Appellate Division, Third Department Appeal No. 534406
Albany County Index No. 906129-21

Court of Appeals
of the
State of New York

In the Matter of

UNITED JEWISH COMMUNITY OF BLOOMING GROVE, INC., JOEL STERN, AS PARENT AND NATURAL GUARDIAN OF K.S., M.S., R.S., B.S., AND F.S., INFANTS UNDER THE AGE OF EIGHTEEN YEARS, AND YITZCHOK EKSTEIN, AS PARENT AND NATURAL GUARDIAN OF J.E., C.E., M.E., AND P.E., INFANTS UNDER THE AGE OF EIGHTEEN YEARS,

Petitioners/Plaintiffs-Movants,

-against-

WASHINGTONVILLE CENTRAL SCHOOL DISTRICT AND THE NEW YORK STATE EDUCATION DEPARTMENT,

Respondents/Defendants-Respondents.

MOTION FOR LEAVE TO APPEAL OF PETITIONERS/PLAINTIFFS UNITED JEWISH COMMUNITY OF BLOOMING GROVE, INC. ET AL.

WHITEMAN OSTERMAN & HANNA LLP
Robert S. Rosborough IV
Anna V. Pinchuk
Attorneys for Petitioners/Plaintiffs-Movants
One Commerce Plaza
Albany, New York 12260
(518) 487-7600
rrosborough@woh.com

Dated: September 28, 2022

COURT OF APPEALS
STATE OF NEW YORK

In the Matter of

UNITED JEWISH COMMUNITY OF BLOOMING GROVE, INC., JOEL STERN, AS PARENT AND NATURAL GUARDIAN OF K.S., M.S., R.S., B.S., AND F.S., INFANTS UNDER THE AGE OF EIGHTEEN YEARS, AND YITZCHOK EKSTEIN, AS PARENT AND NATURAL GUARDIAN OF J.E., C.E., M.E., AND P.E., INFANTS UNDER THE AGE OF EIGHTEEN YEARS,

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NOTICE OF MOTION FOR LEAVE TO APPEAL

Motion by: Petitioners/Plaintiffs-Movants United Jewish Community of Blooming Grove, Inc. ("UJC"), Joel Stern as Parent and Natural Guardian of K.S. and M.S. and R.S. and B.S. and F.S., Infants under the Age of Eighteen, and Yitzchok Ekstein, as Parent and Natural Guardian of J.E. and C.E. and M.E. and P.E, Infants under the Age of Eighteen.

Place and Date of Hearing:	Court of Appeals of the State of New York 20 Eagle Street Albany, New York Tuesday, October 11, 2022 NOTE: Personal appearance in opposition to the motion is neither required nor permitted.
Relief Sought:	An order, pursuant to CPLR 5602(a)(1)(i), granting Petitioners/Plaintiffs-Movants leave to appeal to the Court of Appeals from the Opinion and Order of the Supreme Court, Appellate Division, Third Department, dated and entered June 2, 2022, which reversed the order and judgment of Supreme Court, Albany County dated November 18, 2021, denied Petitioners/Plaintiffs-Movants' motion for summary judgment, granted Respondent State Education Department's cross motion for summary judgment, and declared that "respondent Washingtonville Central School District is not required to transport nonpublic school students on days when its public schools are closed" and that "the State Education Department's transportation guidance, to the effect that school districts outside New York City are permitted, but not required, to transport nonpublic school students on days when public schools are closed, is valid"; and granting such further relief as the Court deems just and proper.
Date of Notice of Motion:	September 28, 2022

Notice of Motion
Served by:

WHITEMAN OSTERMAN & HANNA LLP
Robert S. Rosborough IV
Anna V. Pinchuk
Attorneys for Petitioners/Plaintiffs-Movants
One Commerce Plaza
Albany, New York 12260
(518) 487-7600
rrosborough@woh.com

Notice of Motion
Addressed to:

SHAW PERELSON MAY & LAMBERT LLP
Mark C. Rushfield
Attorneys for Respondent/Defendant-Respondent Washington Central School District
21 Van Wagner Road
Poughkeepsie, New York 12603
mrushfield@shawperelson.com

NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL
Beezly J. Kiernan, Assistant Solicitor General
Attorneys for Respondent/Defendant-Respondent New York State Education Department
The Capitol
Albany, New York 12224
beezly.kiernan@ag.ny.gov

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 500.1(f) of this Court's rules, Petitioner/Plaintiff-Movant United Jewish Community of Blooming Grove, Inc. hereby states that it does not have any parents, subsidiaries, or affiliates.

Petitioners/Plaintiffs-Movants United Jewish Community of Blooming Grove, Inc., Joel Stern, and Yitzchok Ekstein, and their children (collectively, "Petitioners" or "UJC") respectfully submit this memorandum in support of their motion, pursuant to CPLR 5602(a)(1)(i), for leave to appeal to this Court from the Opinion and Order of the Supreme Court, Appellate Division, Third Department (Clark, J.P., Pritzker, Colangelo, Ceresia, and McShan, JJ.), dated and entered June 2, 2022, which reversed the order and judgment of Supreme Court, Albany County dated November 18, 2021, denied Petitioners/Plaintiffs-Movants' motion for summary judgment, granted Respondent State Education Department's cross motion for summary judgment, and declared that "respondent Washingtonville Central School District is not required to transport nonpublic school students on days when its public schools are closed" and that "the State Education Department's transportation guidance, to the effect that school districts outside New York City are permitted, but not required, to transport nonpublic school students on days when public schools are closed, is valid."

STATEMENT OF PROCEDURAL HISTORY AND TIMELINESS OF MOTION FOR LEAVE TO APPEAL

On or about July 19, 2021, Petitioners commenced this hybrid CPLR Article 78 proceeding and declaratory judgment action seeking, among other things, a declaration that Education Law § 3635(1) requires central school districts, such as Respondent/Defendant-Respondent Washingtonville Central School District (the "District"), to provide transportation to all nonpublic school students on all days when their nonpublic schools are open for instruction during the school year and compelling the District to provide all nonpublic students transportation accordingly (R58-R74).[1]

By a Decision, Order, and Judgment dated and entered November 18, 2021, Supreme Court, Albany County (Hon. Peter A. Lynch, J.), (1) granted UJC's motion for summary judgment, (2) denied Respondent/Defendant-Respondent New York State Education Department's ("SED") cross motion for summary judgment, (3) declared that "Education Law §3635(1) requires the Washingtonville Central School District to provide transportation to all nonpublic school

[1] Citations to R__ refer to the Record on Appeal before the Appellate Division.

students on all days when their nonpublic schools are open for instruction, regardless of whether the public schools are open," and (4) granted a permanent injunction compelling the District to do so (R3-R19; *see also* Appendix A). UJC served the Supreme Court judgment with notice of its entry on November 18, 2021 via electronic filing through the NYSCEF filing system. On November 23, 2021, Respondents served a notice of appeal from the Supreme Court judgment (R20-21, 39-40).

By Opinion and Order dated and entered June 2, 2022, the Appellate Division, Third Department (Clark, J.P., Pritzker, Colangelo, Ceresia, and McShan, JJ.) reversed the Supreme Court judgment, holding that Education Law § 3635(1)(a) permits, but does not require, school districts outside New York City to transport nonpublic school students to and from school on days when the public schools are closed (*see Matter of United Jewish Community of Blooming Grove, Inc. v Washingtonville Cent. School Dist.*, 207 AD3d 9 [3d Dept 2022]; *see also* Appendix B). Thus, the Appellate Division declared that the District is not required to transport nonpublic school students on days when its public schools are closed, and that SED's Transportation Rules and the

District's policies were valid, to the effect that school districts outside New York City are permitted, but not required, to transport nonpublic school students on days when public schools are closed. Respondents served the Appellate Division order with notice of its entry on UJC, via electronic filing through the NYSCEF filing system, on June 2, 2022.

On June 28, 2022, UJC served a motion, in the Appellate Division, for leave to appeal to this Court from the June 2, 2022 Appellate Division order, and other relief. By Decision and Order on Motion dated and entered August 25, 2022, the Appellate Division, Third Department (Clark, J.P., Pritzker, Ceresia, and McShan, JJ.) denied UJC's motion (*see* Appendix C). SED served the August 25, 2022 Appellate Division order with notice of its entry, via electronic filing through the NYSCEF filing system, on August 29, 2022. The District has not served the August 25, 2022 Appellate Division order with notice of its entry. Therefore, this motion for leave to appeal to this Court is timely made (*see* CPLR 5513).

JURISDICTIONAL BASIS

This Court has jurisdiction over this motion for leave to appeal pursuant to CPLR 5602(a)(1)(i), as the Appellate Division order finally disposes of all issues in this proceeding within the meaning of the New York Constitution. The Appellate Division order reversed the Supreme Court judgment, denied UJC's motion for summary judgment, granted SED's cross motion for summary judgment, declared that the District is not required to transport nonpublic school students on days when its public schools are closed, and declared that SED's transportation guidance and District policies were valid, to the effect that central school districts are not required to transport nonpublic school students on days when public schools are closed. The Appellate Division order, therefore, finally disposed of all of UJC's claims in their entirety.

QUESTIONS PRESENTED

1. Does Education Law § 3635(1)(a) grant all nonpublic school students who reside within central school districts the same right to transportation to and from school every day their nonpublic schools are open for instruction, as is provided to public school students across New York State, including on days during the normal school year and normal school week that are not legal or statutory holidays but the public schools nevertheless choose to close?

The Appellate Division erroneously held that section 3635(1)(a) does not grant nonpublic school students equal transportation rights to those provided to their public school counterparts. Rather, the Appellate Division held that central school districts may deny transportation to nonpublic school students on days when the public schools choose to be closed, even though the students' nonpublic schools are open. As recognized in the Appellate Division's opinion and order, the complex statutory interpretation issues presented in this case have never before been addressed by this Court and have an immense statewide impact on approximately 421,475 nonpublic school students and their parents throughout the State, who have to arrange for alternative

transportation to and from their nonpublic schools when their public schools choose not to provide the equal transportation to and from school that the statute guarantees.

This issue has been raised and preserved at R7-R18, R67-R68, and R755-R756 of the Appellate Division Record on Appeal, and at pages 21-43 of UJC's Appellate Division brief.

2. If Education Law § 3635(1)(a) does not require central school districts to provide transportation to nonpublic school students on days that are not legal or statutory holidays but central school districts choose to be closed, even though the nonpublic schools are open, as the Appellate Division held, does section 3635(1)(a) violate the nonpublic school students' right to equal protection of the law under the New York Constitution because they are denied equal transportation rights to those guaranteed to public school students—transportation to and from school on every day their schools are open for instruction during the normal school year and normal school week?

The Appellate Division order erroneously held that Respondents provided a rational basis for section 3635(1)(a) denying nonpublic school

students equal transportation rights because to do so would be administratively and financially burdensome, notwithstanding that the District already contracts with a private transportation company to provide these same transportation services to nonpublic school students on days the public schools are open, thus minimizing any additional administrative burden providing the same transportation routes on days when the District chooses to close, and the Legislature made the intentional choice in the statute to place the financial burden of transportation on the public school districts.

This issue has been raised and preserved at R71-R72, R756 of the Appellate Division Record on Appeal, and at pages 44-50 of UJC's Appellate Division brief.

PRELIMINARY STATEMENT

Transportation to and from school is an essential part of a child's education. For many of the approximately 421,475 nonpublic school students across New York, busing provided by the public school district is the only way they can get to their schools. Many parents' work schedules prevent them from bringing their children to and from school each day. Many other parents may have only one car that they have to take to get to and from work. Some may have no car at all. Still others have children of different ages attending nonpublic schools in different locations, so it is impossible to get each child to or from school at the same time. Indeed, as the Legislature recognized, "the right to attend a nonpublic school is *meaningless* if the pupil has no way of getting to and from school" (Bill Jacket, L 1974, ch 755, at 9 [emphasis added]).

The transportation the Legislature has mandated public school districts provide to nonpublic school students is intended to fix these problems. Under Education Law § 3635(1)(a), the Legislature has mandated that central school districts outside of New York City "*shall*" provide transportation "for *all* children residing within the school district" from kindergarten through 12th grade, within certain

distances from their schools. All children means all children, regardless of whether they attend the public or nonpublic schools. Parity between public and nonpublic school students is precisely what the Legislature intended. Yet, in practice, Respondents' transportation policies deny nonpublic school students the same transportation rights that are granted to their public school counterparts, in contravention of section 3635(1)(a)'s mandate.

While public school students receive transportation to and from school every day that their schools are in session during the school year, nonpublic school students do not. They are only provided transportation when the public schools are open. That inequality is what the Appellate Division erroneously concluded was "sufficient" under section 3635(1)(a). If the nonpublic schools choose to follow a different school calendar than the public schools—as many do based on the observation of religious holidays—their students are denied the transportation they are required to receive under section 3635(1)(a) on the many days when the public schools are closed, but the nonpublic schools are open.

