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Section Seven: Compliance Issues between New York State Education Law and the Convention on the Rights of the Child

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ble standards of care to which children with disabilities are guaranteed.

Section Seven: Compliance Issues Between New York State Education Law and the Convention on the Rights of the Child

by Matthew P. Miller⁵⁶⁰

Article 28 of the CRC recognizes a child's right of access to education.⁵⁶¹ In New York, Article XI of the Constitution of the State of the New York states: "[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."⁵⁶² Education in New York is governed by the Education Law ("NYEL") and Article 65, Part I, of the NYEL governs compulsory education for New York's children.⁵⁶³ The constitutional and statutory provisions bring New York into compliance with the CRC for recognizing and ensuring a child's right to education, and to achieving this right progressively and on the basis of equal opportunity. Using the Committee on the Rights of the Child's reporting guidelines, this Section will compare a child's right to education under the NYEL and the CRC.

I. CONVENTION ON THE RIGHTS OF THE CHILD

Generally, the Articles of the CRC provide broad protection for the rights of the child, some of which are reflected in New York State's education laws. Measures adopted in New York reflecting principles of the non-discrimination provisions under Article 2 of the CRC,⁵⁶⁴ for example, are NYEL sections 3201 and 3201-a.⁵⁶⁵ Under NYEL section 3201, "[n]o person shall be refused admission into or be excluded from any public school in the state of New York on account of race, creed, color or national origin."⁵⁶⁶ Section 3201-a protects a child's right to not be discriminated against

⁵⁶⁰ J.D., Albany Law School, 2009; B.A., George Washington University, 2006.

⁵⁶¹ See generally CRC, *supra* note 2, art. 28.

⁵⁶² N.Y. CONST. art. XI, § 1.

⁵⁶³ See generally N.Y. EDUC. LAW §§ 3201–34 (2009).

⁵⁶⁴ See generally CRC, *supra* note 2, art. 2.

⁵⁶⁵ N.Y. EDUC. LAW § 3201.

⁵⁶⁶ *Id.*

on the basis of sex.⁵⁶⁷ The NYEL does not mandate the provision of educational services that are in the best interests of the child, that respect the views of the child, or the child's right to life, survival, and development to the maximum extent possible.⁵⁶⁸ Under NYEL section 1804(12), a school district can have the district's voters approve a measure to allow a high school student to sit on the district's board of education.⁵⁶⁹ The elected students are allowed to sit on the school board and can participate in all board hearings and meetings; however, that student is not allowed to vote and cannot attend executive sessions.⁵⁷⁰ While CRC Article 12 recognizes a child's right to be heard,⁵⁷¹ and a similar provision exists in NYEL section 1804(12),⁵⁷² it is unclear whether the provision in the NYEL would conform to the protections in the CRC.

Under CRC Article 4, "[w]ith regard to economic, social and cultural rights . . . [member states are to] undertake such measures to the maximum extent of their available resources[.]"⁵⁷³ Governor Paterson's Executive Budget for the 2009–2010 fiscal year plans to spend \$20.7 billion in school aid, which is a decrease from the previous fiscal year's allocation of \$21.4 billion.⁵⁷⁴ This drop in resources is directly related to New York's current \$13.7 billion deficit.⁵⁷⁵

In New York, public education is free to those who have not received a high school diploma and are between the ages of five and twenty-one.⁵⁷⁶ Furthermore, section 3202 of the NYEL governs the tuition costs of education applied to nonresident pupils, and mandates education for children cared for in free family homes and boarding homes, such as foster care.⁵⁷⁷

New York has multiple legal provisions to ensure that children of limited English proficiency be taught in their native language other than English. NYEL section 3204(2) provides that "[t]he

⁵⁶⁷ See *id.* § 3201-a.

⁵⁶⁸ See CRC, *supra* note 2, art. 6.

⁵⁶⁹ N.Y. EDUC. LAW § 1804.

⁵⁷⁰ *Id.*

⁵⁷¹ See generally CRC, *supra* note 2, art. 12.

⁵⁷² See N.Y. EDUC. LAW § 1804(12).

