

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

**NEW YORK STATE, DIVISION OF HUMAN
RIGHTS,**

Complainant,

v.

**EAST MEADOW UNION FREE SCHOOL
DISTRICT,**

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10115533

PLEASE TAKE NOTICE that the attached is a true copy of an Order issued by the Honorable Kumiki Gibson, Commissioner of the New York State Division of Human Rights (“Division”), after a hearing held before Lilliana Estrella-Castillo, an Administrative Law Judge of the Division. In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must

also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

DATED: March 10th, 2008
Bronx, New York

A handwritten signature in black ink, appearing to read 'Kumiki Gibson', written over a horizontal line.

KUMIKI GIBSON
COMMISSIONER

**STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS**

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This matter arises under the New York State Human Rights Law, which prohibits, among other things, discrimination by educational entities against people with disabilities, including, specifically, those who use guide, hearing, and/or service dogs. *See* N.Y. Exec. Law, Art. 15 (“Human Rights Law” or “Law”) §§ 296.4, -.14. Specifically, the Complaint in this matter alleges that the East Meadow Union Free School District (“East Meadow” or “Respondent”) discriminates against students with disabilities who use guide, hearing, and/or service dogs, in violation of both Section 296.4 and Section 296.14 of the Law. East Meadow claims that it is not an educational entity encompassed by the Law and that it does not discriminate, as alleged, in any event. After consideration of the Administrative Law Judge’s recommended Findings of Fact, Decision and Opinion, and Order (“Recommended Order”) and of East Meadow’s submissions, including its briefs submitted to the Administrative Law Judge (“ALJ”) and its objections to the Recommended Order, I find that the Division has jurisdiction over this matter, and that East Meadow’s

policy and practices with respect to the use of guide, hearing, and service dogs by students with disabilities violate the New York Human Rights Law: Both Section 296.4 and Section 296.14 grant an absolute right to students with disabilities, as defined by the Law, who use guide, hearing, and/or service dogs, as defined by Human Rights Law § 292, to have those guide, hearing, and/or service dogs with them in school and during all school-related activities, except, perhaps, in exceptional circumstances, which are not present here.

PROCEEDINGS IN THE CASE

On January 8, 2007, a verified complaint was filed with the Division, charging East Meadow with unlawful discriminatory practices “by preventing the use of guide dogs, hearing dogs or service dogs by hearing impaired or other [students] with disabilities in educational facilities.” Complaint (“Compl.”) at 3. Specifically, the Complaint alleges that both Section 296.4 and Section 296.14 provide an absolute right to students with disabilities to bring their guide, hearing, and service dogs into school with them, including blind students who use guide dogs and hearing-impaired students who use service dogs. Compl. at ¶ 6. East Meadow has never recognized this as a right of their students and, instead, has used, and is using, a balancing test to assess whether guide, hearing, and/or service dogs should be allowed. (ALJ’s Exhibit 4)

The Long Island Regional Office of the Division commenced an investigation into the allegations in the Complaint. After its investigation, it found that the Division has jurisdiction over the Complaint and that probable cause exists to

believe East Meadow had engaged and was engaging in the alleged unlawful discriminatory practices. The case was referred to a public hearing before an Administrative Law Judge.

After the finding of probable cause and before commencement of the hearing, East Meadow sued the Division and the Long Island Regional Director in Supreme Court, seeking to enjoin the hearing. *See East Meadow Union Free School District v. New York State Division of Human Rights & Jefferson*, No. 07-6475, 2007 N.Y. Misc. LEXIS 6004 (N.Y. Sup. Ct. Aug. 7, 2007) (“Supreme Court Order”). In that proceeding, East Meadow did not argue that the Division lacked jurisdiction over it because it was not encompassed by Section 296.4. Rather, it argued that the Division’s proceeding was precluded based on a prior Federal court case commenced against East Meadow by one of its students with a disability who was not allowed to bring his service dog into school with him and who was also alleged in the present Complaint to be one of the students affected by East Meadow’s alleged discriminatory policy and practice. *See* Supreme Court Order at 2.¹ The Supreme Court disagreed, finding that “the School District’s transparent attempt to superimpose the alleged findings of the [Federal] District Court fails for several