For example, in the Village of Kiryas Joel, the Hasidic Jewish religious schools that the student Petitioners attend do not close for the

District's recesses on the day before and after Thanksgiving, the days around Christmas, and the February recess. These are not federal or state holidays and, yet, the District refuses to provide transportation on those days merely because it chooses to be closed. Education Law § 3635(1)(a) makes no such distinction. It places a mandatory duty upon central school districts to provide transportation to all children every day that their schools are in session, in parity with the public school students, and not only merely when it is convenient for a school district to do so.

The Appellate Division acknowledged that this case presents novel and complex issues of statutory interpretation affecting hundreds of thousands of nonpublic school students across the State. And the Appellate Division notably thought that section 3635(1)(a) could be interpreted both ways the parties suggest. Because this case presents a very close call affecting the rights to transportation to and from school for nonpublic school students across the entire state of New York, it warrants this Court's review and a final decision that will settle their rights under Education Law § 3635(1)(a).

Not only does this case present a novel issue that is of great

statewide importance for all nonpublic school students, but the Appellate Division's interpretation of the transportation mandate in section 3635(1)(a) was simply mistaken. First, the Appellate Division created a textual ambiguity in the statute where none exists. The plain language of Education Law § 3635(1)(a) is *clear* and *unambiguous* mandating that public school districts "shall" provide transportation "to and from school," without limitation, "for all children residing within the school district" from kindergarten through 12th grade, within certain distances. The Appellate Division concluded that this language was ambiguous because it does not explicitly say "when" the transportation must be provided. But the statute does provide the "when" by requiring transportation to be provided *to and from the nonpublic schools*. Nonpublic school students are denied that very right when the public schools choose not to provide transportation to and from school on non-statutory holiday days the nonpublic schools are open, but the public schools choose to be closed, like the days around Thanksgiving or after Christmas.

Indeed, that language must be read in conjunction with the New York Constitution's requirement of parity between public and nonpublic

school students. Thus, because public school students receive transportation every day their schools are open for instruction during the normal school week and school year, section 3635(1)(a) guarantees nonpublic school students the same. Any other construction would imperil the statute's constitutionality, because it would deny nonpublic school students equal protection of the laws, a result this Court's precedent teaches should be avoided. This Court should therefore grant leave to appeal and overturn the Appellate Division's erroneous interpretation of section 3635(1)(a).

Second, the Appellate Division overlooked the legislative history accompanying the initial adoption of the transportation guarantee for nonpublic school students in 1939 and the problem that the Legislature intended to fix by adopting it. Rather, the Appellate Division's erroneous interpretation of Education Law § 3635(1)(a) was based on an 1985 amendment to section 3635 that applies only in New York City, which the Legislature has long treated differently for transportation purposes than central school districts outside of the City.

The Appellate Division also relied on bills that the Legislature never adopted to decide that the Legislature did not intend for

nonpublic school students to have equal transportation rights. As this Court has taught, however, legislative inactivity is the most dubious of legislative history from which the Appellate Division could have drawn a positive inference of intent. Because the legislative history on which the Appellate Division based its interpretation did not provide a clear showing of intent to deny nonpublic school students transportation on days when the public schools choose to be closed, the Appellate Division should have construed section 3635(1)(a) to serve its remedial purpose—to provide equal transportation to nonpublic school students to and from school.

When the legislative history is viewed as a whole, and the statute's remedial purpose is considered, the Legislature's true intent shines through—to guarantee equal transportation for nonpublic school students to and from school, including on days when their schools are in session, but the public schools choose to be closed, ensuring that nonpublic school students would always have a way to get to their schools of choice. That was precisely the purpose of the 1939 statute. Indeed, the legislative history shows that when the Legislature intended to limit the equal transportation guarantee for nonpublic

school students outside of New York City—for example, by imposing distance limitations or requiring parents to make a formal request for transportation to their children's non-public schools each year—it did so expressly. And, here, the Legislature never did.

This Court should grant leave to appeal to review these issues of first impression that necessarily affect every single nonpublic school student and parent throughout the State. Indeed, for the approximately 421,475 nonpublic school students at the 1,700 nonpublic schools in New York,[2] this Court's decision in this case will determine whether a public school bus will arrive at their door each school day, or whether they and their parents will be left scrambling to find a different way to and from school on days their public school district chooses to be closed. This Court should not permit nonpublic school students to continue to be relegated to second class citizens under section 3635(1)(a)'s transportation mandate.

[2] This data was taken from NYSED.gov, Information and Reporting Services https://www.p12.nysed.gov/irs/statistics/nonpublic/home.html (last accessed Sept. 28, 2022), of which this Court can take judicial notice.

STATEMENT OF FACTS

UJC is a not-for-profit community organization that provides support services for Jewish families throughout Orange County, New York (R61). Petitioners Joel Stern and Yitzchok Ekstein are members of UJC, reside within the District, and send their children to nonpublic Hasidic Jewish religious schools in the Village of Kiryas Joel to foster the children's Jewish faith (R61-R62). Petitioners' residences are more than 2 miles, but less than 15 miles, from the nonpublic schools that their children attend, and their children are thus statutorily entitled to transportation to their nonpublic schools at the District's expense (R62).

Generally, throughout the school year, the District transports Petitioners' children to their nonpublic schools, as required under the Education Law, but only on days when the District is open for instruction (R63). That is the case even though the District does not provide the transportation using its own buses and employees, but rather contracts with a private transportation company to provide the services (R177-R179).

The District has repeatedly denied Petitioners' requests to provide transportation on the non-holiday days the District is closed, even after

Petitioners informed the District that its mandatory, statutory transportation obligation continues even on those days (R62, 64). UJC was therefore forced to commence this proceeding seeking, among other things, that the Court declare that Education Law § 3635(1)(a) requires central school districts, such as the District here, to provide transportation to all nonpublic school students on all days when their nonpublic schools are open for instruction during the school year (R58-R74).

STATUTORY BACKGROUND

To understand the issues and procedural history in this case, it is important first to grasp the statutory context in which it arises. Education Law § 3635(1)(a) provides that "[s]ufficient transportation facilities (including the operation and maintenance of motor vehicles) shall be provided by the school district for all the children residing within the school district to and from the school they legally attend." Those words are clear and unambiguous. The Legislature guaranteed that nonpublic school students would have transportation, provided by the central school district in which they live, "to and from school" on each day that their nonpublic schools are open for instruction, just as

the central school districts provide to public school students.

When the legislative history is viewed as a whole, the Legislature's intent to guarantee equal transportation for nonpublic school students on days when their schools are in session during the regular school week and school year shines through. Indeed, the legislative history shows that when the Legislature intended to limit the equal transportation guarantee for nonpublic school students outside of New York City, including by imposing distance limitations or requiring parents to make a formal request for transportation to their children's non-public schools each year, it did so expressly.

Prior to 1936, school districts were not required to provide transportation to nonpublic school students. In 1936, the Legislature attempted to enact such a requirement, by amending former Education Law § 206 (the "1936 Law") to allow school districts to transport students to nonpublic schools "within the district or an adjacent district or city[,]" if the residents of the school district voted to authorize the transportation (L 1936, ch 541). The New York Constitution, at the time, however, did not permit the State or its subdivisions, including school districts, to use any public money "directly or indirectly, in aid or

maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught" (NY Const art XI, former § 4). Thus, when the 1936 Law was challenged, this Court struck it down because it authorized the use of public funds to pay for the transportation of students to religious schools (*see Judd v Board of Educ.*, 278 NY 200, 217 [1938]).

Shortly after this Court struck down the 1936 Law, however, the people of this State amended the Constitution to allow the Legislature to "provide for the transportation of children to and from any school or institution of learning" (NY Const art XI, § 3). This amendment overruled this Court's holding in *Judd* and firmly fixed the State policy that transportation should be provided to all students in New York to and from any schools, including nonpublic and religious schools.

To implement the constitutional amendment, the Legislature not only allowed school districts to provide transportation to nonpublic school students, but *mandated* that they do so "when deemed necessary, irrespective of the will of the taxpayers" (Bill Jacket, L 1939, ch 465, at 3). When adopting the new law, the Legislature intentionally chose to

abandon the prior restriction in the 1936 Law, which had made it "permissive and determinable by the taxpayers in the district" (*id.*). Specifically, the language adopted by the Legislature in 1939 stated:

> In providing or granting transportation for children pursuant to the provisions of this chapter, sufficient transportation facilities (including the operation and maintenance of motor vehicles) *shall be provided* for all the children residing within the school district to and from the school they legally attend, who are in need of such transportation because of the remoteness of the school to the child or for the promotion of the best interest of such children

(L 1939, ch 465, § 5 [emphasis added] [the "1939 Law"] [adding Education Law former § 503]).[3]

Since 1939, the Legislature has revised and clarified the scope of Education Law § 3635 numerous times. And whenever the Legislature sought to limit the broad transportation rights provided under Education Law § 3635(1)(a), it has done so expressly.

For example, in 1960, the Legislature limited the scope of the

[3] Even the New York State School Boards Association noted at the time that the transportation for nonpublic school students required under the new section was "mandatory" and, thus, urged the Governor to veto the bill because it "would open the way to a greatly increased cost of transportation" (Ltr from N.Y.S. Sch. Bds. Assn. Inc., May 12, 1939, Bill Jacket, L 1939, ch 465, at 13).

transportation mandate under section 3635(1)(a) to students who reside within a certain mileage of the school district (L 1960, ch 1074, § 1 ["1960 Amendment"]). In 1961, the Legislature further limited the scope of the mandate by clarifying that (1) door-to-door transportation from home to a nonpublic school was not required and (2) parochial school students only had the right to transportation to the nearest parochial school of a particular denomination (*see* L 1961, ch 959, § 1 ["1961 Amendment"]).

Notably, throughout the many times that the Legislature amended section 3635(1)(a) since it was adopted in 1939, the Legislature has never added any language that permits non-city school districts to refuse to provide the mandatory transportation for nonpublic school students on days when the public schools are closed (*see* Education Law § 3635[1][a]).[4] That legislative omission can only be viewed as intentional, for had the Legislature intended to create that

[4] The Legislature amended Education Law § 3635 numerous times from 1984 through 2012, in addition to those summarized here. None of these amendments, however, altered or limited the scope of the transportation mandate for nonpublic school students under section 3635(1)(a) (*see* L 1984, ch 53; L 1986, ch 0683, § 22; L 1987, ch 63, § 40; L 1989, ch 653, § 1; L 1990, ch 665, § 1; L 1992, ch 69, § 3; L 1994, ch 545, § 2; L 1999, ch 129, § 1).

exception to the mandatory transportation that section 3635(1)(a) guarantees on days when the public schools are closed, it was "free . . . to draft appropriately worded legislation" that did so expressly (*Patrolmen's Benevolent Assn. of City of N.Y. v City of New York*, 41 NY2d 205, 208-209 [1976]; *see also e.g. Hernandez v State of New York*, 173 AD3d 105, 112 [3d Dept 2019] ["if the drafters had wished to adopt SERA's special definition of 'employees,' they would have had to incorporate it explicitly into the constitutional amendment. The drafters did not do so, thereby giving rise to the inference that its omission was intentional"]).

Since 1961, the Legislature has largely chosen to narrow the limits that were placed on the transportation mandate in Education Law § 3635(1), and to solidify the right to transportation for nonpublic students. For example, in 1974, the Legislature amended section 3635 to increase the mileage parameters to cover more nonpublic school students, as a way to combat fiscal problems at many nonpublic schools (L 1974, ch 755; Bill Jacket, L 1974, ch 755, at 2). The amendment's supporters believed this increase was necessary because (1) "the right to attend a nonpublic school is *meaningless* if the pupil has no way of

getting to and from school" and (2) the "cost of providing the transportation, while high, is much less than the cost of educating the pupils" (Bill Jacket, L 1974, ch 755, at 9 [emphasis added]). The Legislature also amended section 3635 to require non-city school districts to (1) designate central pickup points for nonpublic school students, and (2) transport students from the pickup points to nonpublic schools, even if the students live too far from the nonpublic schools to qualify for direct transportation to the nonpublic schools (*see* L 1981, ch 960; Bill Jacket, L 1981, ch 960; L 1990, ch 718, § 1; NY Session Law Serv. 718 [McKinney 1990]).

Other changes were made to section 3635(1)(a) in part due to concerns over the discriminatory application of some of the prior limitations. For example, in 1978, the Legislature eliminated the 1961 clause restricting parochial students' transportation to the nearest available parochial schools of their denomination, after concerns were raised that this restriction discriminatorily limited parents' freedom to choose a parochial school for their children (L 1978, ch 453; Bill Jacket, L 1978, ch 453). The Legislature also eliminated a non-city school district's ability to deny a late transportation request if a reasonable

explanation was given for the lateness, because the requirements were being inequitably applied to requests for transportation to nonpublic schools (L 1978, ch 719; Bill Jacket, L 1978, ch 719).

