation marks omitted), does not support State liability for the violations alleged in this complaint. The language quoted by the Appellate Division arises from a portion of the opinion in *CFE II* that held that City mismanagement of funds did not relieve the State of its obligation to provide adequate funding to ensure that students receive a sound basic education. *Id.* In reaching that conclusion, this Court noted that "[r]elative to the State, the City has absolutely no control over the school funding system." *Id.* at 925

(quotation marks omitted). That reasoning does not apply here because, rather than alleging the State does not provide adequate funding to the City, plaintiffs challenge the "day-to-day operation of the schools," for which "[n]either the Regents nor the SED is responsible." *See id.* at 904.

In imputing liability to the State Defendants for matters committed to local control, the Appellate Division also fundamentally misconstrued the State Defendants' general supervisory authority over schools, *see* Education Law § 101; *see also id.* § 305(2). For example, the court held that City schools' alleged failure to meet the goals set by *Education Framework* supported plaintiffs' Education Article claim (R. 595) without explaining how the State could be responsible for the City's compliance with the *Education Framework*'s advisory guidelines.

To the extent any state official has authority to affirmatively enforce the *Education Framework*, plaintiffs cannot compel the State to do so by bringing an Education Article claim. As this Court explained in *NYCLU*, the sole remedy for contesting the alleged inactions of a public officer lie in a C.P.L.R. article 78 proceeding

seeking mandamus to compel. Applying the law governing such proceedings, this Court concluded that the SED Commissioner's determination whether to place a school in a regulatory program for underperforming schools and how to monitor schools in that program were discretionary tasks that could not be compelled by mandamus. *See* 4 N.Y.3d at 183-84; *see also Alliance to End Chickens as Kaporos v. New York City Police Dept.*, 32 N.Y.3d 1091, 1093 (2018) (the enforcement of hygiene laws is a discretionary task). The same is true here, especially given that no statute or regulation requires the State Defendants to enforce *Education Framework* at all, let alone in a particular manner.

B. The Alleged Educational Inadequacies Are Not Actionable Under the Education Article.

Even if *CFE II* did provide a basis for generally holding the State Defendants liable for the operation of City schools—and it does not—plaintiffs' Education Article claim would fail on the independent ground that the violations alleged by plaintiffs are not redressable by the judiciary through an Education Article claim.

1. This Court has recognized Education Article claims solely in the limited context of school funding.

The Education Article was intended "to constitutionalize the established system of common schools rather than to alter its substance." *R.E.F.I.T.*, 86 N.Y.2d at 284. In other words, the adoption of the Education Article ensured that the State would provide a public school system wholly funded by taxes and thereby divested the Legislature of discretion over that subject.

Recognizing that the Education Article's purpose would be thwarted if the resources made available in each local district's schools were so inadequate as to deprive students of any education at all, this Court has construed the phrase "may be educated" to mean "may receive a sound basic education." *See Levittown*, 57 N.Y.2d at 48. A violation of the Education Article, it added, could be demonstrated only by establishing a "gross and glaring inadequacy." *Id.* at 48-49. But as long as "what is made available by this system [of educational funding] . . . may properly be said to constitute an education, the constitutional mandate is satisfied." *Id.* at 48.

This Court has since defined a "sound basic education" as "the opportunity for a meaningful high school education, one which prepares [students] to function productively as civic participants." *CFE II*, 100 N.Y.2d at 908. That requirement encompasses "the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury." *CFE I*, 86 N.Y.2d at 316. Specifically, students "are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn . . .[,] minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks," and "minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas." *Id.* at 317. This Court has explained that the Education Article establishes a "constitutional floor," *Aristy-Farer*, 29 N.Y.3d at 505 (quotation marks omitted), and "does not require equality of educational offerings throughout the state," *NYCLU*, 4 N.Y.3d at 178.

Consistent with the history and text of the Education Article, this Court has recognized Education Article claims in the limited context of whether "the State's public school financing system effectively fails to provide for a minimally adequate educational opportunity." *CFE I*, 86 N.Y.2d at 319. For example, in the *CFE* litigation, the Court considered whether plaintiffs received "minimally acceptable educational services and facilities," *CFE I*, 86 N.Y.2d at 316, but that inquiry occurred in the context of determining whether the school funding system was constitutionally adequate, *see id.* at 318-19; *see also CFE II*, 100 N.Y.2d at 913 (discussing supply, not content, of textbooks, libraries, and computers).