¹ In that case, the Federal District Court denied plaintiffs’ motion for a preliminary injunction, finding that they failed to show that they were likely to succeed on the merits. *See Cave v. E. Meadow Union Free Sch. Dist.*, 480 F. Supp. 2d 610 (E.D.N.Y. 2007). The Second Circuit, however, reversed and remanded the case to the District Court to dismiss for lack of jurisdiction, finding that the plaintiffs had not exhausted their administrative remedies. *See Cave v. E. Meadow Union Free Sch. Dist.*, 2008 U.S. App. LEXIS 1239 (2d Cir. Jan. 23, 2008).

reasons,” including, among others, the fact that the “School District’s overall policy regarding service animals was not and could not be made an issue in the District Court proceeding,” and, thus, “res judicata does not apply.” *Id.* at 10. It concluded that the “School District’s policy relating to service animals in general is subject to review before the [Division].” *Id.* at 11.

The matter then proceeded to hearing, before ALJ Lilliana Estrella-Castillo, on that precise issue. After the hearing, the ALJ allowed both parties to file post-hearing submissions, and both parties made timely submissions. On January 16, 2008, ALJ Estrella-Castillo issued a Recommended Order, finding that the Division has jurisdiction over this matter and that East Meadow’s policy violates Section 296 of the Human Rights Law.

The Commissioner’s Office requested the parties’ view on the Recommended Order, and East Meadow submitted timely objections to it, arguing principally that it is not a “education corporation or association” encompassed by the Human Rights Law. After full consideration of the Recommended Order and East Meadow’s objections thereto, I find that East Meadow Union Free School District is encompassed by Sections 296.4 and 296.14 of the Human Rights Law, and that East Meadow’s “balancing test” policy with respect to use of guide, hearing, and service dogs by its students with disabilities violates both sections of the Law.

FINDINGS OF FACT

1. According to its website,

The East Meadow Union Free School District, formed in 1814, is made up

of nine schools serving the communities of East Meadow and Westbury, New York. Located on Long Island, the district is in the heart of Nassau County and has a long and accomplished history. There are more than 8,000 students attending our schools.

<http://www.eastmeadow.k12.ny.us>.²

2. The schools that comprise this district share the same Board of Education and the same mission. See <http://www.eastmeadow.k12.ny.us/board> (board information); <http://www.eastmeadow.k12.ny.us/board/missionstatement> (mission statement).

3. East Meadow claims that it is a “statutory political subdivision of the State of New York.” (ALJ’s Exhibit 6)

4. East Meadow contends that it addresses the needs of students with disabilities, including those who require the use of guide, hearing, or service dogs, “on a case-by-case basis.” Under this policy, when presented with a request for the use of a guide, hearing, or service dog on school grounds or in educational facilities, East Meadow “utilizes a balancing test” that weighs the potential benefits to the student with the disability against “the risks inherent in having a service animal in the school building.” (ALJ’s Exhibit 4)

5. According to East Meadow, this test was based primarily on, adopted, and implemented in accordance with Federal law. (ALJ’s Exhibit 4)

² The Division may take official notice of facts “of which judicial notice could be taken and of other facts within the specialized knowledge of the agency,” SAPA § 306.4, including publicly-available information.