⁵⁷³ CRC, *supra* note 2, art. 4.

⁵⁷⁴ N.Y. STATE DIV. OF THE BUDGET, 2009-2010 EXECUTIVE BUDGET-BRIEFING BOOK, available at <http://publications.budget.state.ny.us/eBudget0910/fy0910littlebook/EducationSchoolAid.html>.

⁵⁷⁵ Press Release, N.Y. State Div. of the Budget, Governor Paterson's Executive Budget Eliminates Largest Deficit in State History, Reins in Spending (on file with author).

⁵⁷⁶ See N.Y. EDUC. LAW § 3202.

⁵⁷⁷ *Id.*

board of education of each school district . . . shall provide a program of bilingual education or English as a second language for eligible pupils[.]”⁵⁷⁸ Section 3204(4) provides specific criteria for school districts that have bilingual programs, requiring them to: “(a) provide content instruction for children of limited English proficiency using the child’s native language and English; (b) provide native language instruction; and (c) provide English as a second language instruction.”⁵⁷⁹ However, local school boards ultimately make the decision to adopt a bilingual education program, so if a child lives in a school district that does not have a bilingual program, that child may not be able to access these services. This scheme may not be in compliance with Articles 2⁵⁸⁰ or 28⁵⁸¹ of the CRC.

For children with special needs or in especially difficult circumstances, the NYEL has a separate title—Title VI—that governs the provision of special education services and special schools.⁵⁸² Article 89 of NYEL Title VI specifically covers children with handicapping conditions.⁵⁸³ Under Article 89, section 4402 requires school districts to identify, evaluate and place students with handicapping conditions in designated programs,⁵⁸⁴ and section 3209 provides special treatment for homeless children.⁵⁸⁵ There are also laws governing whether a child with handicapping conditions can go to schools outside their designated district if they are not receiving instruction.⁵⁸⁶ Article 85⁵⁸⁷ governs the instruction of the deaf and the blind while Articles 87⁵⁸⁸ and 88⁵⁸⁹ govern the New York State School for the Blind and the New York State School for the Deaf, respectively.

Article 61 sets forth the requirements for teachers as well as supervisory and administrative staff.⁵⁹⁰ Under Article 61, section

⁵⁷⁸ N.Y. EDUC. LAW § 3204(2).

⁵⁷⁹ *Id.*

⁵⁸⁰ CRC, *supra* note 2, art. 2 (mandating the provision of services to a child without discrimination of any kind, including, *inter alia*, discrimination based on national origin).

⁵⁸¹ CRC, *supra* note 2, art. 28 (recognizing a child’s right to education on the basis of equal opportunity).

⁵⁸² N.Y. EDUC. LAW tit. VI (“Special Schools and Instruction”).

⁵⁸³ *Id.* art. 89 (“Children with Handicapping Conditions”).

⁵⁸⁴ *Id.* § 4402.

⁵⁸⁵ *Id.* § 3209.

⁵⁸⁶ *Id.* § 4407.

⁵⁸⁷ *Id.* art. 85 (“Instruction of the Deaf and of the Blind”).

⁵⁸⁸ *Id.* art. 87 (“New York State School for the Blind”).

⁵⁸⁹ *Id.* art. 88 (“New York State School for the Deaf”).

⁵⁹⁰ *Id.* art. 61 (“Teachers and Supervisory and Administrative Staff”).

3001 provides that no one can teach in New York public schools if they are under the age of 18, are not in possession of a teacher's certificate, or are not a citizen or legal permanent resident.⁵⁹¹ Part 80 of the Regulations of the Commissioner of Education governs teacher certification, while section 100.2(o) of the Regulations governs performance reviews of teachers in New York schools.⁵⁹² The New York State's Education Department's ("NYSED") Office of Planning and Professional Development also has a professional development program to improve the quality of teaching in New York schools.⁵⁹³ The NYEL is silent on whether there is a preferred student-teacher ratio, or whether each school district is required to have a minimum number of teachers. According to the National Center for Education Statistics, a department within the federal Department of Education, the average student-teacher ratio for New York is 12.8:1.⁵⁹⁴ For the 2007–2008 school year, New York's public school system employed approximately 220,000 teachers and approximately 40,000 professional staff statewide.⁵⁹⁵

