

**THE STATE OF NEW YORK
SUPREME COURT**

COUNTY OF TOMPKINS

ITHACA CITY SCHOOL DISTRICT,

Petitioner,

vs.

Index No. 2007-0785

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

Respondent.

**BEFORE: HON. ROBERT C. MULVEY
Supreme Court Justice**

APPEARANCES: BOND, SCHOENECK & KING
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Syracuse, New York 13202

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

By: Michael K. Swirsky, Esq., Senior Attorney
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DECISION & ORDER

Mulvey, Robert C., J.

In this proceeding under Article 78 of the Civil Practice Law and Rules, the petitioner Ithaca City School District seeks a determination that the respondent New York State Division of Human Rights (“SDHR”) lacks jurisdiction to consider complaints against it under the New York State Human Rights Law (“NYSHRL”).

The petitioner contends that it is not an “education corporation or association” as set forth in Section 296(4) of the NYSHRL. The respondent contends that it has jurisdiction under that statute, citing the holding of the Appellate Division, Fourth Department in State Division of Human Rights v. Board of Cooperative Educational Services [98 AD2d 58 (Fourth Dept., 1983)].

BACKGROUND

The respondent SDHR has concluded that probable cause exists with regard to a complaint against the petition alleging an unlawful discriminatory practice and that a public hearing must be conducted thereon. The SDHR denied the petitioner’s application to reopen the investigation and the public hearing is scheduled to commence on October 1, 2007.

The SDHR asserts jurisdiction under Section 296(4) of the NYSHRL which provides as follows:

“It shall be an unlawful discriminatory practice for an education corporation or association which holds itself out to the public to be non-sectarian and exempt from taxation pursuant to the provisions of article four 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 his race, color, religion, disability, national origin, sexual orientation, military status, sex, age or marital status, except that any such institution which establishes or maintains a policy of educating persons of one sex exclusively may admit students of only one sex.”

DISCUSSION

The petitioner has advanced persuasive arguments that it is not an “education corporation or association” within the meaning of Section 296(4). In sum, the petitioner contends that the term “education corporation” in that statute refers to private not for profit corporations formed for an educational purpose. It points out that the General Construction Law identifies three categories of corporations: public, other than for profit, and for profit (GCL Section 65). Because a school district is a municipal corporation it falls within the definition of public corporation and therefore cannot be considered a not

for profit. Because an “education corporation” is defined in GCL Section 66(6) it is wholly distinct from a municipal corporation.

Since a Board of Cooperative Educational Services (BOCES) is included in the list of municipal corporations defined in Section 119-n of the General Municipal Law, it appears that a BOCES could not be considered an “educational corporation.”

Nevertheless, in 1983, the Fourth Department rejected the SDHR’s position that a BOCES did not fall within its jurisdiction and held that it was an education corporation.

Id.

Because a BOCES is listed as a municipal corporation and is a creature of several component school districts, this Court cannot distinguish the Fourth Department holding from the present case.

In view of the lack of any other precedent on this issue, the doctrine of *stare decisis* requires that this Court follow the Fourth Department’s holding until the Appellate Division of this Department or the Court of Appeals pronounces a contrary rule. See, **In the Matter of Patrick BB** , 284 AD2d 636639 (Third Dept., 2001), **Mountain View Coach Lines, Inc. v. Storms**, 102 AD2d 663, 664 (Second Dept., 1984).

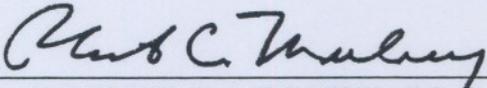
For the foregoing reasons, the Court has no basis to conclude that the respondent is acting without jurisdiction in considering the instant complaint.

CONCLUSION

The petition is denied.

This decision shall also constitute the order of the court pursuant to rule 202.8(g) of the Uniform Rules for the New York State Trial Courts. To commence the statutory time period for appeals as of right [CPLR 5513(a)] a copy of this decision and order, with notice of entry, must be served upon all parties.

Signed this 11TH day of September, 2007.



ROBERT C. MULVEY, J.S.C.