6. This policy was in effect in 2007 and was used in that year to prevent a student with a disability from entering school with his service dog on at least four occasions. (ALJ's Exhibits 1, 4, 5)³ The policy remained in effect through the conclusion of the hearing in this matter, in November 2007. (ALJ's Exhibit 4)

OPINION AND DECISION

The Human Rights Law was the first anti-discrimination law in the country. It was enacted in 1945 to cover discrimination based on employment and has been expanded ever since to have far-reaching effect to prevent and fight discrimination in the State. *See Board of Higher Education v. Carter*, 14 N.Y.2d 138, 145, 250 N.Y.S.2d 33, 34 (1964). The New York Legislature has made clear that the purpose of the Law is to, among other things, ensure that "every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the State." Human Rights Law § 290.3. To achieve that purpose, it declared the "opportunity to obtain education . . . without discrimination" to be a "civil right" in this State. Human Rights Law § 291.2.

³ East Meadow contends that it was justified in refusing entry to this particular student as he did not meet the then-definition of hearing-impaired under Human Rights Law § 296.14. (ALJ's Exhibit 5) This is no defense to its actions or to this Complaint: East Meadow concedes that its policy was based on a balancing test, not on Human Rights Law § 296; East Meadow concedes that it used this balancing test for all students with disabilities, not just those with hearing impairments; the then-definition of hearing-impaired under Human Rights Law § 296.14 was not applicable to Human Rights Law § 296.4, and cannot be used as a defense to a violation to that Section of the Law; Section 296.14 has since been amended so to remove the hearing-impairment test; and East Meadow's balancing test policy remains intact since that change.

The New York State Division of Human Rights (“Division”) is the State agency mandated and empowered to enforce the Human Rights Law. Its mission is to accomplish the Law’s objectives by “eliminat[ing] and prevent[ing] discrimination . . . in educational institutions,” among other areas, Human Rights Law § 290.3, and the Legislature granted it broad authority to do so, including police powers, see Human Rights Law § 297.

In light of the importance of the Law and the vast mandate and authority of the Division, in enacting the Law, the Legislature also made crystal clear that “[t]he provisions of this [Law] shall be construed liberally for the accomplishment of the purposes thereof.” Human Rights Law § 300. And, courts have done just that. See, e.g., *Aurecchione v. N.Y. State Div. of Human Rights*, 98 N.Y.2d 21, 26, 744 N.Y.S.2d 349, 351 (2002) (“a liberal reading of the statute is explicitly mandated to effectuate the statute’s intent”); *Miller v. Ravitch*, 60 N.Y.2d 527, 537, 470 N.Y.S.2d 558, 563 (1983) (“[Respondent’s procedure must] also conform to the protective mandate of the antidiscrimination law which requires that its provisions ‘be construed liberally’”); *Sanders v. Winship*, 57 N.Y.2d 391, 395, 456 N.Y.S.2d 720, 722 (1982) (“the [Human Rights Law], expressive of fundamental state policy, . . . is to be regarded as remedial in nature and, therefore, liberally construed.”).⁴

⁴ In addition, as the Fourth Department has recognized, “[d]eference should be paid to the assessments of [the Division] in view of the ‘important objectives of the Human Rights Law, the discretion vested in the agency to achieve those objectives, and its . . . decades of special experience in weighing the merit and value of such claims.’” *Father Belle Community Center v. New York State Div. of Human Rights*, 221 A.D.2d 44, 57, 642 N.Y.S.2d 739, 749 (4th Dept. 1996) (citation omitted).

It is against this backdrop that this matter is decided.

I. THE STATE'S LAW WITH RESPECT TO DISABILITIES

The Human Rights Law is one of the broadest in the country with respect to disabilities. *See State Div. of Human Rights ex rel. McDermott v. Xerox Corp.*, 65 N.Y.2d 213, 218, 491 N.Y.S.2d 106, 109 (1985). It is far broader than the Federal statute addressing the rights of people with disabilities, the American with Disabilities Act (“ADA”), in many important respects. Specifically, for purposes of this case, the ADA does not include a specific provision with respect to the use of guide, hearing, and/or service dogs by students with disabilities. *See* 42 U.S.C. §§ 12101-12213. And, the ADA generally requires entities only to provide reasonable accommodations to people with disabilities. *Id.*

The Human Rights Law, on the other hand, prohibits “education corporations and associations” from, among other things, denying people with disabilities use of their facilities:

It shall be an unlawful discriminatory practice for an education corporation or association [that] holds itself out to the public to be non-sectarian and exempt from taxation . . . of the real property tax law to deny the use of its facilities to any person otherwise qualified, or to permit the harassment of any student or applicant, by reason of . . . [the person's] . . . disability

Human Rights Law § 296.4.