The Legislature has also specified expressly when it is not expanding the transportation mandate for nonpublic school students, but rather giving school districts the option to provide additional transportation with voter approval. For example, the Legislature authorized school districts to voluntarily provide transportation to students (1) who reside outside of the mileage ranges (L 1960, ch 1074, § 1), including those who attend nonpublic schools and reside on an established bus route for the centralized pick-up point (L 1994, ch 571, § 1), or (2) are enrolled in a universal prekindergarten programs, so long as the transportation was offered "equally to all children in like circumstances residing in the district" (2012 McKinney's Session Law News of NY, ch 244 [S7218-A]; L 2012, ch 244, § 1, eff. July 18, 2012). When the Legislature chose to provide central school districts with these options, however, it made clear that the transportation mandate did not apply in those circumstances.

And the Legislature has consistently treated city school districts,

including the New York City School District, differently than it has central school districts. In 1961, the Legislature amended section 3635 to explicitly provide that city school districts are not required to provide any transportation to nonpublic school students (*see* L 1961, ch 959, § 1; Mem to the Governor from Louis J. Lefkowitz, Attorney General, Bill Jacket, L 1961, ch 959, at 8 ["One of the amendments in the above bill is to explicitly exclude city school districts from any mandatory requirement to provide transportation"]). That exclusion continues today (*see* Education Law § 3635[1][c]). So, while central school districts outside New York City have been required to provide transportation to nonpublic school students for the last 80-plus years, city school districts are not under the same obligation.

PROCEDURAL HISTORY

After filing suit, UJC moved for a preliminary injunction to ensure that the required transportation for nonpublic school students would begin on August 30, 2021 when the student Petitioners had their first day of school (R109-R113; R167-R295). Respondents separately cross-moved to dismiss the Petition (R114-R166).

In a Decision and Order entered August 26, 2021, Supreme Court,

Albany County (Lynch, J.) granted Petitioners a preliminary injunction compelling the District to comply with its statutory duty under Education Law § 3635(1)(a) (R296-R309).[5] In a separate order entered September 10, 2021, Supreme Court denied Respondents' cross motions to dismiss (R310-R313). Respondents thereafter answered the Petition (R314-R324 [District's answer]; R325-R337 [SED's answer]). Following joinder of issue, Petitioners moved for summary judgment on their claims for declaratory relief and a permanent injunction (R754-R758). The District opposed the motion (R763-R775), and SED cross-moved for summary judgment (R848-R854).

In a Decision, Order, and Judgment entered November 18, 2021, Supreme Court (1) granted Petitioners' motion for summary judgment, (2) denied SED's cross motion for summary judgment, (3) declared that "Education Law § 3635(1) requires the Washingtonville Central School District to provide transportation to all nonpublic school students on all days when their nonpublic schools are open for instruction, regardless

[5] The preliminary injunction was automatically stayed upon Respondents' service of notices of appeal (*see* CPLR 5519[a][1]), and the Appellate Division denied UJC's motion to vacate the automatic stay (*see Matter of United Jewish Community of Blooming Grove, Inc. v Washingtonville Cent. School Dist.*, 2021 NY Slip Op 75834[U] [3d Dept Dec. 8, 2021]).

of whether the public schools are open," and (4) granted a permanent injunction compelling the District to do so (R3-R19). Respondents appealed the November 18, 2021 Supreme Court judgment.

In an Opinion and Order entered June 2, 2022, the Appellate Division, Third Department (Clark, J.P., Pritzker, Colangelo, Ceresia, and McShan, JJ.) reversed the Supreme Court judgment, holding that Education Law §3635 (1) (a) permits, but does not require, school districts outside New York City to transport nonpublic school students to and from school on days when the public schools are closed (*see United Jewish Community of Blooming Grove, Inc.*, 207 AD3d at 12-15). The Appellate Division, noting that "the parties conflicting interpretations . . . [are] at least arguably persuasive, with both sides claiming that their interpretation treats all children equitably," reasoned that section 3635's text was ambiguous because it did not specify "*when* [the] transportation must be provided" and, thus, resorted to its analysis of legislative history to derive the Legislature's intent (*see id.* at 12-13). Rather than viewing the legislative history of section 3635(1)(a) in its entirety, however, the Appellate Division focused only on an amendment to a different subsection of section 3635 that applies

only to the New York City School District (*see id.* at 13). In that amendment, the Legislature limited the number of days when nonpublic schools in New York City could choose transportation on days when the public schools were closed, but rejected any such limitation for the transportation provided by central school districts.

The Appellate Division misconstrued this amendment to conclude that because the Legislature was providing additional transportation to these New York City nonpublic school students that was not already provided, the same must be true for nonpublic school students outside of New York City. Although the Appellate Division was correct that more transportation rights were being provided for nonpublic school students in New York City, because no transportation was previously guaranteed for New York City nonpublic school students under the statute, the Appellate Division was mistaken that this same logic applied to students residing within central school districts outside of New York City. Those nonpublic school students already had their right to transportation guaranteed in the 1939 Law. The Appellate Division's reliance on the 1985 amendment that added section 3635(2-a) improperly skewed its interpretation of section 3635(1)(a), which is

what guarantees equal transportation for nonpublic school students residing within central school districts.

The Appellate Division also based its interpretation on (1) bills that the Legislature never passed and (2) the Legislature's inactivity in the face of SED's incorrect interpretation of the section 3635(1)(a) transportation guarantee, even though there was no evidence that the Legislature was aware of this interpretation. This Court has held, however, that legislative inactivity is "inherently ambiguous and affords the most dubious foundation for drawing positive inferences" (*Roberts v Tishman Speyer Properties, L.P.*, 13 NY3d 270, 287 [2009] [internal quotation marks omitted]). Based only upon that dubious foundation, the Appellate Division declared that the District is not required to transport nonpublic school students on days when its public schools are closed, and that SED's Transportation Rules and the District's policies were valid, to the effect that school districts outside New York City are permitted, but not required, to transport nonpublic school students on days when public schools are closed (*United Jewish Community of Blooming Grove, Inc.*, 207 AD3d at 16-17).

The Appellate Division also rejected UJC's equal protection

challenge to section 3635(1)(a) because, "assuming, without deciding, that SED's guidance treats nonpublic and public school students differently, SED has articulated a rational basis for it—the financial and administrative burdens that would be imposed upon school districts if they were required to transport nonpublic school students on days when public schools are closed" (*id.* at 16).

Petitioners now seek leave to appeal to this Court from the June 2, 2022 Appellate Division order.

ARGUMENT

POINT I

THIS COURT SHOULD GRANT LEAVE TO DECIDE WHETHER EDUCATION LAW § 3635(1)(A) REQUIRES CENTRAL SCHOOL DISTRICTS OUTSIDE OF NEW YORK CITY TO PROVIDE TRANSPORTATION TO NONPUBLIC SCHOOL STUDENTS THROUGHOUT THE STATE ON ALL DAYS DURING THE NORMAL SCHOOL WEEK AND YEAR THAT THEIR NONPUBLIC SCHOOLS ARE OPEN FOR INSTRUCTION

The Appellate Division order recognizes that the issues presented in this case are novel, complex issues of statutory interpretation, and have important statewide implications (*see United Jewish Community of Blooming Grove, Inc.*, 207 AD3d at 12-16). Indeed, the Appellate Division expressly noted that "the parties conflicting interpretations . . .

[are] at least arguably persuasive, with both sides claiming that their interpretation treats all children equitably" (*id.* at 13). For the approximately 421,475 nonpublic school students through New York, however, only Petitioners' interpretation of Education Law § 3635(1)(a) guarantees them transportation to and from school every day their nonpublic schools are open, as the Legislature intended. Respondents' and the Appellate Division's interpretations do not.

Under the Appellate Division's interpretation of section 3635(1)(a), while public school students receive transportation to and from school every day that their school is in session during the school year, nonpublic school students do not. They are only provided transportation when the public schools are open. If the nonpublic schools choose to follow a different school calendar than the public schools—as many do based on the observation of religious holidays—their students are denied transportation they are required to receive under section 3635(1)(a) on the many days when the public schools are closed, but the nonpublic schools are open. For example, Hasidic Jewish religious schools in the Village of Kiryas Joel do not close for the District's recesses on the day before and after Thanksgiving, the days

around Christmas, and the February recess. These are not federal or state holidays and, yet, the District still refuses to provide transportation on those days merely because it chooses to be closed.

This Court should grant leave to appeal to settle this issue statewide in accord with Education Law § 3635(1)(a)'s plain meaning and broad remedial purpose. Nonpublic school students' rights to transportation to and from school every day their schools are open depend on it.

A. The Appellate Division Order Misconstrues the Plain Language of Education Law § 3635(1)(a).

When interpreting a statute, a court's analysis must begin, and in this case can end, with the plain language of the statute (*see Matter of Theroux v Reilly*, 1 NY3d 232, 239 [2003] ["When interpreting a statute, we turn first to the text as the best evidence of the Legislature's intent."]; *Riley v County of Broome*, 95 NY2d 455, 463 [2000]). Where, as here, the language chosen is unambiguous, the plain meaning of the words used must control (*see Jones v Bill*, 10 NY3d 550, 554 [2008]; *Riley*, 95 NY2d at 463; *Majewski v Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 583 [1998]).

The court must apply the "natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction, and courts have no right to add to or take away from that meaning" (*Tompkins v Hunter*, 149 NY 117, 123 [1896]). In other words, "[w]hen th[e] language is clear and leads to no absurd conclusion, the words must be accorded their plain and ordinary meaning" (*People v Carroll*, 3 NY2d 686, 689 [1958]; *see Burton v New York State Dept. of Taxation and Fin.*, 25 NY3d 732, 739 [2015]). Moreover, a statute "must be construed as a whole and its various sections must be considered together and with reference to each other" (*Colon v Martin*, 35 NY3d 75, 78 [2020] [internal quotation marks, ellipses and citations omitted]).

Here, the plain meaning of section 3635(1)(a) is clear and demonstrates the legislative intent for the statute. Education Law § 3635(1)(a) states, in relevant part:

> Sufficient transportation facilities (including the operation and maintenance of motor vehicles) shall be provided by the school district for *all the children residing within the school district to and from the school they legally attend*, who are in need of such transportation because of the remoteness of the school to the child or for the promotion of the best interest of

> such children. Such transportation shall be provided for all children attending grades kindergarten through eight who live more than two miles from the school which they legally attend and for all children attending grades nine through twelve who live more than three miles from the school which they legally attend and shall be provided for each such child up to a distance of fifteen miles, the distances in each case being measured by the nearest available route from home to school. *The cost of providing such transportation between two or three miles, as the case may be, and fifteen miles shall be considered for the purposes of this chapter to be a charge upon the district and an ordinary contingent expense of the district.*

(emphasis added). The statute clearly provides that a central school district "*shall*" provide transportation for "*all* the children" who live within the central school district, attend grades kindergarten through twelve, and attend a school within the applicable mileage restrictions (Education Law §3635[1][a] [emphasis added]). Section 3635(1)(a) does not differentiate between nonpublic and public school students, and the Legislature's choice to use the broad and expansive term "all the children," "without qualification or restriction, was a deliberate one" (*Hernandez*, 173 AD3d at 112). Section 3635(1)(a) unambiguously provides that "all the children" shall be given transportation "to and from the school they legally attend" (Education Law § 3635[1][a]).

That wording provides the "when" that the Appellate Division mistakenly held was missing. Central school districts must provide transportation for nonpublic school students "to and from school." The only logical interpretation of this mandate is that it requires transportation on all of the nonpublic school students' school days, with the limited exception that central school districts cannot operate or provide transportation on certain legal holidays (*see id.* § 3604[8] ["No school shall be in session on a Saturday or a legal holiday, except general election day, Washington's birthday and Lincoln's birthday"]). Thus, even if the public schools choose to be closed on days that are not legal holidays, transportation must still be provided to nonpublic school students to and from their schools. Indeed, no exceptions are made to the transportation mandate, unlike the statutory language that the Legislature chose to apply to the optional transportation provided by the city school districts (*see id.* § 3635[2-a]).

The Legislature's purposeful choice to require central school districts to provide transportation to nonpublic school students on all days when their nonpublic schools are open for instruction, as is provided to public school students, must be respected, not simply cast

aside for convenience. Indeed, equality is what was intended. But that is not how the Appellate Division read the statute.

The Appellate Division's conclusion that section 3635(1)(a) is ambiguous because it does not specify "when" the transportation must be provided disregards the principles of statutory construction that this Court has announced. The Legislature did not need to specifically provide that that transportation must run from the first day of school to the last, or specify that the nonpublic school students are still entitled to transportation to and from school on non-holiday days when the public schools choose to be closed, to guarantee that they receive the same transportation that public school students receive.