Since rates of illiteracy are not compiled, whether a child is proficient in English and reading based on statewide and national standards should suffice as standards for the country's reading level. According to the results of a standardized test administered by the National Assessment of Educational Progress ("NCES"), 69% of New York students in the fourth grade and 75% of students in the eighth grade were at or above a basic level of proficiency in reading.⁵⁹⁶ In order to be considered proficient in "English Language Arts," as a part of New York's compliance with the national "No Child Left Behind" legislation,⁵⁹⁷ students are required to

⁵⁹¹ *Id.* § 3001.

⁵⁹² N.Y. COMP. CODES R. & REGS. tit. 8, §§ 80, 100.2(o) (2009).

⁵⁹³ New York State Education Department, Teacher Quality and Professional Development, <http://www.emsc.nysed.gov/ppd/> (last visited Feb. 16, 2010).

⁵⁹⁴ National Center for Education Statistics, State Education Data Profiles, <http://nces.ed.gov/programs/stateprofiles/sresult.asp?mode=short&s1=36> (last visited Feb. 16, 2010).

⁵⁹⁵ New York State Education Department, Table 6—Professional Staff in Public Elementary and Secondary Schools, <http://www.emsc.nysed.gov/irts/statistics/public/table6.html> (last visited Feb. 16, 2010).

⁵⁹⁶ National Center for Education Statistics, State Education Data Profiles, <http://nces.ed.gov/programs/stateprofiles/sresult.asp?mode=full&displaycat=7&s1=36> (last visited Feb. 16, 2010). Among students in the fourth grade, 33% of students in New York schools were at or above proficiency in reading, and 8% were at or above an advanced level compared to the national average of 30% and 7%, respectively. *Id.* Among students in the eighth grade, 33% of students in New York schools were at or above proficiency in reading, and 3% were at or above an advanced level compared to the national averages of 29%, and 3%, respectively. *Id.*

⁵⁹⁷ No Child Left Behind Act of 2001, 20 U.S.C. § 6311 (2006).

score either in level 3 or 4.⁵⁹⁸ In 2007, New York students scoring in level 3 or 4 across the third through eighth grades, by racial/ethnic group, were: 75.6% Asian/Pacific Islander; 45.2% Black; 45.6% Latino/Hispanic; 50.8% Native American; and 75.4% White.⁵⁹⁹ For students with disabilities, those that scored in either level 3 or 4 were as follows: 28% of third graders with disabilities; 27.6% of fourth graders; 29.1% of fifth graders; 19.7% of sixth graders; 17.3% of seventh graders; and 15.6% of eighth graders.⁶⁰⁰ On average, across the third through eighth grades, female students scored in either level 3 or 4 in reading proficiency 67.5% of the time, while male students scored a 3 or 4 59.6% of the time.⁶⁰¹ This data indicates that a clear majority of students in the third through eighth grades in New York schools are proficient in basic English skills. While students scoring in levels 1 and 2 may not be illiterate, they do not have basic proficiency, which is the minimum goal set forth in Article 28 of the CRC.⁶⁰²

To provide early development and education services for young children, especially those from disadvantaged social groups, New York has a “Universal Prekindergarten Program” (“UPK”).⁶⁰³ UPK allows school districts to create pre-kindergarten programs for eligible children before they start attending regular elementary school.⁶⁰⁴ There is a funding approval process that each school district must go through each year if they are to receive funding.⁶⁰⁵ New York is also part of a nationwide initiative called “Reading First” which is “aimed at helping every child in every state become a successful reader by the end of third grade.”⁶⁰⁶ According to the New York State Education Department, “[f]ederal funds are specifically dedicated to helping states and local school districts establish high-quality, comprehensive reading instruction for all children in

⁵⁹⁸ Press Release, Press Conference Presentation of N.Y. State Educ. Dep’t Comm’r, 2007 Grade 3-8 English Test Results (May 22, 2007), *available at* <http://www.emsc.nysed.gov/irts/pressRelease/20070522/home.html>.