And, it expressly bans discrimination based on the use of a guide, hearing, or service dog. Up until October 2007, the relevant provision of the Law read as follows:

It shall be an unlawful discriminatory practice for any person engaged in any activity covered by this section to discriminate against a blind person, a

hearing impaired person who has a hearing impairment manifested by a speech discrimination score of forty percent or less in the better ear with appropriate correction as certified by a licensed audiologist or otolaryngologist . . . or a physician who has examined such person . . . or a person with a disability on the basis of his or her use of a guide dog, hearing dog or service dog.

Human Rights Law § 296.14.

In 2007, Section 296.14 was amended, so to make clear that all persons with a hearing impairment have the right to use a guide, hearing, or service dog. Thus, as of October 1, 2007, Section 296.14 provides:

It shall be an unlawful discriminatory practice for any person engaged in any activity covered by this section to discriminate against a blind person, a hearing impaired person or a person with a disability on the basis of his or her use of a guide dog, hearing dog or service dog.

Human Rights Law § 296.14 (as amended).

The Law also was amended to define “guide, service, and hearing dogs,” as used in the Law, to mean dogs that are “trained to aid a person” with a disability by a “recognized service dog training center or professional dog trainer,” and that are “actually used for such purpose.” Human Rights Law §§ 292.31 to -.33.

Thus, the New York State Human Rights Law now prohibits discrimination by “an education corporation or association” against any person with a disability, as defined by the Law and regardless of level of impairment, on the basis of her/his use of a guide, hearing, and service dog, which discrimination includes, among other things, denying access to educational facilities.

II. EAST MEADOW UNION FREE SCHOOL DISTRICT IS COVERED BY SECTION 296 OF THE HUMAN RIGHTS LAW

East Meadow argues that the Division has no jurisdiction over it in this case because it is not an “education corporation or association,” within the meaning of Human Rights Law § 296.4. Because “education corporation or association” is not defined in the Human Rights Law, East Meadow urges the adoption of the State’s General Construction Law’s definition of “education corporation,” which does not encompass school districts such as East Meadow:

The term “education corporation” . . . means a corporation (a) chartered or incorporated by the regents or otherwise formed under [Section 216 of the Education Law], or (b) formed by a special act of this state with its principal purpose an education purpose and which is a member of the university of the state of New York, or (c) formed under laws other than the statutes of this state which, if it were to be formed currently under the laws of this state, might be chartered by the regents, and which has been authorized to construct its activities in this state by the regents or as an authorized foreign education corporation with the consent of the commissioner.

Gen. Constr. Law § 66(6) (citing Education Law § 216-a(1)).

The General Construction Law’s definition of “education corporation” has no application here.

As an initial matter, the General Construction Law defines only “education corporation,” not education association, and the East Meadow Union Free School District is clearly an “education association.” By its own characterization, East Meadow is “made up of nine schools serving the communities of East Meadow and Westbury, New York,” sharing the same mission and being governed by a single Board. <http://www.eastmeadow.k12.ny.us>. According to Webster’s Dictionary, an “association” is “the act of associating,” or the “state of being associated,” which is to

