

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

E.G., individually and as parent and natural guardian of A.I. and L.I., minor children; M.M., individually and as parent and natural guardian of E.H., L.H., Ev.P., and E.P., minor children; O.M., individually and as parent and natural guardian of A.M., a minor child; and COALITION FOR THE HOMELESS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF EDUCATION; RICHARD A. CARRANZA, as Chancellor of the New York City Department of Education; NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES; STEVEN BANKS, as Commissioner of the New York City Department of Social Services; NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES; JOSLYN CARTER, as Administrator of the New York City Department of Homeless Services; NEW YORK CITY HUMAN RESOURCES ADMINISTRATION; GARY JENKINS as Administrator of the New York City Human Resources Administration; NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS; and JESSICA TISCH, as Commissioner of the New York City Department of Information Technology and Telecommunications,,

Defendants.

CIVIL ACTION NO. 1:20-cv-9879 (AJN)

**MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANTS' MOTION TO
DISMISS**

TABLE OF CONTENTS

PRELIMINARY STATEMENT.....	1
FACTS	3
I. The COVID-19 Pandemic Caused a Seismic Shift in Education in New York City From In- Person to Remote Learning Beginning March 2020.....	3
II. The Named Plaintiffs.....	5
ARGUMENT	5
I. LEGAL STANDARD.....	5
II. DEFENDANTS’ MOTION TO DISMISS SHOULD BE GRANTED BECAUSE PLAINTIFFS’ FEDERAL CLAIMS FAIL AS A MATTER OF LAW AND THE COURT SHOULD DECLINE TO EXERCISE SUPPLEMENTAL JURISDICTION OVER THE STATE LAW CLAIMS.....	5
A. Plaintiffs’ Equal Protection Clause Claim Fails As a Matter of Law	6
1. Plaintiffs Fail To Allege That Defendants Discriminate Between Different Classes of Citizens.....	7
2. Plaintiffs Have Not Alleged Any Definable Suspect Class.....	8
3. Plaintiffs Have Not Alleged Violation of a Fundamental Right and Cannot Show That Heightened Standard of Review Applies.....	9
4. Plaintiffs' Claim Fails Under Either The Highly Deferential Rational Basis Review Or Heightened Scrutiny.....	11
B. Plaintiffs Fail to State a Claim Under the McKinney-Vento Act.....	12
1. Sections 11432(2) and 11432(d) Do Not Create Rights That Plaintiffs Can Enforce Either Through an Implied Private Right of Action or Through Section 1983.....	14
2. The Amended Complaint Establishes That Defendants are Complying With the MVA.....	20
C. The Court Should Decline to Exercise Supplemental Jurisdiction Over Plaintiffs’ State Law Claims	21
1. The New York Education Law Section 3209 Claim Raises Novel and Complicated Issues of State Law That May Have Sweeping Implications for Local Governments and School Districts Across New York.....	22

2. The Education Article Claim Should Be Dismissed, But at a Minimum
Raises a Question of First Impression About the New York
Constitution.....23