⁵⁹⁹ *Id.*

⁶⁰⁰ *Id.*

⁶⁰¹ *Id.*

⁶⁰² CRC, *supra* note 2, art. 28 (recognizing a child’s right to education on the basis of equal opportunity).

⁶⁰³ N.Y. EDUC. LAW 3602-e.

⁶⁰⁴ *Id.*

⁶⁰⁵ New York State Education Department, Statewide Prekindergarten Programs, <http://www.emsc.nysed.gov/upk/> (last visited Feb. 16, 2010).

⁶⁰⁶ N.Y. STATE EDUC. DEP’T, GUIDELINES FOR IMPLEMENTING READING FIRST WITH LIMITED ENGLISH PROFICIENT/ENGLISH LANGUAGE LEARNER (LEP/ELL) STUDENTS IN NEW YORK STATE 1 (2007), <http://www.emsc.nysed.gov/readfirst/documents/ell-lep-guidancefinalsept2007.pdf>.

kindergarten through third grade.”⁶⁰⁷ Furthermore, New York’s “Even Start” program “provide[s] intensive family literacy services that involve parents and children in a cooperative effort to help parents become full partners in the education of their children and assist children in reaching their full potential as learners.”⁶⁰⁸ This program is available to children from birth through seven years of age.⁶⁰⁹

All of New York’s education is supervised by the State Board of Regents.⁶¹⁰ “The Regents are responsible for the general supervision of all educational activities within the State, presiding over The University and the New York State Education Department [“NYSED”].”⁶¹¹ Below the Board of Regents is the Commissioner of Education, who “is the chief executive officer of the state system of education and of the Board of Regents.”⁶¹² “He [has] general supervision over all schools and institutions which are subject to the provisions of [the NYEL], or of any statute relating to education, and shall cause the same to be examined and inspected, and shall advise and guide the school officers of all districts and cities of the state in relation to their duties and the general management of the schools under their control.”⁶¹³ Section 101 of the NYEL created NYSED, which is responsible for “the general management and supervision of all public schools and all of the educational work of the state, including the operations of The University of the State of New York and the exercise of all the functions of the education department[.]”⁶¹⁴

There are numerous divisions within NYSED that oversee various areas of education in New York. For comparison with the CRC, the three most important divisions are the Office of Elementary, Middle, Secondary, and Continuing Education (“EMSC”), Office of Higher Education (“OHE”), and the Office of Vocational and Education Services for Individuals with Disabilities (“VESID”).⁶¹⁵ Within EMSC, there is the Office of State Assessment, which com-

⁶⁰⁷ *Id.*

⁶⁰⁸ New York State Education Department, Even Start, <http://www.emsc.nysed.gov/evenstart/> (last visited Feb. 16, 2010).

⁶⁰⁹ *Id.*

⁶¹⁰ N.Y. CONST. art. XI, § 2.

⁶¹¹ New York State Education Department, New York State Board of Regents, <http://www.regents.nysed.gov/> (last visited Feb. 16, 2010).

⁶¹² N.Y. EDUC. LAW § 305.

⁶¹³ *Id.*

⁶¹⁴ *Id.* § 101.

⁶¹⁵ New York State Education Department, Program Offices, <http://usny.nysed.gov/programs.html> (last visited Feb. 16, 2010).

piles education statistics for New York's public schools, and serves as an information and reporting service.⁶¹⁶ There are also certain requirements that each public school student must meet before they are allowed to graduate.⁶¹⁷ In order to graduate, New York administers the Regents' exams, which test a multitude of subjects from English and mathematics to social studies and science.⁶¹⁸ New York also issues School Report Cards that publish the tests scores of all students in a given school.⁶¹⁹ The School Report Cards are easily accessible to the public. Furthermore, NYSED sets the learning standards for all of New York's public school students.⁶²⁰