Here, the Legislature adopted a statute that expressly, clearly, and unambiguously mandates that "all the children" shall be given transportation "to and from the school they legally attend" (*id.* § 3635[1][a]). How specifically that mandate is implemented (i.e., what time the children are picked up, whether there is a single pickup or drop off point, and in what kinds of transportation facilities) is up to the central school district. Public schools cannot be permitted, however, to violate the Legislature's transportation mandate by refusing to provide

transportation to nonpublic school students, as it did here, simply because it chooses not to open on days when it is not statutorily required to be closed. This Court should therefore grant leave to confirm that the plain language of Education Law § 3635(1)(a) guarantees all nonpublic school students across this state transportation to and from school every day their nonpublic schools are open for instruction.

B. Even if Inquiry Into Legislative History was Warranted, the Appellate Division's Review Overlooked the History Underlying the Initial Adoption of the Transportation Mandate in 1939 and the Remedial Purpose of the Statute.

Because the plain language of section 3635(1)(a) is unambiguous, the Appellate Division did not need to resort to an examination the legislative history to determine the Legislature's intent (*see Matter of Walsh v New York State Comptroller*, 34 NY3d 520, 524 [2019] ["Where the statutory language is unambiguous, a court need not resort to legislative history"]; *Matter of Auerbach v Board of Educ. of City School Dist. of City of New York*, 86 NY2d 198, 204 [1995]). Even reviewing the complete legislative history of the statute, however, should have led the Appellate Division to adopt a construction of section 3635(1)(a) that safeguards the Legislature's intent to guarantee nonpublic school

students transportation to and from school every day their schools are open. The Appellate Division order, however, relies on pieces of legislative history that simply do not apply to the transportation mandate for central school districts outside of New York City and improperly distorts the Legislature's true intent.

As explained in more detail in Petitioners' *Statutory Background,* the statutory history shows that the Legislature intended to guarantee equal transportation for nonpublic school students on days when their schools are in session during the regular school week and school year. This Court should grant leave to undertake the careful review of the legislative history underlying Education Law § 3635(1)(a) that the Appellate Division did not, which should confirm that the Legislature has always intended a broad remedial guarantee ensuring that nonpublic school students will have a way to and from school each and every day their schools are open for instruction.

Education Law § 3635(1)(a) was adopted as a remedial statute to implement the constitutional amendment to allow the Legislature to "provide for the transportation of children to and from any school or institution of learning" (NY Const art XI, § 3). As a remedial statute,

the Appellate Division should have construed it "broadly" to effectuate its purpose—to provide equal transportation to all school students (*see Matter of Scanlan v Buffalo Pub. School Sys.*, 90 NY2d 662, 676 [1997] ["Remedial statutes, of course, should be construed broadly so as to effectuate their purpose"]).

The broad purpose of Education Law § 3635 is also evident by subsequent amendments to the statute. Since its adoption in 1939, whenever the Legislature sought to limit the transportation rights provided to nonpublic school students outside of New York City, it did so expressly. For example, in 1960, the Legislature limited the scope of the transportation mandate for central school districts to students who reside within a certain mileage of the school district (L 1960, ch 1074, § 1). In 1961, the Legislature further limited the scope of the mandate by clarifying that (1) door-to-door transportation from home to a nonpublic school was not required; (2) parochial school students only had the right to transportation to the nearest parochial school of a particular denomination; and (3) city school districts are not required to provide transportation to students (*see* L 1961, ch 959, § 1). The Legislature's exclusion of city school districts from the mandatory

transportation that central school districts outside of New York City must provide is critical for the analysis here, and is one of the many things that the Appellate Division's analysis overlooked (*see* Mem to the Governor from Louis J. Lefkowitz, Attorney General, Bill Jacket, L 1961, ch 959, at 8 ["One of the amendments in the above bill is to explicitly exclude city school districts from any mandatory requirement to provide transportation"]).

Notably, throughout the many times that the Legislature amended section 3635(1) since it was adopted in 1939, the Legislature has *never added any language* that permits non-city school districts to refuse to provide the mandatory transportation for nonpublic school students on days when the public schools are closed (*see* Education Law § 3635[1][a]). That legislative omission can only be viewed as intentional, for had the Legislature intended to create that exception to the mandatory transportation that section 3635(1)(a) guarantees on days when the public schools are closed, it was "free . . . to draft appropriately worded legislation" that did so expressly (*Patrolmen's Benevolent Assn. of City of N.Y. v City of New York*, 41 NY2d 205, 208-209 [1976]; *see also e.g. Hernandez v State of New York*, 173 AD3d 105,

112 [3d Dept 2019]). Indeed, that is precisely what the Legislature did for the New York City School District, but never did for central school districts outside of New York City. The Appellate Division, however, overlooked the remedial nature of the statute and its broad effect and purpose, which is supported by its legislative history of placing *only express limitations* upon the mandatory rights of nonpublic school students to transportation to and from school under section 3635(1)(a).

Rather, the Appellate Division erroneously focused on the 1985 amendment that added section 3635(2-a), which applies only to the optional transportation that city school districts may choose to provide under section 3635(1)(c), and does not address the Legislature's intention when it adopted the mandatory transportation obligation under section 3635(1)(a) (*see People v Barnes*, 26 NY3d 986, 989-990 [2015] ["In light of the statute's plain language, we decline defendant's invitation to consult the legislative history of a *different* statute"]). In 1985, the Legislature amended Education Law § 3635 to add a new subsection (2-a), which required the New York City School District to "provide transportation to nonpublic schools for a maximum of five alternative days on which the public schools are scheduled to be closed,"

if it decided to provide any transportation at all (Bill Jacket, L 1985, ch 906, at 8; *see* L 1985, ch 906 ["1985 Amendment"]). The 1985 Amendment provided that the alternative days would need to be agreed to in advance and were limited to specifically enumerated holidays (Bill Jacket, L 1985, ch 906).

The purpose of the 1985 Amendment was to "authorize the transportation of nonpublic school students in New York City for up to five (5) days on which the public schools [were] scheduled to be closed," to "enable the nonpublic schools to carry on a full educational program without being penalized for scheduling a limited number of school days to meet the special needs of the nonpublic schools" (*id*. at 8). The 1985 Amendment only applies to New York City School District, however, and does not apply to central school districts, like the District here. And, notably, the 1985 Amendment did not change the text of section 3635(1)(a), or otherwise alter the mandatory obligations of central school districts outside of New York City to provide transportation to nonpublic school students.

The Appellate Division concluded that the reason for this revision was to "expand the number of required transportation days, and not to

limit a previously unrestricted transportation obligation" and imported that same intent for the central school district transportation mandate under section 3635(1)(a) (*United Jewish Community of Blooming Grove, Inc.*, 207 AD3d at 13). That makes sense for the New York City School District, however, because prior to the 1985 Amendment, it was not obligated to provide any transportation to nonpublic school students (*see* Education Law § 3635[1][c] ["The foregoing provisions of this subdivision shall not require transportation to be provided for children residing within a *city school district,* but if provided by such district pursuant to other provisions of this chapter, such transportation shall be offered equally to all such children in like circumstances" (emphasis added)]). Thus, adding alternate days of transportation for nonpublic school students in New York City was an expansion of rights, rather than a limitation.

Central school districts, in contrast, were already obligated to provide transportation for nonpublic school students under section 3635(1)(a). Had the Legislature adopted a similar provision for central school districts in 1985 (one was initially proposed but was eliminated from the 1985 bill that was ultimately passed), that would have limited

the existing transportation mandate. But the Legislature rejected any such limit, and declined to adopt the same provision that was adopted for the New York City School District. The Appellate Division's reasoning overlooks this important distinction.

In light of the prior amendments to section 3635(1)(a) and the legislative history underlying them, which show that the Legislature intended a broad remedial transportation guarantee for nonpublic school children who reside in central school districts, any revision to the language of section 3635(1)(a) clearly would have imposed a significant *limitation* on the nonpublic school students' rights, and not an expansion (*see Statutory Background*, *supra*; Bill Jacket, L 1974, ch 755, at 9 [noting that "the right to attend a nonpublic school is meaningless if the pupil has no way of getting to and from school" and the "cost of providing the transportation, while high, is much less than the cost of educating the pupils"]). When the Legislature has done that previously, it was always done expressly.

The Legislature's rejection, in 1985, of the proposed limitation of central school districts' obligations to transport nonpublic school students, to only two days (rather than all school days that are not legal

holidays) when the public schools are closed, therefore, can only be viewed as a reaffirmation of the Legislature's prior intent that nonpublic school students should receive transportation to and from school each day that their schools are open for instruction. Indeed, to the extent the 1985 amendment was proposed to expand the nonpublic school students' rights, the Legislature could have easily concluded that no language addressing the central school districts' transportation obligation was needed, because the existing language already requires those school districts to provide transportation on the non-holiday days when nonpublic schools are open but the public school districts choose to be closed.[6]

The Appellate Division's order, however, misconstrues this history, which led it to an erroneous interpretation of the section 3635(1)(a) transportation mandate that denies nonpublic school

[6] This interpretation of the Legislature's intent is in line with the subsequent history of the 1985 Amendment. Notably, since 1985, the Legislature has twice expanded the list of eligible days off and holidays, and added another provision that, at times, allows nonpublic schools up to ten days of transportation on days when the city school district is closed (L 1996, ch 474, §§ 91, 92; 1996 McKinney's Session Law News of NY, ch 474 [A11335]; L 1997, ch 34, § 1; 1997 McKinney's Session Law News of NY, ch 34 [A6298–A]; L 2005, ch 424, § 1, eff. Sept. 1, 2005; 2005 McKinney's Session Law News of NY, ch 424 [A8398–A/S5423–A]). None of those amendments, however, apply to central school districts or otherwise affect the mandatory transportation required under section 3635(1)(a).

students equal rights (*see Clark v Cuomo*, 66 NY2d 185, 190-191 [1985] ["Legislative inaction, because of its inherent ambiguity, affords the most dubious foundation for drawing positive inferences" (quotation marks omitted)]). Indeed, the Appellate Division's interpretation creates an exception to the plain language of the statute's transportation mandate for days the central school districts choose to close that the Legislature has never adopted (*see Commonwealth of the N. Mariana Is. v Canadian Imperial Bank of Commerce*, 21 NY3d 55, 62 [2013] [a court "cannot read into the statute that which was specifically omitted by the legislature"]; *see also Makinen v City of New York*, 30 NY3d 81, 88 [2017] ["Even if the NYCHRL was intended to be more protective than the state and federal counterparts, and even if its legislative history contemplates that the Law be independently construed with the aim of making it the most progressive in the nation, the NYCHRL still must be interpreted based on its plain meaning." (cleaned up)]).

The Appellate Division order, adopting SED's inequitable reading of the transportation mandate, has a significant practical impact statewide. For example, the District is relieved from providing

transportation to the student Petitioners on 20 days during the normal school year when the District's schools are open, because Petitioners' nonpublic schools are closed in observance of religious holidays (R108, R170, R268-R269). Petitioners' request for transportation to their nonpublic schools did not ask the District to provide any more transportation days than it already provides to public school students. Petitioners merely sought transportation, which the District has contracted with a private transportation company to provide (R177-R179), on different instructional days based on the differences in the nonpublic schools' calendars. No District employees or new bus routes are involved. The only change would be that the private transportation company would be required to run the routes on different school days. That is not an additional burden on the District.

And even if it was, it is a burden that the Legislature has specifically chosen to place on central school districts' shoulders rather than on the all the parents across this state who choose to send their children to nonpublic schools (*see* Education Law § 3635[1][a] ["The cost of providing such transportation between two or three miles, as the case may be, and fifteen miles shall be considered for the purposes of this

chapter to be a charge upon the district and an ordinary contingent expense of the district."]). The Legislature has specifically provided that the District, through State aid and the taxes levied on its taxpayers, including Petitioners, must bear the costs to provide transportation to all school children. Any additional financial burden on the District, therefore, is not a basis upon which to disregard the plain language construction of section 3635(1)(a) (*see Scanlan*, 90 NY2d at 677 [rejecting "significant fiscal implications" as a basis to choose a different construction of the statute]).

The Appellate Division's interpretation of the statute has allowed SED's unequal two-tiered system of transportation to continue, even though it denies nonpublic school students the same rights that are guaranteed to public school students, in violation of the Legislature's intent. For public school students, the bus comes to bring them to and from school every day that their schools are open for instruction. For nonpublic school students, however, they are denied transportation whenever the public schools choose to be closed, even on days that are not legal holidays, leaving their parents burdened with finding them a different way to school. That is not what the Legislature intended when

it adopted the transportation mandate in 1939, and it is certainly not what this Court should permit to continue unreviewed more than 80 years later.