be “joined” or “connected.” *The Merriam-Webster Dictionary* 53 (11th ed. 2004). The nine schools here are clearly “joined” and/or “connected,” by, among other things, a shared mission and the same governing Board, to “serve the communities of East Meadow and Westbury New York.” <http://www.eastmeadow.k12.ny.us/board>. Thus, under the plain language of the Human Rights Law -- that is, specifically, the term “education association” -- East Meadow is encompassed by the Section 296.4. *See Amorosi v. South Colonie Independent Central School District*, 9 N.Y.3d 367, 372, 849 N.Y.S.2d 485 (2007) (“we have correspondingly and consistently emphasized that where the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used”); *Comptroller of City of N.Y. v. Mayor of City of N.Y.*, 7 N.Y.3d 256, 264, 819 N.Y.S.2d 672 (2006) (“unambiguous language is determinative, and courts must give effect to the plain meaning of a statute's terms”); *Theroux v. Reilly*, 1 N.Y.3d 232, 240, 771 N.Y.S.2d 43, 45 (2003) (“a statute's plain meaning must be discerned without resort to forced or unnatural interpretations”); *State Div. of Human Rights v. Berler*, 46 A.D.3d 32, 40, 848 N.Y.S.2d 183, 188 (2nd Dept. 2007) (“the starting point of analysis must be the plain meaning of the statutory language”); *State Div. of Human Rights v. Board of Cooperative Education Services*, 98 A.D.2d 958, 958, 470 N.Y.S.2d 209, 210 (4th Dept. 1983) (terms in Section 296 are “intended to be interpreted in its accepted and dictionary meaning”).

With respect to the term “education corporation,” the General Construction Law’s definition cannot be engrafted onto Section 296 because doing so would

undermine completely the intent of that provision, which, as the Legislature has made clear, the General Construction Law cannot do. As the General Construction Law expressly provides, a definition in that law will govern only where it will not conflict with the intent of the statute being interpreted. *See* Gen Const. Law § 110 (“This chapter is applicable . . . unless its general object, or the context of the language construed, or other provisions of law indicate that a different meaning or application was intended from that required [under] this chapter.”). Here, the General Construction Law’s definition will have such an effect.

As noted above, the principal purpose of the Human Rights Law is to ensure that “every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the State.” Human Rights Law § 290.3. And, thus, in enacting the Law, the Legislature expressly declared the “opportunity to obtain education . . . without discrimination” to be a “civil right” in this State, Human Rights Law § 291.2, and mandated and empowered the Division to enforce that civil right by fighting “discrimination . . . in educational institutions,” Human Rights Law § 290.3. Lest there be any doubt about the importance of this Law, including in the area of education, the Legislature included an express provision instructing that “[t]he provisions of this [Law] shall be construed liberally for the accomplishment of the purposes thereof.” Human Rights Law § 300.

Courts have consistently interpreted the Human Rights Law so to accord individuals with the fullest of civil rights and the fullest of protections from discrimination, including, specifically, in the area of education. *See, e.g., Board of*

Higher Education v. Carter, 14 N.Y.2d 138, 153, 250 N.Y.S.2d 33, 41 (1964) (in holding that Section 296 covers boards of education, the court cites to Section 300, finding that it “require[d]” the court to make “a liberal reading”). And, thus, it has found that the Human Rights Law encompasses a broad array of educational entities -- from boards of education,⁵ to city school systems,⁶ to “state agency programs for formal and informal education.”⁷

Indeed, at least one court has found an educational entity similar in structure to East Meadow to be an “education corporation” under Section 296. In *State Div. of Human Rights v. Board of Cooperative Education Services*, the Fourth Department was faced with a disability discrimination claim against the Board of Cooperative Education Services (“BOCES”). *State Div. of Human Rights v. Board of Cooperative Education Services*, 98 A.D.2d 958, 958-59, 470 N.Y.S.2d 209, 210-11 (4th Dept. 1983). In that case, BOCES argued, among other things, that it was not an “education corporation or association,” within the meaning of Section 296.4. *Id.* The court rejected BOCES’ argument, holding that because BOCES “exists for the purpose of carrying out a program of shared educational services in the schools of

⁵ See, e.g., *Board of Higher Education v. Carter*, 14 N.Y.2d at 42, 250 N.Y.S.2d at 153; *Board of Education v. State Div. of Human Rights*, 42 A.D.2d 473, 474, 349 N.Y.S.2d 25, 27 (3rd Dept. 1973).