II. ARTICLE 28, PARAGRAPH 1 OF THE CONVENTION ON THE RIGHTS OF THE CHILD

Article 28, paragraph 1 of the CRC mandates that states parties shall "make primary education compulsory" as well as encourage and make accessible secondary education.⁶²¹ Compulsory education is guaranteed under New York's constitution⁶²² as well as under Article 65 of the NYEL.⁶²³ NYEL Section 3205(1)(a) sets forth a clear requirement for compulsory education: "[i]n each school district of the state, each minor from six to sixteen years of age shall attend upon full time instruction."⁶²⁴ Furthermore, Section 3205(1)(c) sets out when six-year-old children are to start school.⁶²⁵ Under section 3206, "[t]he board of education of a city or district shall have power to require each employed minor from sixteen to seventeen years of age to attend upon part time instruction[.]"⁶²⁶ Under section 3207:

[I]n each city and school district in which evening instruction is

⁶¹⁶ New York State Education Department, Office of State Assessment, <http://www.emsc.nysed.gov/osa/> (last visited Feb. 16, 2010); New York State Education Department, Information and Reporting Services, <http://www.emsc.nysed.gov/irts/> (last visited Feb. 16, 2010).

⁶¹⁷ N.Y. STATE EDUC. DEP'T, DIPLOMA REQUIREMENTS FOR STUDENTS ENTERING GRADE 9 (2007), http://www.emsc.nysed.gov/ciai/gradreq/GradReq3columnStyle7_1.pdf.

⁶¹⁸ *Id.*

⁶¹⁹ N.Y. STATE EDUC. DEP'T, NEW YORK STATE SCHOOL AND DISTRICT REPORT CARDS FOR SCHOOL YEAR 2006-2007, available at <https://www.nystart.gov/publicweb/Home.do?year=2007>.

⁶²⁰ New York State Education Department, Learning Standards for New York State, <http://www.emsc.nysed.gov/ciai/pub/standards.pdf> (last visited Feb. 16, 2010).

⁶²¹ CRC, *supra* note 2, art. 28, ¶ 1.

⁶²² N.Y. CONST. art XI, § 1.

⁶²³ N.Y. EDUC. LAW §§ 3201-3219.

⁶²⁴ *Id.* § 3205.

⁶²⁵ *Id.* § 3205(1)(c).

⁶²⁶ *Id.* § 3206.

provided, under the provisions of part one of this article, each person from seventeen to twenty-one years of age who is unable to speak, read and write English as required for the completion of the fifth year of the elementary school course of study, and who is not attending upon equivalent day instruction, shall attend upon such evening instruction.⁶²⁷

For the school year of 2007–2008, a total of 1,401,912 students were enrolled in grades Kindergarten through 6 (“K–6”) in New York’s public school system, while another 241,079 K–6 students were enrolled in non-public schools.⁶²⁸

To make higher education accessible to all students, NYEL section 351 establishes the state university system, and states that “[t]he mission of the state university system shall be to provide to the people of New York educational services of the highest quality, with the broadest possible access, fully representative of all segments of the population in a complete range of academic, professional and vocational postsecondary programs including such additional activities in pursuit of these objectives as are necessary or customary.”⁶²⁹ Article 13 of the NYEL sets forth various financial aid programs for higher education,⁶³⁰ and section 604 states that “[t]uition assistance program awards are available for all students who are enrolled in approved programs and who demonstrate the ability to complete such courses, in accordance with standards established by the commissioner.”⁶³¹ Furthermore, Articles 14 and 14-a of the NYEL establish other student financial aid programs for those students attending New York public universities.⁶³² The projected total number of students enrolled in New York’s public university system for the 2007–2008 school year was 1,193,144, with 959,683 of those students as undergraduates.⁶³³ This appears to be in compliance with the higher education provisions of CRC Article 28.⁶³⁴

To encourage regular attendance at school and to reduce

⁶²⁷ *Id.* § 3207.

⁶²⁸ New York State Education Department, Table 1–Elementary and Secondary Public and Non-Public School Enrollment, <http://www.emsc.nysed.gov/irts/statistics/public/table1.html> (last visited Feb. 16, 2010).