The Appellate Division's further conclusion that the Legislature has not intervened, by way of any statutory amendment, to correct SED's longstanding interpretation of Education Law § 3635 is similarly mistaken (*see United Jewish Community of Blooming Grove, Inc.*, 207 AD3d at 14-15). None of the proposed but unpassed bills specifically references SED's interpretation of section 3635(1)(a). The only evidence of SED's flawed interpretation can be found on SED's website. As this Court has held, the Appellate Division should not have simply assumed that the Legislature knew about the interpretation and acquiesced to it, without such evidence (*see Roberts v Tishman Speyer Properties, L.P.*, 13 NY3d 270, 287 [2009] [declining to infer that "the Legislature's inactivity in the face of DHCR's interpretation of the statute constitutes its acquiescence thereto" because "at the time the Legislature most recently considered the statute, there is no indication that the specific question presented here—that DHCR's interpretation is improper and

conflicts with the plain language of the statute—had been brought to the Legislature's attention"]).

SED has been inequitably and illegally applying Education Law § 3635(1)(a) to deny nonpublic school students the same transportation to and from their schools every day that public school students receive. Supreme Court properly construed the statute to remedy this inequity and avoid a construction that would violate the nonpublic school students equal protection rights (*see People v Santorelli*, 80 NY2d 875, 876 [1992] [holding that the Court "must construe a statute . . . to uphold its constitutionality if a rational basis can be found to do so"]; *Matter of Lower Manhattan Loft Tenants v New York City Loft Bd.*, 66 NY2d 298, 306 [1985] ["a statute is to be construed so as to sustain its constitutionality"]; *Eaton v New York City Conciliation & Appeals Bd.*, 56 NY2d 340, 346 [1982] ["[a] statute . . . should be construed in such a manner as to uphold its constitutionality"]). This Court should grant leave to appeal to review and reverse the Appellate Division order that denies hundreds of thousands of nonpublic school students and their families from all corners of New York the equal transportation to and from school that the Legislature intended.

POINT II

EVEN IF THE APPELLATE DIVISION CORRECTLY INTERPRETED EDUCATION LAW § 3635(1)(A), THIS COURT SHOULD GRANT LEAVE TO APPEAL TO DETERMINE WHETHER THE STATUTE DENIES NONPUBLIC SCHOOL STUDENTS EQUAL PROTECTION OF THE LAWS UNDER THE NEW YORK CONSTITUTION

Even if the Appellate Division's interpretation of section 3635(1)(a) were to prevail, the question remains whether the unequal two-tiered system of transportation that denies nonpublic school students transportation to and from school every day that their nonpublic schools are open, which is guaranteed to public school students, violates nonpublic school students right to equal protection of the laws under the New York Constitution. The Appellate Division concluded that it did not, because public school districts might face additional administrative and financial burdens. This Court should grant leave to hold that those minimal burdens, which the Legislature already accounted for in the statute, do not provide a rational basis for the transportation disparity.

Under the equal protection clause of the New York State Constitution, "[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof" (NY Const art I, § 11). As

this Court has held, "the wording of the State constitutional equal protection clause 'is no more broad in coverage than its Federal prototype' and that the history of this provision shows that it was adopted to make it clear that this State, like the Federal Government, is affirmatively committed to equal protection, and was not prompted by any perceived inadequacy in the Supreme Court's delineation of the right" (*Esler v Walters*, 56 NY2d 306, 313-314 [1982]). Equal protection requires that any education a state provides "must be made available on equal terms" (*San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 30 [1973]).

Education Law § 3635(1)(a) "mandates the provision of transportation to public and nonpublic school students alike" (*Cook v Griffin*, 47 AD2d 23, 27 [4th Dept 1975]). Additionally, section 3635: (1) states that transportation "shall be provided for *all* children" who meet certain residency, distance, and grade level requirements, (2) does not distinguish between public or nonpublic school students, and (3) does not contain any language restricting the number of school days central school districts must provide transportation to nonpublic school students (Education Law § 3635[1][a] [emphasis added]). Thus, the

statute specifically provides that all students are the same for purposes of transportation to and from school, regardless of whether they attend public or nonpublic schools.

So long as their nonpublic schools are within the statutory 15 miles from their homes, and they are thus entitled to transportation, the Constitution commands that nonpublic school students be treated the same as public school students. Accordingly, under Education Law § 3635(1)(a), public and nonpublic school students are similarly situated, since both are entitled to transportation to and from their schools on days when their schools are in session.

SED's Transportation Guidance and the District's Policy 5730, however, draw a distinction between public school students and nonpublic school students, and claim only public school students are entitled to transportation to and from school on all days when their schools are open. Contrary to the Appellate Division's conclusion, no rational basis exists for that distinction, especially when section 3635(1)(a) requires that public school students and nonpublic school students be treated equally for transportation to and from school.

The justification that the Appellate Division adopted for the

disparity—that additional transportation would be financially and logistically burdensome—has already been considered and rejected by the Legislature itself. Indeed, section 3635(1)(a) specifically provides that "[t]he cost of providing such transportation between two or three miles, as the case may be, and fifteen miles shall be considered for the purposes of this chapter to be a charge upon the district and an ordinary contingent expense of the district." The Legislature has decided that any additional expense for nonpublic school transportation is to be borne by the school districts because "the right to attend a nonpublic school is meaningless if the pupil has no way of getting to and from school" and the "cost of providing the transportation, while high, is much less than the cost of educating the pupils" (Bill Jacket, L 1974, ch 755, at 9).

Furthermore, under section 3635(1)(a), central school districts are unquestionably required to provide transportation to nonpublic school students when the public schools are open. To do so, central school districts have already designated the pickup and drop off points, created and communicated the bus routes, and ensured that they have buses and drivers (whether owned and employed by the district or contracted

for with private bus companies) to provide the transportation for nonpublic school students. What then is the additional administrative burden of arranging for those same services to be provided on different days during the school year when the public schools choose to close, but the nonpublic schools remain open?

For those like the District, which contracts with a private transportation company to provide the student Petitioners with transportation (R177-R179), the burden is simply agreeing with the bus company at the beginning of the year on the specific dates that nonpublic school transportation must be provided under the parties' contract. That is no additional administrative burden at all, because the bus company is presumably willing and able to provide transportation services on the dates the District chooses. According to the Appellate Division, however, that minimal burden was enough to justify denying all nonpublic school students in the District equal transportation rights.

For central school districts that employ their own buses and drivers for the transportation of nonpublic school students, the initial administrative burden may be greater than it is for the District, but it is still minimal compared to the students' deprivation of equal rights.

Although a central school district initially may be required to negotiate with the union that represents its drivers to take on the additional work, ensure that it has buses available, and pay a little more each year, that is exactly what the Legislature contemplated when it enacted the mandate requiring the schools to provide "[s]ufficient transportation facilities (including the operation and maintenance of motor vehicles)" for the transportation and to take on the costs of doing so (Education Law § 3635[1][a]). Indeed, for the taxpaying parents of nonpublic school students, that is the only benefit that they get for their school taxes each year (R167-R175). In that balance, it is not rational for a district's mere temporary administrative inconvenience to justify the deprivation of students' equal rights.

In a state like New York committed to equality, the Appellate Division's word on this issue should not be the last. This Court should grant leave to appeal.

CONCLUSION

For the foregoing reasons, Petitioners/Plaintiffs-Movants respectfully request that this Court grant their motion for leave to appeal in its entirety, and award it such other relief as this Court shall deem just, proper, or equitable.

Dated: September 28, 2022
Albany, New York

WHITEMAN OSTERMAN & HANNA LLP

By: _____

Robert S. Rosborough IV
Anna V. Pinchuk
Attorneys for Petitioners/Plaintiffs-Movants
One Commerce Plaza
Albany, New York 12260
(518) 487-7600
rrosborough@woh.com

APPENDIX A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of

UNITED JEWISH COMMUNITY OF BLOOMING GROVE, INC., JOEL STERN, As Parent and Natural Guardian of K.S., M.S., R.S., B.S., and F.S., Infants Under the Age of Eighteen Years, YITZCHOK EKSTEIN, As Parent and Natural Guardian of J.E., C.E., M.E. and P.E, Infants Under the Age of Eighteen Years,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules and for Declaratory Relief Pursuant to Section 3001 of the Civil Practice Law and Rules

- against -

WASHINGTONVILLE CENTRAL SCHOOL DISTRICT and THE NEW YORK STATE EDUCATION DEPARTMENT,

Respondents-Defendants.

NOTICE OF ENTRY

Index No.: 906129-21

PLEASE TAKE NOTICE, that the within is a true and correct copy of the Decision, Order, and Judgment of Supreme Court, Albany County (Lynch, J.) dated November 18, 2021 and entered in the Office of the Albany County Clerk on November 18, 2021 (NYSCEF Dkt. Nos. 136, 137, 138).

Dated: November 18, 2021
Albany, New York

WHITEMAN OSTERMAN & HANNA LLP

By: _____

Robert S. Rosborough IV, Esq.
Hilda M. Curtin, Esq.
Counsel for Petitioners-Plaintiffs
One Commerce Plaza
Albany, New York 12260
(518) 487-7600
rrosborough@woh.com

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of

UNITED JEWISH COMMUNITY OF BLOOMING GROVE, INC., JOEL STERN, As Parent and Natural Guardian of K.S. and M.S. and R.S. and B.S. and F.S., Infants under the Age of Eighteen Years, YITZCHOK EKSTEIN, As Parent and Natural Guarding of J.E. and C.E. and M.E. and P.E., Infants under the Age of Eighteen Years,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules and for Declaratory Relief Pursuant to Section 3001 of the Civil Practice Law and Rules

-against –

DECISION, ORDER and JUDGMENT
Index No. 906129-21
RJI No. 01-21-ST1835
(Hon. Lynch, J.)

WASHINGTONVILLE SCHOOL CENTRAL SCHOOL DISTRICT and the NEW YORK STATE EDUCATION DEPARTMENT,

Respondents-Defendants.

INTRODUCTION

This is a hybrid proceeding pursuant to CPLR Article 78 and a Declaratory Judgment action pursuant to CPLR §3001.

By Decision and Order dated August 25, 2021, incorporated herein and made a part hereof by reference, this Court granted Plaintiff's motion for a mandatory preliminary injunction. The standard for a permanent injunction is essentially the same as that of a preliminary injunction but requires that the party seeking the injunction prevail on the underlying merits of the case (see Town of N. E. v Vitiello, 159 A.D.3d 766 [2d Dept. 2018]; Town of Brookhaven v. Mascia, 38 A.D.3d 758, 759 [2d Dept. 2007]; Town of Nassau v. Nalley, 52 A.D. 3d 1013 [3d Dept. 2008], lv denied 11 N.Y. 3d 771 [2008]).

Plaintiff moved for summary judgment seeking a declaration that they are entitled to a permanent mandatory injunction, requiring the defendant school district to provide transportation to all children in the district who attend non-public schools on each day that their school is in session, regardless of whether the public schools are open. Defendants oppose the relief requested, claiming that they are only obligated to provide bus transportation on days when the public schools are open.[1] Defendant SED cross-moved for summary judgment to dismiss the complaint.[2]

To the extent that Defendants cite procedural irregularities arising out of Plaintiff's failure to specifically reference the Answer in it's motion and to submit a statement of material facts, the Court will excuse the claimed irregularities (see CPLR § 2001).[3] Clearly, where, as here, all pleadings are e-filed, there is no prejudice arising out of the claim. Moreover, resolution of the issue is a matter of statutory interpretation, and there are no material issues of fact. Hence, a summary determination is appropriate.

[1] NYSEF Doc. No. 131 Pinsonnault Aff. ¶ 14
[2] NYSEF Doc. No. 129-132.
[3] NYSEF Doc. No. 123 Rushfield Aff. ¶ 2-4.

STATEMENT OF FACTS

As aforementioned, the statement of facts in my prior decision are incorporated herein by reference.

The New York State Education Department (SED) has long dealt with the practical issue of providing transportation to non-public school students on days when the public schools are closed. In fact, SED issued the Transportation Supervisor Handbook in 1992 to advise that transportation services were not so required on days when the public schools were closed.[4]

As of 2007, SED continued to publish its Handbook position on its webpage, to wit:

> "School districts and private schools have an obligation to share their calendars and start/dismissal times during the summer months prior to the opening of school. **Public school districts do not have the legal authority to transport to a private school before the start of the public school year.** So if your district opens on September 10th and a private school opens on Sept 5th, you must not provide transportation until Sept 10th. **Public school districts also do not have the legal authority to provide transportation on the legal holidays that the state requires that the public school district be closed.** On other optional holidays and other days a district is closed (conference days, training days, etc), then the public school district may choose to provide transportation to private schools. However, if they decide not to, that intent and information must have been provided to private schools when the calendars and start/dismissal times were shared, prior to the start of the school year. If a public school district did not state their intent not to transport and did not share their calendar, then they would be required to provide the transportation."[5] (emphasis added)

SED's practice under Education Law § 3635, is to limit transportation to only those days when the public schools are open.