CONCLUSION.....26

TABLE OF AUTHORITIES

Cases

42 U.S.C. § 11432.....	13, 14, 16
<i>Alexander v. Sandoval</i> , 532 U.S. 275 (2001).....	16, 18
<i>Aristy-Farer v. State of New York</i> , 29 N.Y.3d 501 (NY 2017).....	23, 25
<i>Armour v. City of Indianapolis</i> , 566 U.S. 673 (2012).....	6
<i>Armstrong v. Exceptional Child Ctr., Inc.</i> , 575 U.S. 320 (2015)	19
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	5
<i>Backer ex rel. Freedman v. Shah</i> , 788 F.3d 341 (2d Cir. 2015).....	16
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544, 570 (2007).....	5
<i>Blessing v. Freestone</i> , 520 U.S. 329, 340-41 (1997).....	15, 16, 17, 18
<i>Bradway v. Gonzales</i> , 26 F.3d 313, 317-18 (2d Cir. 1994).....	6
<i>California v. Sierra Club</i> , 451 U.S. 287 (1981)	16
<i>Campaign for Fiscal Equity v. State</i> , 86 N.Y.2d 307 (NY 1995).....	24
<i>Campaign for Fiscal Equity, Inc. v. State of New York</i> , 100 N.Y.2d 893 (NY 2003).....	24
<i>City of Cleburne v. Cleburne Living Ctr.</i> , 473 U.S. 432 (1985).....	12
<i>Cleburne v. Cleburne Living Ctr.</i> , 473 U.S. 432 (1985).....	6
<i>Comcast Corp. v. Nat’l Ass’n of African-American-Owned Media</i> , 140 S. Ct. 1009, 1015 (2020)	15
<i>Dandridge v. Williams</i> , 397 U.S. 471 (1970)	12
<i>Davis v. Shah</i> , 821 F.3d 231, 246 (2d Cir. 2016)	17
<i>Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.</i> , 140 S. Ct. 1891 (2020).....	9
<i>Edelman v. Comm’r of Soc. Sec.</i> , 83 F.3d 68 (3d Cir. 1996)	12
<i>Engquist v. Or. Dep’t of Agric.</i> , 553 U.S. 591 (2008)	8
<i>FCC v. Beach Comm’ns</i> , 508 U.S. 307 (1993)	11
<i>Franza v. Carey</i> , 518 F. Supp. 324 (S.D.N.Y. 1981)	7
<i>Fullwood v. Vosper</i> , No. 9:99CV1586, 2007 U.S. Dist. LEXIS 1840 (N.D.N.Y. Jan. 9, 2007)....	7
<i>Gonzaga Univ. v. Doe</i> , 536 U.S. 273, 284 (2002).....	15, 16, 19
<i>Immaculate Heart Cent. Sch. v. N.Y. State Pub. High Sch. Athletic Ass’n</i> , 797 F. Supp. 2d 204 (N.D.N.Y. 2011)	12
<i>Jackson v. Roeman Real Estate Co.</i> , 787 F.2d 590 (6th Cir. 1986).....	7
<i>Joel v. City of Orlando</i> , 232 F.3d 1353 (11th Cir. 2000).....	9
<i>Kadrmas v. Dickinson Pub. Sch.</i> , 487 U.S. 450 (1988).....	6, 10
<i>Kreimer v. Bureau of Police</i> , 958 F.2d 1242 (3d Cir. 1992)	9
<i>Lampkin v. District of Columbia</i> , 27 F.3d 605 (D.C. Cir. 1994).....	13, 17
<i>Maldonado v. George Weston Bakeries</i> , 441 F. App’x 808 (2d Cir. 2011)	8
<i>Manbeck v. Katonah-Lewisboro Sch. Dist.</i> , 435 F. Supp. 2d 273 (S.D.N.Y. 2006).....	10
<i>McCarthy v. Dun & Bradstreet Corp.</i> , 482 F.3d 184 (2d Cir. 2007)	5
<i>McCoy v. Richards</i> , 771 F.2d 1108 (7th Cir. 1985).....	7
<i>McGowan v. Maryland</i> , 366 U.S. 420 (1961).....	8
<i>Melrose Credit Union v. City of New York</i> , 247 F. Supp. 3d 356 (S.D.N.Y. March 30, 2017)....	11
<i>Mo., K. & T. R. Co. v. Cade</i> , 233 U.S. 642 (1914)	7
<i>Morse v. Univ. of Vt.</i> , 973 F.2d 122 (2d Cir. 1992)	23
<i>New York Citizens’ Coal. for Children v. Poole</i> , 922 F.3d 69, 78 (2d Cir. 2019).....	15

N.J. v. New York, 872 F. Supp. 2d 204 (E.D.N.Y. 2011) 18
N.Y. Civ. Liberties Union v. State, 4 N.Y.3d 175 (NY 2005)..... 23, 24, 25
Nat’l Law Ctr. on Homelessness & Poverty v. New York, 224 F.R.D. 314 (E.D.N.Y. 2004) 17
National Law Center on Homelessness & Poverty v. New York, 224 F.R.D. 314 (E.D.N.Y. 2004)
..... 10, 13
Patane v. Clark, 508 F.3d 106 (2d Cir. 2007) 8
Paynter v. State, 100 N.Y.2d 434 (2003)..... 23, 24
Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17-18 (1981)..... 15
Plyler v. Doe, 457 U.S. 202 (1982)..... 6, 10
Reform Educ. Fin. Inequities Today v. Cuomo, 86 N.Y.2d 279 (1995) 23
S.C. v. Riverview Gardens Sch. Dist., No. 18-cv-04162-NKL, 2019 U.S. Dist. LEXIS 29282
(W.D.Mo. Feb. 25, 2019),..... 18
San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973 10
Seabrook v. Jacobson, 153 F.3d 70 (2d Cir. 1998)..... 21
Turner v. E. Meadow Sch. Dist., No. 07-CV-4318 (JS)(AKT), 2009 U.S. Dist. LEXIS 29524
(E.D.N.Y. Mar. 31, 2009) 10
United States v. Williams, No. 02 C 4990, 2003 U.S. Dist. LEXIS 9988(N.D. Ill. June 10, 2003)7
Valencia v. Sung M. Lee, 316 F.3d 299 (2d Cir. 2003) 6, 21
Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252 (1977) 9
Wallace v. New York, 40 F. Supp. 3d 278 (E.D.N.Y. 2014)..... 9
Waller v. United States, 847 F.2d 1279 (7th Cir. 1988)..... 8
Yale Auto Parts, Inc. v. Johnson, 758 F.2d 54 (2d Cir. 1985)..... 6

Statutes

28 U.S.C. § 1367..... passim
42 U.S.C. § 1132-33 13
42 U.S.C. § 11431..... 6, 14, 16
42 U.S.C. § 1983..... 2, 6, 15, 19
Article XI § 1 of the New York Constitution 6
Equal Protection Clause..... 5, 6, 7, 8, 9
Federal Rule of Civil Procedure 12(b)(6).....1,5
McKinney-Vento Act..... passim
New York Constitution Education Article..... 2, 23, 24, 25
New York Education Law § 3209 1, 2, 3, 6, 22

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.