This Court has declined to extend Education Article claims beyond the limited context of funding claims.[4] For example, in

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[4] While the Appellate Division, Second Department recognized a broader claim in *Davids v. State*, 159 A.D.3d 987 (2d Dep't 2018), that case was wrongly decided and is distinguishable in any event. It concerned the discrete question of whether plaintiffs stated a claim that certain state statutes concerning teacher tenure resulted in students failing to receive a constitutionally adequate education. *See id.* at 991-92. Plaintiffs' claims here, by contrast, seek redress for alleged problems arising from innumerable over-

(*continued on next page*)

Paynter v. State, the Court explained that "allegations of academic failure" alone are insufficient to state an Education Article claim and that plaintiffs must plead that any inadequacy "is causally connected to the funding system." 100 N.Y.2d 434, 440-41 (2003); *see Aristy-Farer*, 29 N.Y.3d at 510 (plaintiffs must plead "failures caused by inadequate state funding"). As this Court noted, "[t]he causes of academic failure may be manifold, including such factors as the lack of family supports and health care," and the Education Article does not shield students from all such causes. *Paynter*, 100 N.Y.2d at 441. So long as "the State truly puts adequate resources into the classroom, it satisfies its constitutional promise under the Education Article." *Id.* This Court's limitation of Education Article claims against the State to funding issues reflects the state Constitution's structure, which entrusts general control over education to local governments. Here, where there are no allegations that the State has failed to adequately fund City schools, plaintiffs fail to state an Education Article claim.

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lapping discretionary decisions, implicating policy questions that are the prerogative of the coordinate branches of government.

2. The justiciability doctrine counsels against expanding the scope of the Education Article to reach plaintiffs' claims.

This Court has long recognized that traditional principles of justiciability constrain the scope of an Education Article claim. *Levittown*, 57 N.Y.2d at 38-39. The justiciability doctrine reflects a well-settled understanding that courts should not "intrude upon the policy-making and discretionary decisions that are reserved to the legislative and executive branches." *Klostermann v. Cuomo*, 61 N.Y.2d 525, 541 (1984).

Although the contours of the justiciability doctrine may be "nebulous," *id.* at 535, it has its roots in the separation of powers and at its core reflects two fundamental concerns, *see Jones v. Beame*, 45 N.Y.2d 402, 408 (1978). First, the doctrine reflects the judiciary's reluctance to intrude upon discretionary decisions, responsibility for which is "conferred upon a coordinate branch of government." *Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL-CIO v. Cuomo*, 64 N.Y.2d 233, 238-39 (1984). Second, the doctrine reflects the judiciary's sound judgment not to "undertake tasks that the

other branches are better suited to perform." *Klostermann*, 61 N.Y.2d at 535.

Both of these concerns—the constitutional commitment of matters of education to the coordinate branches, and the absence of manageable judicial standards—have long pervaded this Court's jurisprudence in the context of public education and have consistently weighed against judicial intervention. Specifically, the Court has recognized that the judiciary must take a "disciplined perception of the proper role of the courts in the resolution of our State's educational problems," since "[p]rimary responsibility for the provision of fair and equitable educational opportunity within the financial capabilities of our State's taxpayers unquestionably rests with" the Legislature. *Levittown*, 57 N.Y.2d at 49 n.9.[5] And the Court has emphasized that courts should not, "under the guise of

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[5] *See also James v. Board of Educ. of City of N.Y.*, 42 N.Y.2d 357, 366 (1977) ("The general legislative and constitutional system for the maintenance of public schools" was intended "to make all matters pertaining to the general school system of the state within the authority and control of the department of education and to remove the same so far as practicable and possible from controversies in the courts." (quotation marks omitted)).

enforcing a vague educational public policy, . . . assume the exercise of educational policy vested by constitution and statute in school administrative agencies."[6] *Matter of New York City School Bds. Assn. v. Board of Educ. of City School Dist. of City of N.Y.*, 39 N.Y.2d 111, 121 (1976).