⁶ See e.g., *Maloff v. City Comm. on Human Rights*, 38 N.Y.2d 329, 333, 379 N.Y.S.2d 788, 791 (1975).

⁷ *Board of Higher Education v. Carter*, 14 N.Y.2d at 38, 250 N.Y.S.2d at 149.

the supervisory district,” it is an “education corporation,” within the meaning of Section 296.4. *Id.*

In short, the intent of Section 296 is to prevent and fight discrimination in education and in access to educational facilities, programs, and activities, and includes schools that are organized and/or overseen in a variety of ways. To exclude East Meadow because the term “education corporation” is not defined in the Human Rights Law to include school districts would be contrary to the language of the statute (which expressly includes “education associations”), to common law (which expressly defines an “education corporation” as an entity that is comprised of several schools in one district, as well as public schools, their programs, their boards, and their “school systems”), and to the intent of the Law (which is to protect students with disabilities in education and educational facilities).

Thus, East Meadow Union Free School District is an “education corporation and association,” within the meaning of Section 296.4 of the Human Rights Law;⁸

⁸ To the extent that East Meadow is suggesting that it is somehow immune from the Human Rights Law or the Division’s reach because it is a “political subdivision,” it is simply wrong. Courts construing the Human Rights Law have consistently held that “political subdivisions,” such as school districts, are encompassed by the Law and are barred from discriminating in the State of New York. See *Union Free Sch. Dist. No. 6 of Islip and Smithtown v. New York Div. of Human Rights Appeal Bd.*, 35 N.Y.2d 371, 381, 362 N.Y.S.2d 139, 146 (1974) (school district’s employment policies constituted discrimination based on sex); *Rochester City Sch. Dist. v. Donaldson*, 38 A.D.3d 1280, 1280, 834 N.Y.S.2d 919, 919 (4th Dept. 2007) (Division order finding discrimination by a school district affirmed); *Bayport–Blue Point Sch. Dist. v. State Div. of Human Rights*, 131 A.D.2d 849, 850, 517 N.Y.S.2d. 209, 211 (2nd Dept. 1987) (Division’s determination that the complainant was unlawfully discriminated against by the school district was ruled to be supported by substantial evidence).

is bound to the terms of that provision and to Section 296.14; and is subject to the Division's jurisdiction under those provisions.

III. EAST MEADOW'S POLICY AND PRACTICES WITH RESPECT TO THE USE OF GUIDE, HEARING, AND SERVICE DOGS BY STUDENTS WITH DISABILITIES WHO USE SUCH DOGS VIOLATE BOTH SECTION 296.4 AND SECTION 296.14 OF THE HUMAN RIGHT LAW

The Complaint alleges that students with disabilities who use guide, hearing, and/or service dogs have a right to have such dogs with them while they are in school or engaging in school-related activities, and that the failure to recognize and honor that right constitutes unlawful discrimination in education and in the use of educational facilities, in violation of Sections 296.4 and 296.14 of the Human Rights Law.

East Meadow contends that its policy and practice, based on the "balancing of interests," is lawful and necessary. In defending this policy and practice, East Meadow does not cite to the language of the Law, but rather to its manual, which establishes "Programs for Students with Disabilities" and "Access to Individualized Education Program," and to the decision in *Perino v. St. Vincent's Medical Center of Staten Island*, 132 Misc. 2d 20, 502 N.Y.S.2d 921 (N.Y. Sup. Ct. 1986). East Meadow's reliance on the manual and/or *Perino* is misplaced.