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[4] NYSEF Doc. No. 138 Handbook @ p. 170, ¶ 11, which provides: "**School districts are not required to provide transportation to nonpublic schools on days when public schools are scheduled to be closed**" (emphasis added); see also, NYSEF Doc. No. 12 - Coughlin Affidavit ¶ 4-5.

[5] NYSEF Doc. No. 109. See also NYSEF Doc. No. 110.

Education Law § 3635 (2-a) specifically allows for up to five (5) to ten (10) days of transportation to non-public schools, when public schools are closed. In the legislative history, a similar restriction of two (2) days for all other districts was struck from the legislation.[6] No such restriction is expressed under Education Law § 3635 (1) (a), which is at issue herein.

Plaintiff's have not submitted any cognizable proof of monetary damages.

SUMMARY JUDGMENT

In Zuckerman v. New York, 49 N.Y.2d 557, 562 [1980], where the Court held,

> "To obtain summary judgment it is necessary that the movant establish his cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor (CPLR 3212, subd [b]), and he must do so by tender of evidentiary proof in admissible form. On the other hand, to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact' (CPLR 3212, subd [b]). Normally if the opponent is to succeed in defeating a summary judgment motion, he, too, must make his showing by producing evidentiary proof in admissible form. The rule with respect to defeating a motion for summary judgment, however, is more flexible, for the opposing party, as contrasted with the movant, may be permitted to demonstrate acceptable excuse for his failure to meet the strict requirement of tender in admissible form." (internal quotations and citations omitted)."

Recognizing that summary judgment is a **"drastic remedy"** the "facts **must be viewed in the light most favorable to the non-moving party (see** Vega v Restani Constr. Corp., 18 N.Y.3d 499, 503 [2012]) (emphasis added). The Court's function is "**not to determine credibility,** but whether there exists a factual issue, or if arguably there is a genuine issue of fact" (see S. J. Capelin Associates, Inc. v. Globe Mfg. Corp., 34 N.Y.2d 338, 341 [1974]); see also Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 404 [1957] where the Court held, "**issue-finding, rather than issue-determination, is the key to the procedure**" (emphasis added).

[6] NYSEF Doc. No. 38, p. 18.

Here, there are no material facts at issue. The issue is limited to the interpretation of the provisions of Education Law § 3635, and, as an issue of law only, summary determination is appropriate.

In this Court's view, it is fundamental error to assume that the identification of SED's transportation practice is equivalent to a determination of the legislative mandate under Education Law § 3635 (1) (a). To the contrary, the record shows that SED has long implemented a self-serving practice, in derogation of its statutory obligation, all as more fully appears below.

Education Law § 3635 provides, inter alia:

> **1.**
> **a. Sufficient transportation facilities** (including the operation and maintenance of motor vehicles) **shall be provided by the school district for all the children residing within the school district to and from the school they legally attend**...The cost of providing such transportation between two or three miles, as the case may be, and fifteen miles shall be considered for the purposes of this chapter to be a charge upon the district and an ordinary contingent expense of the district...
> b.
> (i) School districts providing transportation to a nonpublic school for pupils living within a specified distance from such school shall designate one or more public schools as centralized pick-up points and shall provide transportation between such points and such nonpublic schools for students residing in the district who live too far from such nonpublic schools to qualify for transportation between home and school. The district shall not be responsible for the provision of transportation for pupils between their home and such pick-up points. The district may provide school bus transportation to a pupil if the residence of the pupil is located on an established route for the transportation of pupils to the centralized pick-up point provided such transportation does not result in additional costs to the district. The cost of providing transportation between such pick-up points and such nonpublic schools shall be an ordinary contingent expense.
> (ii) A board of education may, at its discretion, provide transportation for pupils residing within the district to a nonpublic school located more than fifteen miles from the home of any such pupil provided that such transportation has been provided to such

nonpublic school pursuant to this subdivision in at least one of the immediately preceding three school years and such transportation is provided from one or more centralized pick-up points designated pursuant to this paragraph and that the distance from such pick-up points to the nonpublic school is not more than fifteen miles. The district shall not be responsible for the provision of transportation for pupils between pupils homes and such pick-up points. The cost of providing transportation between such pick-up points and such nonpublic schools shall be an ordinary contingent expense.
c. The foregoing provisions of this subdivision shall not require transportation to be provided for children residing within a city school district, but if provided by such district pursuant to other provisions of this chapter, such transportation shall be offered equally to all such children in like circumstances…
d. Nothing contained in this subdivision, however, shall be deemed to require a school district to furnish transportation to a child directly to or from his or her home...
2-a. The superintendent of each city school district, in a **city having a population in excess of one million,** shall prepare a public school calendar and shall notify officials of nonpublic schools to which transportation has been requested not later than the first day of June in each year, of the days on which the public schools will be in session in the following school year. **Such school district which provides transportation to nonpublic schools shall provide such transportation for the same number of days as the public schools are open but shall not provide transportation services for more than one hundred eighty days.** Officials of each nonpublic school to which transportation is provided by a city school district of a city having a population in excess of one million may notify such district, not later than the first day of July of each school year, **of a maximum of five days,** exclusive of Saturdays, Sundays or legal holidays upon which public schools are required to be closed, **on which the public schools are scheduled to be closed, except** that in any year in which the first or last day of Passover and Easter Sunday are separated by more than seven days**, such officials may notify the district of a maximum of ten days, but such school district will be required to provide for transportation to such nonpublic school provided that such five or ten additional days, whichever is applicable, are limited to the following:** the Tuesday, Wednesday, Thursday and Friday after Labor Day, Rosh Hashanah, Yom Kippur, the week in which public schools are closed for spring recess, December twenty-fourth and the week between Christmas day and New Year's day, the Tuesday, Wednesday, Thursday and Friday after the observance of Washington's birthday, and, in the boroughs of Brooklyn and

> Queens only, Anniversary Day as designated in section twenty-five hundred eighty-six of this chapter...

Defendants have focused their statutory interpretation of the scope of the Education Law § 3635 (1) (a) mandate, on the restrictions imposed under paragraph 2-a thereof. Defendant's focus is misplaced.

STATUTORY INTERPRETATION

The Court notes that "where the constitutionality of an act may be rendered doubtful, the court will first ascertain whether a construction of the act is fairly possible by which the question may be avoided" (see McKinney's Statutes §150 (c)). Where, as here, such construction is readily permissible in this case, the Court need not determine the merit of Plaintiff's equal protection and freedom of religion constitutional claims under (NY Const. art I, § 11 and NY Const. art I, § 3, respectively; see also, Everson v. Board of Education of the Township of Ewing, 330 U.S. 1).

Generally, the underlying administrative interpretation of a statute is afforded great weight by the Court (see McKinney's Statutes §129; see also Trump-Equitable Fifth Ave. Co. v. Gliedman, 62 N.Y. 2d 539, 545 [1984]; Kison v. Wilkie, 139 S.Ct. 2400, 2405-2406 [2019]). Deference to an administrative interpretation is not required, however, when the issue at hand is one of statutory construction (see Matter of Suffolk Regional Off-Track Betting Corp. v. New York State Racing & Wagering Bd., 11 N.Y.3d 559, 567 [2008], where the Court held,

> "First and foremost, it is **our role to implement the intent of the Legislature. Deference to administrative agencies charged with enforcing a statute is not required when an issue is one of pure statutory analysis.** Even if no deference is owed to an agency's reading of a statute, a court can nevertheless defer to an

> agency's definition of a term of art contained within a statute"). (emphasis added)

It is the Court's ultimate responsibility to interpret a statute, with full recognition of the underlying legislative intent (See Matter of Academy v. New York State Educ. Dept., 169 A.D. 3d 1287, 1288 [3d Dept. 2019]; Rackmyer v. Gates-Chili Cent. School Dist., 48 A.D.2d 180, 183 [4th Dept. 1975], where the Court held,

> "While appeal to the **commissioner** is exclusive where the exercise of discretion is involved, where rights depend upon the **interpretation of a statute** which it is claimed the school board or an official has violated, **the courts will determine the matter** notwithstanding that another procedure for settling the controversy is available". (emphasis added)

; see also, Martin v. Brienger, 49 Misc. 2d 130, 133 [Sup. Ct. 1966], aff'd on op below 26 A.D. 2d 772 [1966], where the Court rejected the Education Commissioner's interpretation of Education Law § 3635, finding,

> "The difficulty with such argument is that the **construction** placed on the phrase "nearest available parochial school" **is that of the Commissioner of Education and not of a Supreme Court**, and there is nothing in the Governor's memorandum which specifically adopts, confirms or approves the various interpretations placed upon said phrase by the Commissioner in the afore-mentioned cases…"). (emphasis added)

Where, as here, the text of the statute is clear, the Court must also give import to its plain meaning (see People v. Aragon, 28 N.Y. 3d 125, 128 [2016]; People v. Ocasio, 28 N.Y. 3d 178, 181 [2016]; Morgenthau v. Avion Resources Ltd., 11 N.Y.3d 383, 389 [2008]); see Hernandez v State of New York, 173 A.D.3d 105, 111 [3d Dept. 2019], where the Court held, inter alia:

> "It is a well-settled and basic tenet of constitutional and statutory interpretation that the clearest and most compelling indicator of the drafters intent is the **language itself**. [R]esort must be had to the natural signification of the words employed, and if they have a

> definite meaning, which involves no absurdity or contradiction, there is no room for construction **and courts have no right to add to or take away from that meaning.** In other words, [w]hen th[e] language is clear and leads to no absurd conclusion, the words must be accorded their **plain and ordinary meaning.**" (internal quotations and citations omitted; emphasis added)

; Matter of North Gate Health Care Facility, LLC v. Zucker, 174 A.D. 3d 1202, 1202-1203 [3d Dept. 2019]).

Education Law § 3635 (1) (a) plainly states, "**Sufficient** transportation facilities…shall be provided by the school district for **all** the children residing within the school district **to and from the school they legally attend.**" (emphasis added) Once again, "All the children" means all the children, without regard to whether the school they attend is private or public. It is manifest that the phrase "Legally attend" means exactly what is says and necessarily includes both private and public schools (see Rackmyer v. Gates-Chili Cent. School Dist., supra. at 184, where the Court interpreted the terms of Education Law § 3635 (1) as "absolute"; Martin v. Brienger, supra. at 133, where the Court held, inter alia: "The court is of the view that the statute means exactly what it says").

Paragraph 1 (a) of the statute does not expressly impose any other restriction, and certainly does not condition the obligation to provide transportation to nonpublic schools on the public schools also being open; such omission is meaningful and evinces a legislative intent not to limit the express terms thereof (see, Hernandez v State of New York, supra. at 112, where the Court held the absence of any restriction was meaningful, stating,

> "the **choice to use the broad and expansive word "employees"** in NY Constitution, article I, § 17, **without qualification or restriction, was a deliberate one** that was meant to afford the constitutional right to organize and collectively bargain to any person who fits within the plain and ordinary meaning of that word. Indeed, there is **nothing in the language of the**

constitutional provision to support the suggestion that the drafters intended for the term "employees" to be narrowed or limited in any way.") (emphasis added)

It is not the Court's function to expand upon or restrict the statutory mandate (see Commonwealth of the N. Mariana Is. v. Canadian Imperial Bank of Commerce, 21 N.Y.3d 55, 62 [2013], where the Court held, "we cannot read into the statute that which was specifically omitted by the legislature"; Matter of Ronell W. v. Nancy G., 121 A.D.3d 912 [2d Dept. 2014]).

In O'Donnell v. Antin, 81 Misc. 2d 849 [Sup. Ct. 1974], aff'd on op below 36 N.Y. 2d 941 [1975], the Court upheld the district's determination not to provide bus transportation to children who lived in the district but attended private school outside of the district. In so doing, the Court found **"defendant board continues to bus all children to all schools within the district, regardless of affiliation."** (id.at 850) (emphasis added). (see also, Charter Sch. for Applied Tech. v Board of Educ. for City Sch. Dist. of City of Buffalo, 105 A.D.3d 1460 [4th Dept. 2013], where the Court held, "It is undisputed, however, that CSAT is located outside the District, and "students attending school outside the [D]istrict are not 'in like circumstances' with students attending school within the [D]istrict"). Here, as distinguished, it is manifest that Plaintiff's live and attend schools in the district, but the transportation presently provided by Defendants varies because of affiliation with private, as distinct from public schools.