This long history of abstention from the field of education animated even the Court's *CFE* decisions—the one context in which the Court has sanctioned greater judicial involvement in matters of education. While acknowledging the judiciary's undisputed obligation to protect constitutional rights, the Court nevertheless repeatedly emphasized "the responsibility" of the judiciary "to defer to the Legislature in matters of policymaking," *CFE II*, 100 N.Y.2d at 925, and therefore cautioned "courts to tread carefully," *Campaign for Fiscal Equity, Inc. v. State*, 8 N.Y.3d 14, 28 (2006) ("*CFE III*"). The Court explained that "the manner by which the State

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[6] *See also Donohue v. Copiague Union Free School Dist.*, 47 N.Y.2d 440, 444-45 (1979) (declining to "make judgments as to the validity of broad educational policies" or "sit in review of the day-to-day implementation of these policies"); *James*, 42 N.Y.2d at 358-59 (declining to interfere "with an educational policy judgment made by" school officials).

addresses complex societal and governmental issues is a subject left to the discretion of the political branches of government."[7] *Id.* (quotation marks omitted).

The justiciability doctrine strongly counsels against extending the Education Article to permit judicial intervention in the fields of education policymaking raised in the complaint. Plaintiffs' claim seeks judicial review of (and a remedy for) a complex web of overlapping and evolving policy judgments. (*See* R. 17.) Adjudicating plaintiffs' sweeping claims would entangle the judiciary in reviewing myriad day-to-day operational decisions, including curriculum design and content, workforce diversity, employment policies, school admission policies, standardized test content, and disciplinary policies, among other things for which the judiciary has neither judicially manageable standards nor substantive expertise. *See CFE II*, 100 N.Y.2d at 929-30; *see also Klostermann*, 61 N.Y.2d at

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[7] *See Hoffman v. Board of Educ. of City of N.Y.*, 49 N.Y.2d 121, 125-26 (1979) ("We had thought it well settled that the courts of this State may not substitute their judgment, or the judgment of a jury, for the professional judgment of educators and government officials actually engaged in the complex and often delicate process of educating the many thousands of children in our schools.").

535 (formulating "broad programs" based on data and expert advice "cannot be economically done by the courts"). Indeed, recognizing plaintiffs' Education Article claim here would potentially allow the judiciary to review day-to-day operational decisions of schools statewide when individuals are dissatisfied with decisions of their local elected officials concerning matters like curricula. While plaintiffs are free to "question . . . the educational wisdom" of how local educators combat racism in their schools, *see James v. Board of Educ. of City of N.Y.*, 42 N.Y.2d 357, 367 (1977) (quotation marks omitted), courts are ill-suited to implement and enforce plaintiffs' own version of "educational public policy," *see Matter of New York City School Bds. Assn.*, 39 N.Y.2d at 121.

In holding otherwise, the Appellate Division did not identify analogous precedent, judicially manageable standards, or the source of the judiciary's competence for managing education policy. (*See* R. 591-592.) Instead, the Appellate Division offered three flawed reasons for reinstating plaintiffs' Education Article claim.

First, the Appellate Division erroneously concluded that the remedies sought by plaintiffs are irrelevant to justiciability. (*See*

R. 591.) However, the remedies sought by plaintiffs highlight the lack of judicially manageable standards to assess and redress the *harms alleged* in the complaint, showing that plaintiffs seek relief that the Education Article has committed to other branches of government. *See Klostermann*, 61 N.Y.2d at 535. Indeed, this Court has expressly considered at the pleading stage whether "the remedies that would follow from plaintiffs' theory of their case" would impermissibly alter the constitutional scheme enshrined in the Education Article. *Paynter*, 100 N.Y.2d at 442-43. The Court should likewise consider proposed remedies here—including changing the manner in which children are assigned to schools and "directing [defendants to] take certain actions regarding curriculum content . . . [and] employment diversity" (R. 8)—which flow from the harms that plaintiffs have alleged in their complaint. (*See, e.g.*, R. 65-75 (curriculum content), 75-84 (educator diversity).) The Education Article places redressability for alleged harms such as these, which arise from the formulation of education policy, outside the scope of judicial power and with the coordinate branches of government.

Second, the Appellate Division erred (R. 590-592) in concluding that plaintiffs' request for declaratory relief alone was adequate to render their sweeping Education Article claim justiciable. This Court has expressed doubt as to the prudence of a "blanket declaration of unconstitutionality as to the entire system for financing public education, composed as it is of a combination of local and State-wide factors, economic and political—if for no reason other than the great difficulty of fashioning practical remedies or of implementing any such declaration." *Levittown*, 57 N.Y.2d at 39 n.4. Declaratory relief here concerning the propriety of local education policymaking would also disturb the separation of powers no less than injunctive relief.