⁶²⁹ N.Y. EDUC. LAW § 351.

⁶³⁰ *Id.* art. 13 (“Higher Education Student Financial Aid Programs”).

⁶³¹ *Id.* § 604.

⁶³² N.Y. EDUC. LAW §§ 651-695.

⁶³³ N.Y. STATE EDUC. DEP’T, COLLEGE AND UNIVERSITY PRELIMINARY DEGREE-CREDIT ENROLLMENT 10 (2008), <http://www.highered.nysed.gov/oris/counts/prelim/08/rpt.pdf>.

⁶³⁴ CRC, *supra* note 2, art. 28.

drop-out rates, NYEL section 3210 requires a minor to “attend regularly as prescribed where he resides or is employed, for the entire time the appropriate public schools or classes are in session and shall be subordinate and orderly while so attending.”⁶³⁵ New York has an Attendance Improvement/Dropout Prevention (“AI/DP”) program, which “provides students identified as having attendance and academic problems with a variety of services including counseling, attendance outreach, alternative learning strategies and case management.”⁶³⁶ Subpart 149-2 of the Regulations of the Commissioner of Education, states:

Any school district with an attendance ratio in the year prior to the base year that is in the lowest 10 percent of such ratios for all districts and that has a full-time equivalent aggregate absence count of more than 461 students is required to set aside a portion of its comprehensive operating aid for attendance improvement and dropout prevention.⁶³⁷

Furthermore, section 3213 of the NYEL states:

To the end that children shall not suffer through unnecessary failure to attend school for any cause whatsoever, it shall be the duty of each attendance teacher and each attendance supervisor to secure for every child his right to educational opportunities which will enable him to develop his fullest potentialities for education, physical, social and spiritual growth as an individual and to provide for the school adjustment of any nonattendant child in cooperation with school authorities, special school services and community and social agencies.⁶³⁸

The New York State Report Card Comprehensive Information Report found that for the school year 2006–2007, 3.2% of New York’s high school students in public schools dropped out.⁶³⁹ Individual school district information is available on the NYSED website.⁶⁴⁰

III. ARTICLE 28, PARAGRAPH 2 OF THE CONVENTION ON THE RIGHTS OF THE CHILD

Article 28, paragraph 2 of the CRC requires States Parties to ensure that school discipline is administered in a manner consis-

⁶³⁵ N.Y. EDUC. LAW § 3210.

⁶³⁶ N.Y. COMP. CODES R. & REGS. tit. 8, § 149-2 (2009).

⁶³⁷ *Id.*

⁶³⁸ N.Y. EDUC. LAW § 3213.

⁶³⁹ N.Y. STATE EDUC. DEP’T, THE NEW YORK STATE REPORT CARD: COMPREHENSIVE INFORMATION REPORT 2006–2007 7 (2007), <https://www.nystart.gov/publicweb-external/2007statewideCIR.pdf>.

⁶⁴⁰ See DIPLOMA REQUIREMENTS FOR STUDENTS ENTERING GRADE 9, *supra* note 617.

tent with the child's human dignity.⁶⁴¹ NYEL section 2801 requires all school districts to "adopt and amend, as appropriate, a code of conduct for the maintenance of order on school property, including a school function, which shall govern the conduct of students, teachers and other school personnel as well as visitors and shall provide for the enforcement thereof."⁶⁴² Every school district under section 2801-a also must "adopt and amend a comprehensive district-wide school safety plan and building-level school safety plans regarding crisis intervention, emergency response and management[.]"⁶⁴³ The NYEL also has a "uniform violent incident reporting system [which requires] public school districts . . . to annually report [offenses] to the commissioner in a form and by a date prescribed by the commissioner."⁶⁴⁴ Furthermore, under section 2814, "[w]ithin amounts appropriated for implementation of extended day programs and school violence prevention programs, the commissioner is . . . authorized and directed to award grants on a competitive basis to school districts."⁶⁴⁵ Section 3214(2) allows "school authorities of any city or school district [to] establish schools or set apart rooms in public school buildings for the instruction of school delinquents, and fix the number of days per week and the hours per day of required attendance, which shall not be less than is required of minors attending the full time day schools."⁶⁴⁶ It is unclear under the NYEL whether New York would be in compliance with CRC Articles 19⁶⁴⁷ and 37(a),⁶⁴⁸ which protect the child from any sort of violence or corporal punishment.