The manual upon which East Meadow relies is irrelevant because it does not address the New York State Human Rights Law and is based on the Americans with Disabilities Act, which does not contain a provision regarding the use of guide, hearing, or service dogs. Moreover, as New York courts have held, the Americans with Disabilities Act and its interpretations by Federal courts do not govern the

Division or the courts of New York with respect to the New York Human Rights Law. *See, e.g., Brooklyn Union Gas Co. v. New York State Rights Appeal Bd.*, 41 N.Y.2d 84, 85, 390 N.Y.S.2d 884, 886 (1976); *Doe v. Bell*, 194 Misc. 2d 774, 781, 754 N.Y.S.2d 846, 852 (N.Y. Sup. Ct. 2003). The Human Rights Law is viewed more broadly, and ought to be since the ADA is narrower in scope and has been narrowly interpreted. *See, e.g.,* 42 U.S.C. § 12102 (narrower definition of “disability”); *id.* at § 12111 (narrower definition of “employer”); *id.* at § 12117(a) (shorter statute of limitations period). It is unclear why East Meadow relies on a manual that is based principally on the ADA, but the fact that it does so does not relieve it of its responsibility under the State’s Human Rights Law.

Nor does *Perino* protect East Meadow from liability in this action. *Perino* involved the use of a service animal in a hospital delivery room during a delivery. *Perino*, 132 Misc. 2d at 20. The court there was faced with a serious clash between the Public Health Law’s strict guidelines regarding delivery rooms and the control and prevention of infectious diseases and the individual’s right to have guide dog with him in the delivery room, and found that adhering to the Human Rights Law in that situation would have required the hospital to violate the Public Health Law, which the court found the Human Rights Law did not intend. *Id.* at 23.

Perino cannot control here. First, this case involves education, which has been recognized in this State as a civil right, and access to education and educational facilities as an exercise of that right. Second, the *Perino* decision was based solely on a previous decision involving the right of a person in a wheelchair to

participate in a road race -- not the rights of students with disabilities who use guide, hearing, and/or service dogs in education and/or to access educational facilities, programs, and activities. And, even East Meadow would have to admit that access to a road race by a person in a wheelchair is not the same thing and does not have the same import as a student's access to education. Third, and perhaps most importantly, unlike the defendant in *Perino*, East Meadow is not faced with the Hobson's choice of breaking one law or another by the allowance of a dog in the delivery room during a delivery. The court there just merely confirmed the correctness of the hospital's choice to adhere to the law with respect to the sanitary conditions of a delivery room during a birth. In short, *Perino* is of no significance to the case before us.

East Meadow suggests that it, in fact, does face a Hobson's choice, like the hospital in *Perino*, because there are or may be students, faculty, and staff who may be allergic to dogs, and it has a responsibility to those individuals. East Meadow is correct: It does have a responsibility to those individuals who may suffer from such a disability (temporary or permanent). And, the Human Rights Law has provided for such situations -- that is, to reasonably accommodate those individuals, not to abrogate the right of students with disabilities to use their guide, hearing, and/or service dogs in school, which is absolute except, perhaps, in extremely limited circumstances, such as the one in *Perino*.⁹

⁹ As the court recognized in *United Veterans Mut. Housing No. 2 Corp. v. New York City Comm'n on Human Rights*, 207 A.D.2d 551, 552, 616 N.Y.S.2d 84, 85 (2nd (continued . . .)

And this right is conferred by both Section 296.4 and Section 294.14 of the Law. Under Section 296.4, East Meadow cannot “deny the use of its facilities” by reason of a person’s disability. Clearly, to refuse entry into a school facility to a student with a disability who uses a guide, hearing, and service dog, as defined by the Law, with that dog is a denial of use of that facility “by reason” of that person’s disability. Needless to say, that student would not need and could not have such a dog absent her/his disability. Thus, refusing entry to a school facility to that student with her/his guide, hearing, or service dog is unlawful discrimination under Section 296.4.

It is also unlawful discrimination under Section 296.14. That provision forbids discrimination “against a blind person, a hearing impaired person or a person with a disability on the basis of his or her use of a guide dog, hearing dog or service dog.” Human Rights Law § 296.14. To deny a student the use of her/his guide, hearing, and service dog -- which has been trained specifically to aid the student in overcoming obstacles presented by her/his impairment, so that s/he can function and enjoy life and the opportunities of life, such as education, as fully as a student without such an impairment -- because of the problems allegedly caused by

(continued . . .)