Third, the Appellate Division also erred (R. 595-596) in relying on *Education Framework* as a basis for holding that plaintiffs adequately stated constitutionally deficient educational inputs. This Court has explained that noncompliance with "aspirational" standards "may not, standing alone, establish a violation of the Education Article." *CFE I*, 86 N.Y.2d at 317. SED's hortatory standards here, like the standards at issue in *CFE I*, reflect what

sound public policy recommends, not what the state Constitution compels. *Education Framework*'s aspirational recommendations—for example, encouraging students to practice empathy during all interactions, engage in difficult conversations with respect and care, and choose kind words over harmful ones (R. 210)—are laudable ones. But their implementation is better suited to those with training and expertise in educating the State's children on a day-to-day basis, rather than to judges.

POINT II

PLAINTIFFS FAIL TO STATE AN EQUAL PROTECTION CLAIM AGAINST THE STATE DEFENDANTS

An equal protection claim requires a showing of discrimination "occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (quotation marks omitted).[8] Plaintiffs plead neither type of violation here. Indeed, plaintiffs fail to

[8] The Equal Protection Clause in the New York State Constitution is "coextensive with the rights protected under the Federal Equal Protection Clause." *Myers v. Schneiderman*, 30 N.Y.3d 1, 13 (2017).

allege any acts committed by the State Defendants that violate their equal protection rights. To the extent the complaint can be read to raise a discrete equal protection challenge to the Hecht-Calandra Act, that claim would fail as well. The Act's legislative history does not show discriminatory intent; to the contrary, it shows that the Legislature acted to address concerns about the Act's potential disparate impact on racial minorities. After those concerns were addressed, the Legislature passed the Act with overwhelming support. (R. 122.)

A. The State Defendants Are Not Responsible for the Alleged Equal Protection Violations.

The complaint fails to allege any acts by the State Defendants that violated plaintiffs' equal protection rights. The Appellate Division erred in concluding that plaintiffs stated an equal protection claim against the State Defendants based on "the G&T test, the [specialized high school exam], and other standardized admissions tests used in screened middle and high schools." (R. 601.) As explained above (at 12-14, 23), the State Defendants are not responsible for the administration or content of those tests. Indeed,

plaintiffs conceded that the City is responsible for the selection of students placed in G&T programs. (R. 20-21, 49-51.) *See* Education Law § 3204(2-b).

The State Defendants are also not responsible for the content of the specialized high school exam. To be sure, the Hecht-Calandra Act requires the City to base admission to three of the nine specialized high schools on the results of "a competitive, objective, scholastic achievement examination." (R. 125.) See *supra* at 12-14. But the City has discretion to choose the organization retained to prepare the examination and to change the type of examination given and its contents. (R. 125.) *See* Education Law §§ 2590-g, 2590-h.

In addition, the City Defendants have vast discretion to implement a "discovery program" that provides an alternative mechanism for the admission of "disadvantaged" students into the specialized high schools. The Third Department has recognized that the Legislature clearly "empowered the Chancellor to determine the number of seats that each [specialized high school] could allocate for its discovery program" and that the City has the authority to use the discovery program to "promote racial, ethnic, geographic,

and socio-economic diversity." *See Matter of C.K. v. Tahoe*, 211 A.D.3d 1, 12 (3d Dep't 2022) (quotation marks omitted).

Accordingly, while state law requires the administration of an admissions test, the City Defendants are ultimately charged to "[c]ontrol and operate" the specialized high schools, Education Law § 2590-h(1)(b), and they are free to modify the admissions test they choose to administer and to expand alternate admissions procedures to address any alleged racially disparate impact.

B. The Mere Existence of a Statutory Examination Requirement for Admission to Three of the City's Seven Hundred High Schools Is Constitutional.

To the extent plaintiffs' allegations concerning "a racialized pipeline to the City's prime educational opportunities" (R. 17) can be construed to raise a discrete constitutional challenge to the Hecht-Calandra Act itself, that claim fails. The Act is facially neutral and contains no express race-based classifications. Accordingly, it is not "presumptively invalid." *Shaw v. Reno*, 509 U.S. 630, 643-44 (1993) (quotation marks omitted).