To monitor school discipline, section 3214(3)(a) of the NYEL allows "the board of education, board of trustees or sole trustee, the superintendent of schools, district superintendent of schools or principal of a school [to] suspend the following pupils from required attendance upon instruction: A pupil who is insubordinate or disorderly or violent or disruptive, or whose conduct otherwise endangers the safety, morals, health or welfare of others."⁶⁴⁹ In order to respect the views of the child as required under CRC Article 12, under section 3214(3)(b)(1), if the suspended pupil is suspended for more than five school days:

⁶⁴¹ CRC, *supra* note 2, art. 28, ¶ 2.

⁶⁴² N.Y. EDUC. LAW § 2801.

⁶⁴³ *Id.* § 2801-a.

⁶⁴⁴ *Id.* § 2802.

⁶⁴⁵ *Id.* § 2814.

⁶⁴⁶ *Id.* § 3214 .

⁶⁴⁷ CRC, *supra* note 2, art. 19.

⁶⁴⁸ CRC, *supra* note 2, art. 37(a).

⁶⁴⁹ N.Y. EDUC. LAW § 3214(3)(a).

the suspending authority shall provide the pupil with notice of the charged misconduct. If the pupil denies the misconduct, the suspending authority shall provide an explanation of the basis for the suspension. The pupil and the person in parental relation to the pupil shall, on request, be given an opportunity for an informal conference with the principal at which the pupil and/or person in parental relation shall be authorized to present the pupil's version of the event and to ask questions of the complaining witnesses.⁶⁵⁰

Effective June 30, 2009, under section 3214(3)(c)(1) of the NYEL:

[n]o pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his behalf.⁶⁵¹

It is unclear whether these rules apply to non-public schools and whether corporal punishment is completely banned on school grounds. To further monitor school violence, “[t]he [NYSED] Uniform Violent and Disruptive Incident Reporting System (“VADIR”) gathers data on violent and disruptive incidents in schools and uses the information to comply with State and federal reporting requirements and to identify schools as persistently dangerous[.]”⁶⁵²

IV. ARTICLE 28, PARAGRAPH 3

Article 38, paragraph 3 of the CRC requires states parties to “promote and encourage international co-operation in matters relating to education.”⁶⁵³ Its emphasis lies with eradicating “ignorance and illiteracy throughout the world” and promoting advancement in scientific and technical knowledge, as well as modern teaching, especially in developing countries.⁶⁵⁴ It is unclear, however, whether New York has adopted any measures to promote or encourage international cooperation in matters relating to education. Given the NYSED’s focus on education in New York, efforts

⁶⁵⁰ *Id.* § 3214(3)(b)(1).

⁶⁵¹ *Id.* § 3214(3)(c)(1).

⁶⁵² New York State Education Department, Directions for Completing the Summary of Violent and Disruptive Incidents Form (VADIR Summary Form) 2007-08, <http://www.emsc.nysed.gov/irts/vadir/2008/Directions-for-CompletingSummaryForm.pdf> (last visited Feb. 16, 2010).

⁶⁵³ CRC, *supra* note 2, art. 28, ¶ 3.

⁶⁵⁴ *Id.*

to improve international cooperation in education would fall within the purview of the federal government.

V. COMPLIANCE AND DISCREPANCIES BETWEEN THE
NYEL AND THE CRC

New York guarantees the right to a free, compulsory education to children between the ages of five and twenty-one years old.⁶⁵⁵ While children between the ages of six and sixteen are required to attend school by law,⁶⁵⁶ access to public school education is given to a wider age group. The NYEL also protects students from discrimination based on gender, race, creed, color, or national origin⁶⁵⁷ as required by CRC Article 2. While there is no specific provision in the NYEL protecting a child from discrimination based on special needs or for those in difficult circumstances, the NYEL does protect the right of a child with a handicapping condition to education by requiring school districts to provide educational services to those students, as well as children who are homeless.⁶⁵⁸ The NYEL also grants the child a right to be heard in certain disciplinary proceedings as well as on their respective local school district's board of education⁶⁵⁹ as required under CRC Article 4, but these circumstances are limited and may not be fully in compliance with the CRC.