Defendants assert that the SED's guidance and District policy are consistent with the legislative history. In 1985, Education Law § 3635 was amended, adding paragraph 2-a to designate between 5 and 10 transportation days for nonpublic schools when public schools were scheduled to be closed in cities with a population more than one million people. The legislative history clearly indicated that New York City public schools were not, in practice, providing

transportation unless they were open.[7] The statutory language of paragraph 2 -a, includes the following phrases, "of a **maximum**", "are **limited** to the following", and "**shall not provide transportation services for more than one hundred eighty days**". (emphasis added) This language indicates that the designation of 5-10 transportation days for nonpublic schools was an addition to the New York City practice of only providing transportation on days when the public schools were open. While no such limiting language exists under paragraph 1 (a), which is applicable to this district, Defendants cite the legislative history that a 2-day designation for transportation to non-public schools when public schools were closed for all other districts, was initially proposed in 1985 but eliminated from the legislation.[8] Defendants assert that such history necessitates the statute be interpreted to require transportation only on days when the public schools are open. The plain text of the statute, however, contains no such limitation. Moreover, there is no showing that the legislature's intent in 1985 when it amended the statute to add paragraph 2-a, was the same as the legislative intent at the time paragraph (1) (a) was initially enacted in 1939 as more fully appears below (see Matter of Avella v City of New York, 29 N.Y.3d 425, 437 [2017], where the court held, "that the legislature used different words in 2005 does not shed any real light on what the 1961 legislature meant").

Does the cited legislative history from 1985 take precedence over the plain statutory text? It does not (see Matter of Avella v City of New York, supra. at 437, where the court held,

> "The **plain language of the statute** does not authorize the proposed construction, **and we therefore need not consider the legislative history**.") (emphasis added)

[7] NYSEF Doc. No. 38; NYSEF Doc. No. 132 ¶ 9.
[8] NYSEF Doc. No. 132 ¶ 12 -13.

; Hinton v Village of Pulaski, 33 N.Y.3d 931 [2019], where the Court held,

> "Where, as here, **the legislative language is clear, we have no occasion to examine extrinsic evidence to discover legislative intent**"). (emphasis added)

: Makinen v City of New York, 30 N.Y.3d 81, 85 [2017], where the Court held,

> "[w]here [, as here,] the legislative language is clear, [we have] **no occasion [to] examin[e] . . . extrinsic evidence to discover legislative intent"** (McKinney's Cons Laws of NY, Book 1, Statutes § 120, Comment at 242).

; Davila v State of New York, 183 A.D.3d 1164, 1167 [3d Dept. 2020], where the Court held,

> Where, as here, "the disputed [statutory] language is unambiguous, we are bound to give effect to its plain meaning," and, inasmuch as "**the legislative language is clear, we have no occasion to examine extrinsic evidence to discover legislative intent**"). (emphasis added)

The point made is that the legislature did not amend paragraph 1 (a) in 1985, and its continuing plain language is neither subject to, nor defeated by the cited legislative history.

While the Court need not resort to a review of the legislative history to determine the Legislature's intent, a review of the primary legislative history, encompassing the 1938 Constitutional amendment and its implementing legislation in 1939, demonstrates that paragraph 1 (a) must be interpreted in accord with the plain meaning of its text.

In 1938 the constitution was amended to add NY Const art XI, § 3, which provides, inter alia:

> **"…the legislature may provide for the transportation of children to and from any school or institution of learning." (emphasis added)**[9]

[9] At that time, it was NY Const. art XI § 4, and has been renumbered since.

The constitutional amendment was implemented by the passage of the Coudert-McCreery bill of 1939 (Laws of 1939, Ch. 465), to provide transportation for private, as well as public schools. In relevant part, the 1939 legislation included the following, to wit:

> "In providing or granting transportation for children pursuant to the provisions of this chapter, **sufficient transportation facilities** (including the operation and maintenance of motor vehicles) **shall be provided for all children residing within the school district to and from the school they legally attend..."** (emphasis added)[10]

There is nothing in the 1939 Bill Jacket Collection which made transportation to private shools contingent upon public schools being open. That essential text remains intact to date in Education Law § 3635 (1) (a).

The next primary amendment came with the passage of the Speno-Brennan Bill in 1960 (l. 1960, Ch. 1074). This legislation included the foregoing basic transportation mandate but added specific requirements to define and limit the minimum and maximum transportation distances. Upon approval of the legislation, then Governor Nelson A. Rockefeller issued a Memorandum stating, inter alia: "The law requires that children attending private schools be afforded transportation on a **parity** with public school pupils."[11] (emphasis added) The Memorandum accompanying the Senate Bill provided,

[10] As enacted, this text appeared initially appeared in Education Law Article 18, § 503. The Education law went through a procedural revision and its provisions were renumbered (Laws 1947, Ch. 820).
[11] See L. 1960 Ch.1074, Bill Jacket Collection p.225-226/257.

> "The law requires that children attending private school be afforded transportation on a **parity** with public school…[and]…such transportation must be furnished equally to all children residing in the district **attending both public and non-public schools.** The law presently provides transportation benefits for children **to the school which they legally attend**." (internal quotations omitted; emphasis added)[12]

(see also, Board of Education v. Allen, 20 N.Y.2d 109, 117 [1967], where the Court held,

> "At a time when we have large-scale Federal and State aid to education, it is justly feared that children who are denied these benefits may receive education inferior to children in public schools. Unless certain types of aid can be made available to *all* children, we run the risk of creating an educational lag between children in public and private schools."

; Application of Board of Education, 199 Misc. 631 [Sup. Ct. 1961]). The point made is that the primary legislative history (i.e., 1938 constitutional amendment, implementation thereof in 1939, as well as the 1960 amendment) does evidence a legislative intent that the obligation to provide transportation to private school students within the District stands as an independent mandate and is not dependent upon the public schools being open.

Defendant SED claims that Education Law § 3635 requires the District to provide "sufficient transportation", citing the dictionary to assert that sufficient means adequate.[13] It appears the argument is made to support Defendant's assertion that providing transportation on only those days public schools are open is sufficient! Defendants have, however, misrepresented the statute's text. The statute mandates the provision of "Sufficient transportation **facilities (including the operation and maintenance of motor vehicles)**." (emphasis added) This directive speaks to the means, not the scope, of the transportation mandate to provide

[12] See L. 1960 Ch.1074, Bill Jacket Collection p. 231-232/257.
[13] NYSEF Doc. No. 131 Pinsonnault Aff ¶ 11.

transportation "for all the children residing within the school district to and from the school they legally attend." (Education Law § 3635 (1) (a))

Defendant SED asserts it "does not read Education Law § 3635 as entitling nonpublic students to more transportation than public school students." [14] Such statement fails to account for the number of days that public schools are open, and non-public schools are closed. Yet, it is true that Education Law § 3635 makes no such distinction, but it is a distinction without a difference. As aforementioned, Education Law § 3635 (1) (a) mandates transportation "for all the children residing within the school district to and from the school they legally attend," and the attendance at nonpublic school is lawful, regardless of whether the public schools are open.

CONCLUSION

Accordingly, Defendant SED's cross-motion for summary judgment is denied, and Plaintiff's motion for summary judgment is Granted, and it is further,

ORDERED, ADJUDGED AND DECREED, that Education Law § 3635(1) requires the Washingtonville Central School District to provide transportation to all nonpublic school students on all days when their nonpublic schools are open for instruction, regardless of whether the public schools are open, and it is further

ORDERED, ADJUDGED AND DECREED, that the Washingtonville Central School District be and hereby is directed to provide transportation to all nonpublic school students on all days that the nonpublic schools are open for instruction, as required by Education Law § 3635(1), and it is further

[14] NYSEF Doc. No. 132 ¶ 14.

ORDERED, ADJUDGED AND DECREED, that the Washingtonville Central School District is in violation of Education Law § 3635(1) by refusing to provide transportation to nonpublic school students on all days when the nonpublic schools are open for instruction, and it is further

ORDERED, ADJUDGED AND DECREED, the State Education Department's guidance on transportation for nonpublic school students to the extent that it states transportation is required only on those days when public schools are open is null and void, on the grounds that it violates Education Law § 3635 (1); and it is further

ORDERED, ADJUDGED AND DECREED, that the Washingtonville Central School District is permanently enjoined from denying transportation to any nonpublic school students on all days that their nonpublic schools are open for instruction; and it is further,

ORDERED, ADJUDGED AND DECREED, that Plaintiff's claim for an award of monetary damages and attorney fees is denied.

This memorandum constitutes both the decision, order and judgment of the Court.[15]

Dated: Albany, New York
November 18, 2021

Peter A. Lynch
PETER A. LYNCH, J.S.C.

11/18/2021

[15] Notice of Entry and service in accord with CPLR R 2220 is required.

PAPERS CONSIDERED:

All e-filed pleadings, with exhibits.

To: WHITEMAN OSTERMAN & HANNA LLP
By: Robert S. Rosborough IV and Hilda M. Curtin
Attorneys for Petitioners-Plaintiffs
One Commerce Plaza
Albany, New York 12260

Mark C. Rushfield, Esq.
Shaw, Perelson, May & Lambert, LLP
Attorneys for Defendant-Respondent
Washingtonville Central School District
21 Van Wagner Road
Poughkeepsie, New York 12603

Letitia James, New York Attorney General
By: Erik Pinsonnault, Assistant Attorney General
Attorney for Defendant SED
The Capitol
Albany, New York 12224-0341

APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

----------X
In the Matter of

UNITED JEWISH COMMUNITY OF BLOOMING GROVE, INC. JOEL STERN, As Parent and Natural Guardian of K.S., M.S., R.S., B.S., and F.S., Infants Under the Age of Eighteen Years, YITZCHOK EKSTEIN, As Parent and Natural Guardian of J.E., C.E., M.E. and P.E., Infants Under the Age of Eighteen Years,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules and for Declaratory Relief Pursuant to Section 3001 of the Civil Practice Law and Rules

-against-

WASHINGTONVILLE CENTRAL SCHOOL
and THE NEW YORK STATE EDUCATION DEPARTMENT

Respondents-Defendants.
----------X

Albany County
Index No. 906129-21

Appellate Division
Docket No. 534406

PLEASE TAKE NOTICE that the within is a true copy of the Opinion and Order of the State of New York Supreme Court, Appellate Division, Third Judicial Department, dated June 2, 2022, and entered in the office of the Clerk of the Court of the State of New York Supreme Court, Appellate Division, Third Judicial Department on June 2, 2022.

Dated: June 2, 2022
Poughkeepsie, New York

Respectfully submitted:

SHAW, PERELSON, MAY & LAMBERT, LLP
Attorneys for Respondents-Defendants

By: s/Mark C. Rushfield

MARK C. RUSHFIELD, ESQ.
OFFICE AND P.O. ADDRESS
21 Van Wagner Road
Poughkeepsie, New York 12603
Tel. No. (845) 486-4200
mrushfield@shawperelson.com

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: June 2, 2022 534406

In the Matter of UNITED JEWISH COMMUNITY OF BLOOMING GROVE, INC., et al.,
Respondents,
v OPINION AND ORDER

WASHINGTONVILLE CENTRAL SCHOOL DISTRICT et al.,
Appellants.

Calendar Date: April 27, 2022

Before: Clark, J.P., Pritzker, Colangelo, Ceresia and McShan, JJ.

Shaw, Perelson, May & Lambert, LLP, Poughkeepsie (Mark C. Rushfield of counsel), for Washington Central School District, appellant.

Letitia James, Attorney General, Albany (Beezly J. Kiernan of counsel), for New York State Education Department, appellant.

Whiteman Osterman & Hanna LLP, Albany (Robert S. Rosborough IV of counsel), for respondents.

New York State School Boards Association, Latham (Jay Worona of counsel), for New York State School Boards Association, amicus curiae.

Bienstock PLLC, New York City (Martin Bienstock of counsel), for Agudath Israel of America, amicus curiae.

Ceresia, J.

Appeal from a judgment of the Supreme Court (Lynch, J.), entered November 18, 2021 in Albany County, which, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, among other things, granted petitioners' motion for summary judgment.

Petitioner United Jewish Community of Blooming Grove, Inc. is a not-for-profit corporation that provides services to Jewish families in Orange County. Petitioners Joel Stern and Yitzchok Ekstein reside within respondent Washingtonville Central School District (hereinafter the District) and send their children to nonpublic schools in the Village of Kiryas Joel, Orange County. Although the District provides school bus transportation to resident students who are enrolled in nonpublic schools, like Stern's and Ekstein's children are, it does so only on days when public schools are in session. Given that nonpublic schools, at times, observe different holidays and school breaks than public schools, there are days throughout the school year when the District does not provide transportation to nonpublic school students even though their schools are in session. The District's policy on this issue is consistent with guidance posted on the website of respondent State Education Department (hereinafter SED) – specifically, an online handbook on transportation of students enrolled in nonpublic schools.