Dept. 1994), “[l]egislation [that] is designed to prevent discrimination in general and to protect the disabled in particular is intended to promote the general welfare of the community,” which “undoubtedly . . . commonly burdens some more than others.”

the dog's presence is discrimination against the student because of the dog. And, that is simply unlawful under Section 296.14.¹⁰

In short, because Section 296.4 and Section 296.14 simply and clearly provide that students with a disability, as defined by the Law, who use guide, hearing, and/or service dogs, as defined in Human Rights Law § 292, are entitled to access to education, educational facilities, and all education-related activities and programs with their guide, hearing, and service dogs, the “balancing test” that East Meadow employs violates the Human Rights Law. And, we trust that a school district that is dedicated to ensuring that their students “acquire the knowledge and skills needed to lead a productive, responsible, and culturally enriched life in the 21st century,” and “develop attitudes that reflect empathy and caring for others and respect for the differences and diversity in our society,”¹¹ will embrace both the letter and the spirit of the Human Rights Law and of this decision.

¹⁰ Again, this case involves the use of guide, hearing, and service dogs defined by Section 292 of the Law -- not the use of other animals or dogs that do not meet the Section 292 definition. However, animals who do not meet the Section 292 definition may nonetheless be considered under provisions of the Law other than Section 296.14.

¹¹ http://www.eastmeadow.k12.ny.us/board/mission_statement.htm (mission statement).

ORDER

In light of the foregoing and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED that East Meadow, its agents, representatives, employees, successors, and assigns, shall cease and desist immediately from using its "balancing test" against students in their use of guide dogs, hearing dogs, or service dogs;

ORDERED that East Meadow, its agents, representatives, employees, successors, and assigns, shall adopt a new policy and new practices with respect to the use of guide, hearing, and service dogs by students in activities, programs, and facilities (including classrooms) and on school grounds that shall comply with the Human Rights Law, a copy of which shall be distributed to all faculty, staff, and students;

ORDERED that East Meadow, its agents, representatives, employees, successors, and assigns, shall adopt a training program or session for all that may be affected or called upon to implement and/or enforce the new policy and practices;

ORDERED that East Meadow, its agents, representatives, employees, successors, and assigns, shall submit its new policy and new practices and its training program or session to Caroline Downey, General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, NY 10458, within sixty (60) days of this Order;

ORDERED that East Meadow, its agents, representatives, employees, successors, and assigns, shall allow all students with disabilities who use guide, hearing, and service dogs (including those with hearing impairments) to bring their guide, hearing, and service dogs into school or school-related activities, programs, and facilities (including classrooms) and onto school grounds;

ORDERED that East Meadow, its agents, representatives, employees, successors, and assigns, shall submit to Caroline Downey, at the address above, a list of all students with disabilities who use guide, hearing, and/or service dogs who have been allowed to bring their dogs into into school or school-related activities, programs, and facilities (including classrooms) and onto school grounds and the date of first admittance;

ORDERED that East Meadow, its agents, representatives, employees, successors, and assigns, shall prominently post a copy of the Division's poster (available at the Division's website at www.dhr.state.ny.us under the homepage heading "NYS Division of Human Rights is . . .") in places on Respondent's premises where students, faculty, and staff are likely to view it; and

ORDERED, that East Meadow, its agents, representatives, employees, successors and assigns, shall cooperate with the representatives of the Division

during any investigation into compliance with the directives contained in this
Order.

DATED: March 10, 2008
Bronx, New York

N.Y. STATE DIVISION OF HUMAN RIGHTS

A handwritten signature in black ink, appearing to be 'M' followed by a long horizontal stroke.

KUMIKI GIBSON
Commissioner