The three major areas where New York may not be in full compliance with the CRC are with regards to Articles 3,⁶⁶⁰ 4,⁶⁶¹ 19,⁶⁶² and 37(a)⁶⁶³ of the CRC. It is unclear whether the best interests of the child are considered in New York's provision of educational services to the extent required by CRC Article 3. It is further unclear whether New York uses its available resources other than money, to the maximum extent, as required by CRC Article 4. It is also unclear whether New York has provisions that protect the child from all forms of corporal punishment as required by CRC Articles 19 and 37(a).

⁶⁵⁵ N.Y. CONST. art. XI, § 1.

⁶⁵⁶ N.Y. EDUC. LAW § 3201.

⁶⁵⁷ *Id.*

⁶⁵⁸ *Id.* art. 89.

⁶⁵⁹ *Id.* § 1804.

⁶⁶⁰ CRC, *supra* note 2, art. 3 (mandating that the best interests of the child be taken into account in the provision of all services).

⁶⁶¹ *Id.* art. 4 (requiring States Parties to use all available resources to implement the rights given to the child under the CRC).

⁶⁶² *Id.* art. 19 (prohibiting all forms of abuse, injury, and neglect against a child).

⁶⁶³ *Id.* art. 37(a) (prohibiting torture, or cruel, inhuman, or degrading treatment or punishment).

While New York appears to be in overall compliance with CRC Article 28, there are areas of the NYEL—such as discrepancies in academic success based on students' race or ethnicity, student-teacher ratios, and unequal funding of school districts—that would raise concerns about compliance with the CRC mandates.

Section Eight: Services Available in New York to Aid in the Physical and Psychological Recovery of Former Child Soldiers

*by Jessica M. Vaughn*⁶⁶⁴

Human Rights Watch estimates that “some 300,000 child soldiers are actively being used in direct conflict in more than thirty countries around the world.”⁶⁶⁵ Children are easily manipulated and often coerced into committing grave atrocities, including the rape and murder of civilians and even family members.⁶⁶⁶ These child soldiers arrive in the United States as asylum seekers; however, because of federal immigration provisions intended to bar their victimizers,⁶⁶⁷ these children are at risk of being foreclosed from services designed to address the special physical and psychological needs that arise as a result to their traumatic experiences.⁶⁶⁸

The Convention on the Rights of the Child (“CRC”) and the subsequent Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (“OPAC”) include several provisions designed to facilitate the phys-

⁶⁶⁴ J.D. Candidate, Albany Law School, 2009; State University of New York, Potsdam, B.A. 2001.

⁶⁶⁵ Letter to J. Wells Dixon, Esq., Advisory Opinion From the Office of the United Nations High Commissioner for Refugees (UNHCR) Regarding the International Standards for Exclusion from Refugee Status as Applied to Child Soldiers (Sept. 12, 2005), *available at* <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=440eda694> [hereinafter *Advisory Opinion Regarding Standards for Exclusion of Child Soldiers from Refugee Status*].

⁶⁶⁶ See Amnesty International USA, *About Child Soldiers*, <http://www.amnestyusa.org/children/child-soldiers/about-child-soldiers/page.do?id=1021176> (last visited Mar. 29, 2010).

⁶⁶⁷ Immigration and Nationality Act, 8 U.S.C. § 1158 (b)(2)(A)(i) (2006).

⁶⁶⁸ AMERICAN CIVIL LIBERTIES UNION, *SOLDIERS OF MISFORTUNE: ABUSIVE U.S. MILITARY RECRUITMENT AND FAILURE TO PROTECT CHILD SOLDIERS 2* (2008), http://www.aclu.org/files/pdfs/humanrights/crc_report_20080513.pdf.