On two occasions during the 2020-2021 school year, counsel for petitioners wrote to the District, requesting that it provide bus transportation for students of nonpublic schools in Kiryas Joel on days when those schools were in session but the public schools were closed. After those requests were denied by the District, petitioners commenced the instant hybrid CPLR article 78 proceeding and declaratory judgment action, seeking, among other things, a declaration that central school districts are statutorily required to transport nonpublic school students on all days that their schools are open and that SED's guidance to the contrary is invalid, together with a permanent injunction preventing the District from denying transportation to nonpublic school students on those days. Petitioners sought, and Supreme

Court granted, a preliminary injunction compelling the District to provide the requested transportation at the commencement of the 2021-2022 school year. However, the preliminary injunction was automatically stayed when respondents appealed from the order granting it (see CPLR 5519 [a] [1]), and this Court thereafter, among other things, denied petitioners' motion to vacate the automatic stay (see 2021 NY Slip Op 73586[U]).

Following joinder of issue, petitioners moved for summary judgment on their declaratory judgment claims, the District and SED opposed, and SED cross-moved for summary judgment dismissing the petition/complaint. Supreme Court, among other things, granted petitioners' motion, denied SED's cross motion, issued the requested permanent injunction, declared that the District is required to provide transportation for all nonpublic school students on all days that their schools are open, and further declared that SED's guidance to the contrary is null and void. Respondents appeal. Because we find that school districts outside New York City are not statutorily obligated to transport nonpublic school students on days when public schools are closed, we reverse.

This case turns upon interpretation of Education Law § 3635, which sets forth the obligations of school districts to provide resident children with transportation to public and nonpublic schools. In matters of statutory interpretation, our "primary consideration is to ascertain and give effect to the intention of the Legislature" (Matter of Walsh v New York State Comptroller, 34 NY3d 520, 524 [2019] [internal quotation marks and citations omitted]). Noting that "the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" (Majewski v Broadalbin-Perth Cent. School Dist., 91 NY2d 577, 583 [1998]; accord Matter of DeVera v Elia, 32 NY3d 423, 435 [2018]). As is relevant here, Education Law § 3635 (1) (a) states that "[s]ufficient transportation facilities . . . shall be provided by the school district for all the children residing within the school district to and from the school they legally attend, who are in need of such transportation because of the remoteness of

the school to the child or for the promotion of the best interest of such children."

While this subsection contains language as to what must be provided ("[s]ufficient transportation facilities"), for whom ("all the children residing within the school district"), and where ("to and from the school they legally attend"), absent from the plain language of the subsection is any explicit direction as to when such transportation must be provided. One interpretation, put forward by petitioners and adopted by Supreme Court, is that all children must be transported to and from school on all of the days that their school is open, with nonpublic school students treated no differently than public school students in that regard. Respondents, on the other hand, interpret the subsection as requiring only "sufficient" transportation, which is achieved by providing equal transportation services, on the same days of the year, to nonpublic and public school students alike. Inasmuch as the statute is silent as to when transportation must occur, and acknowledging the parties' conflicting interpretations – each of which is at least arguably persuasive, with both sides claiming that their interpretation treats all children equitably – we find that the legislative intent on this point cannot be gleaned from the statutory text alone, and therefore an examination of the legislative history is required (see Matter of Shannon, 25 NY3d 345, 352 [2015]; People v Ballman, 15 NY3d 68, 72 [2010]).

The above-quoted statutory language has existed in its current form since 1939 (see L 1939, ch 465). In 1985, the Legislature adopted a separate subsection, Education Law § 3635 (2-a), the purpose of which was to "provide for transportation to nonpublic schools on a limited number of days upon which public schools are scheduled to be closed" (State Ed Dept Mem in Support, Bill Jacket, L 1985, ch 902 at 19). However, as enacted, this subsection applies only to cities with populations in excess of one million, i.e., New York City. Nonpublic schools in New York City may choose, from a limited list, up to five (or, in certain years, up to 10) days on which their students will receive transportation services even though the public schools are scheduled to be closed (see Education Law §

3635 [2-a]). This list includes, among others, the week of Labor Day, certain Jewish holidays, and the week between Christmas Day and New Year's Day, but not Saturdays, Sundays or legal holidays.[1] In our view, contrary to petitioners' contention, both the legislative history of this amendment and the plain wording of it – namely, the use of the language "provide for" (Education Law § 3635 [2-a]; State Ed Dept Mem in Support, Bill Jacket, L 1985, ch 902 at 19) – indicate that its purpose was to expand the number of required transportation days, and not to limit a previously unrestricted transportation obligation.

When the Legislature first considered this amendment to the statute, the original version of the bill contained an additional requirement that central school districts outside New York City also provide transportation to nonpublic school students on days that public schools are closed, albeit for only two days per year, rather than the five or 10 days required in New York City (see State Ed Dept Mem in Support, Bill Jacket, L 1985, ch 902 at 20; Letter from Counsel and Deputy Commissioner for Legal Affairs, State Ed Dept to Governor, Bill Jacket, L 1985, ch 902 at 18). Insofar as the proposed bill pertained to central school districts, it was strongly opposed by New York State United Teachers and New York State School Boards Association, both of which opined that it would impose significant financial and administrative burdens upon central school districts and interfere with negotiated contracts (see Mem in Opposition, NY State School Bds Assn, Bill Jacket, L 1985, ch 902 at 23; Letter in Opposition, NY State United Teachers, Bill Jacket, L 1985, ch 902 at 26-27). By way of example, the New York State School Boards Association pointed out that the Guilderland Central School District transported students to 33 nonpublic schools, resulting in the possibility of up to 66 additional days of transportation that the district would be required to provide in the event that each nonpublic

[1] These are alternate, and not additional, days of transportation, given that the school district is to provide transportation for the same number of days for both nonpublic and public school students, up to a maximum of 180 days (see Education Law § 3635 [2-a]).

school was allowed to choose any two days, as the bill was drafted (see Mem in Opposition, NY State School Bds Assn, Bill Jacket, L 1985, ch 902 at 24). Ultimately, the Legislature omitted this mandate from the final version of the bill, manifesting its intent not to require central school districts to provide transportation to nonpublic school students on days that public schools are closed (see Stettine v County of Suffolk, 66 NY2d 354, 358 [1985]; Patrolmen's Benevolent Assn. of City of N.Y. v City of New York, 41 NY2d 205, 208-209 [1976]; People v Skinner, 94 AD3d 1516, 1519 [2012]).

Further legislative history is instructive. In 1983, 1999, and 2001, the Legislature considered bills that would have expanded Education Law § 3635 by adding language requiring school districts to transport nonpublic school students on certain days when public schools are closed (see State Ed Dept Mem in Support, 1983 NY Senate Bill S4989; Mem in Support, 1999 NY Assembly Bill A7382C; Mem in Support, 2001 NY Assembly Bill A150). None of these bills were passed into law. It is also noteworthy that the Legislature has not intervened, by way of any statutory amendment, to correct SED's longstanding interpretation of Education Law § 3635 as permitting, but not requiring, transportation of nonpublic school students on days when the public schools are closed (see Greater N.Y. Taxi Assn. v New York City Taxi & Limousine Commn., 25 NY3d 600, 612 [2015]). This interpretation by SED has been found in its transportation handbook for at least the last 30 years, and was upheld by its Commissioner 14 years ago in a parent's appeal from a district's denial of transportation (see Matter of Brautigam, 47 Ed Dept Rep 454 [Decision No. 15,772] [2008]).

We reject Supreme Court's broad view of the statute not only because it runs afoul of the legislative history, but also because it would lead to unreasonable results (see People ex rel. McCurdy v Warden, Westchester County Corr. Facility, 36 NY3d 251, 262 [2020]; Lubonty v U.S. Bank N.A., 34 NY3d 250, 255 [2019]). To be sure, the Legislature could not have intended to require school districts to transport nonpublic school students in the summer, on weekends, on state or federal holidays, or on days when public schools are closed for weather-related or other

emergency reasons, none of which would be foreclosed by Supreme Court's interpretation. For all of the foregoing reasons, we hold that Education Law § 3635 (1) (a) permits, but does not require, school districts outside New York City to transport nonpublic school students to and from school on days when the public schools are closed.

Although Supreme Court did not address the two alternative grounds contained in petitioners' summary judgment motion, we find them to be without merit. First, petitioners did not establish that Education Law § 3635, as interpreted by SED, violates the Equal Protection Clause of the NY Constitution.[2] "A violation of equal protection is deemed to occur when a state agency treats persons similarly situated differently under the law" (Matter of Montgomery v New York State Dept. of Corr. & Community Servs., 192 AD3d 1437, 1441 [2021] [internal quotation marks, brackets and citations omitted], lv denied 37 NY3d 908 [2021]). As an initial matter, the statute does not create a suspect classification, as " the unequal treatment of which [petitioners] complain[] is discrimination between public and nonpublic schools, not anything of a religious nature" (Archbishop Walsh High School v Section VI of N.Y. State Pub. High School Athletic Assn., 88 NY2d 131, 136 [1996]). That said, "[w]here, as here, a legislative distinction is not based on a suspect classification and does not impair a fundamental right, the challenger has the tremendous burden of demonstrating that no facts can reasonably be conceived to show the existence of a rational basis in support of some legitimate state interest in drawing the distinction" (Sullivan v Paterson, 80 AD3d 1051, 1053 [2011]). Even assuming, without deciding, that SED's guidance treats nonpublic and public school students differently, SED has articulated a rational basis for it – the financial and administrative burdens that would be imposed upon school districts if they were required to transport nonpublic

[2] While petitioners also made a state constitutional claim on the ground that SED's guidance violated their right to free exercise of religion, petitioners do not raise this contention in their brief and have therefore abandoned it on appeal (see Matter of Pratt v New York State Off. of Mental Health, 153 AD3d 1065, 1067 [2017]).

school students on days when public schools are closed (see id. at 1054; Bukovsan v Board of Educ. of City School Dist. of City of Oneonta, 61 AD2d 685, 687 [1978]).

Second, petitioners failed to show that SED's transportation guidance violates either the State Administrative Procedure Act or the separation of powers doctrine. SED's online handbook, in a question-and-answer format, simply provides interpretation and clarification of statutory transportation requirements and is therefore exempt from the rule-making requirements of the State Administrative Procedure Act (see State Administrative Procedure Act § 102 [2] [b] [iv]; Matter of Board of Educ. of the Kiryas Joel Vil. Union Free Sch. Dist. v State of New York, 110 AD3d 1231, 1234 [2013], lv denied 22 NY3d 861 [2014]). Likewise, this interpretive guidance does not constitute legislative policy-making in violation of the doctrine of separation of powers.

Finally, given that our disposition in this hybrid proceeding is on the merits, we will make declarations of the rights of the parties (see Hirsch v Lindor Realty Corp., 63 NY2d 878, 881 [1984]; Dodson v Town Bd. of the Town of Rotterdam, 182 AD3d 109, 113 [2020]).

Clark, J.P., Pritzker, Colangelo and McShan, JJ., concur.

ORDERED that the judgment is reversed, on the law, without costs; petitioners' motion denied; respondent State Education Department's cross motion granted; it is declared that respondent Washingtonville Central School District is not required to transport nonpublic school students on days when its public schools are closed; and it is declared that the State Education Department's transportation guidance, to the effect that school districts outside New York City are permitted, but not required, to transport nonpublic school students on days when public schools are closed, is valid.

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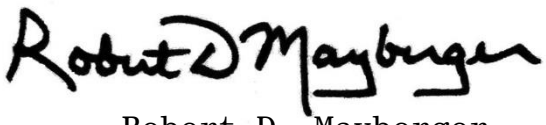

Robert D. Mayberger
Clerk of the Court

APPENDIX C

NEW YORK SUPREME COURT
APPELLATE DIVISION : THIRD DEPARTMENT

In the Matter of UNITED JEWISH COMMUNITY OF BLOOMING GROVE, INC., et al.,

Respondents,

v

WASHINGTONVILLE CENTRAL SCHOOL DISTRICT et al.,

Appellants.

NOTICE OF ENTRY

A.D. No. 534406

PLEASE TAKE NOTICE that the within is a true and complete copy of the Decision and Order duly entered in the above- entitled matter in the Office of the Clerk of the Supreme Court, Appellate Division, Third Department on August 25, 2022.

Dated: August 29, 2022
Albany, New York

LETITIA JAMES
Attorney General of the
State of New York
Attorney for State Appellants
The Capitol
Albany, New York 12224

By: */s/ Beezly Kiernan*
BEEZLY KIERNAN
Assistant Solicitor General
Telephone (518) 776-2023
OAG No. 21-034587

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: August 25, 2022 534406

In the Matter of UNITED JEWISH COMMUNITY OF BLOOMING GROVE, INC., et al.,
Respondents,
v
WASHINGTONVILLE CENTRAL SCHOOL DISTRICT et al.,
Appellants.

DECISION AND ORDER ON MOTION

Motion for reargument or, in the alternative, for permission to appeal to the Court of Appeals.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, without costs.

Clark, J.P., Pritzker, Ceresia and McShan, JJ., concur.

ENTER:

Robert D. Mayberger
Clerk of the Court