Nor have plaintiffs adequately alleged that a discriminatory purpose was a motivating factor for the legislation. *See Village of*

Arlington Hgts. v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 265-66 (1977). As the sponsor's memorandum explains, the impetus for the legislation was a concern about the continued existence of specialized high schools. (R. 126.) In particular, the principals of the three schools subject to the Act explained their view that the existence of their schools was under constant threat. (*See* R. 128 (Bronx High School of Science), 130 (Brooklyn Technical High School), 133 (Stuyvesant).) In response, the Hecht-Calandra Act ensured the schools' continued existence, while allowing the City flexibility to revise the entrance examination and use an alternative admissions mechanism to promote diversity.

In ruling to the contrary, the Appellate Division was wrong (R. 601-602) to rely on the statements of a single legislator—which did not mention race at all—as sufficient evidence of discriminatory intent. That reasoning squarely contravenes the Supreme Court's warning against invalidating a statute based solely on what a small number of legislators have said about it. *United States v. O'Brien*, 391 U.S. 367, 384 (1968). "What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of

others to enact it, and the stakes are sufficiently high for [this Court] to eschew guesswork." *Id.*; *see United States v. Suquilanda*, 116 F.4th 129, 143-44 (2d Cir. 2024). "[S]uch isolated remarks are entitled to little or no weight, particularly when they are unclear or conflict with one another." *Murphy v. Empire of Am., FSA*, 746 F.2d 931, 935 (2d Cir. 1984); *see Butts v. City of N.Y.*, 779 F.2d 141, 147 (2d Cir. 1985).

The other aspects of the "historical background" of the Hecht-Calandra Act relied on by the Appellate Division (R. 601-602) provide no greater support for plaintiffs' claim. In particular, the Appellate Division credited plaintiffs' allegation that the Act was passed "to thwart the City's investigation of the test's potential bias against Black and Puerto Rican students." (R. 588; *see* R. 601.) The court also credited plaintiffs' allegation that the Act "was designed to exclude Black and Latinx students from specialized high schools and to 'stymie' efforts to study discrimination in admissions testing." (R. 601-602).

The text and history of the Hecht-Calandra Act, as well as plaintiffs' own complaint, refute these claims. As previously

explained (at 40), the Hecht-Calandra Act does not hamper the City's efforts to study the admissions test and revise it in response to any bias in its content or administration. (R. 125.) *See* Education Law §§ 2590-g, 2590-h. Indeed, plaintiffs concede that local policy-makers studied the exam in 2013 "to assess [its] validity" and that the "current iteration of the" test has been changed from the 2013 version. (R. 57.)

The legislative history also refutes plaintiffs' contention that the Act "was designed to exclude Black and Latinx students from specialized high schools." (R. 601-602.) As noted above (at 13-14), the Act specifically provides for a discovery program to admit students from racially and economically disadvantaged backgrounds and contains no limit on the number of students admitted to the specialized high schools through these programs. Ch. 1212, 1971 N.Y. Laws at 3134-35. (*See* R. 173.) Indeed, the Act originally capped seats for students in the discovery program but legislators revised the statute to remove the cap after concerns were raised about disparate impacts on minority groups. (*See* R. 122.) Far from showing discriminatory animus, the legislative record thus

shows that the legislative body as a whole worked collaboratively to eliminate any potential disparate impact that might have arisen from earlier drafts of the statute.

Ultimately, whether the Hecht-Calandra Act represents sound public policy is a question for the People's elected representatives in the Legislature, and it is a question to which they have recently devoted ample attention. *See* 2021 N.Y. Senate Bill S3087; 2020 N.Y. Assembly Bill A10731; 2020 N.Y. Senate Bill S8847. Plaintiffs' complaint and the legislative history of the Act do not provide a basis for this Court to short-circuit that debate through a constitutional challenge.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision and order of the Appellate Division, First Department reinstating plaintiffs' Education Article and Equal Protection Clause claims against the State Defendants.

Dated: New York, New York
November 1, 2024

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AFFIRMATION OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.13(c)(1), Mark S. Grube, an attorney in the Office of the Attorney General of the State of New York, hereby affirms that according to the word count feature of the word processing program used to prepare this brief, the brief contains 8,144 words, which complies with the limitations stated in § 500.13(c)(1).

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Mark S. Grube