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.

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by Matthew P. Miller

Article 28 of the CRC recognizes a child’s right of access to education. 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.” 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. 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, for example, are NYEL sections 3201 and 3201-a. 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.” Section 3201-a protects a child’s right to not be discriminated against

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561 See generally CRC, supra note 2, art. 28.
562 N.Y. CONST. art. XI, § 1.
564 See generally CRC, supra note 2, art. 2.
565 N.Y. EDUC. LAW § 3201.
566 Id.
on the basis of sex. 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. 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. 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. While CRC Article 12 recognizes a child’s right to be heard, and a similar provision exists in NYEL section 1804(12), 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[.]” 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. This drop in resources is directly related to New York’s current $13.7 billion deficit.

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. 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.

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.
576 See N.Y. EDUC. LAW § 3202.
577 Id.
board of education of each school district . . . shall provide a pro-
gram of bilingual education or English as a second language for eli-
gible 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) pro-
vide native language instruction; and (c) provide English as a sec-
ond language instruction.”579 However, local school boards
ultimately make the decision to adopt a bilingual education pro-
gram, 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 ser-
vices. This scheme may not be in compliance with Articles 2580 or
28581 of the CRC.

For children with special needs or in especially difficult cir-
cumstances, 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 handi-
capping conditions.583 Under Article 89, section 4402 requires
school districts to identify, evaluate and place students with handi-
capping 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 receiv-
ing 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.\footnote{Id. § 3001.} 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.\footnote{N.Y. COMP. CODES R. & REGS. tit. 8, §§ 80, 100.2(o) (2009).} 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.\footnote{New York State Education Department, Teacher Quality and Professional Development, http://www.emsc.nysed.gov/ppd/ (last visited Feb. 16, 2010).} 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.\footnote{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).} For the 2007–2008 school year, New York’s public school system employed approximately 220,000 teachers and approximately 40,000 professional staff statewide.\footnote{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).}

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.\footnote{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. \textit{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. \textit{Id.}} 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,\footnote{No Child Left Behind Act of 2001, 20 U.S.C. § 6311 (2006).} students are required to 

\footnote{\textit{Id.} § 3001.}
\footnote{N.Y. COMP. CODES R. & REGS. tit. 8, §§ 80, 100.2(o) (2009).}
\footnote{New York State Education Department, Teacher Quality and Professional Development, http://www.emsc.nysed.gov/ppd/ (last visited Feb. 16, 2010).}
\footnote{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. \textit{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. \textit{Id.}}
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

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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.
kindergarten through third grade.”

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.” This program is available to children from birth through seven years of age.

All of New York’s education is supervised by the State Board of Regents. “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”].” 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.” “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.” 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[].”

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”). Within EMSC, there is the Office of State Assessment, which com-

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607 Id.


609 Id.

610 N.Y. CONST. art. XI, § 2.


612 N.Y. EDUC. LAW § 305.

613 Id.

614 Id. § 101.

piles education statistics for New York’s public schools, and serves as an information and reporting service.\textsuperscript{616} There are also certain requirements that each public school student must meet before they are allowed to graduate.\textsuperscript{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.\textsuperscript{618} New York also issues School Report Cards that publish the tests scores of all students in a given school.\textsuperscript{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.\textsuperscript{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.\textsuperscript{621} Compulsory education is guaranteed under New York’s constitution\textsuperscript{622} as well as under Article 65 of the NYEL.\textsuperscript{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.”\textsuperscript{624} Furthermore, Section 3205(1)(c) sets out when six-year-old children are to start school.\textsuperscript{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[.]”\textsuperscript{626} Under section 3207:

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


\textsuperscript{618} Id.


\textsuperscript{621} CRC, supra note 2, art. 28, ¶ 1.

\textsuperscript{622} N.Y. CONST. art XI, § 1.

\textsuperscript{623} N.Y. EDUC. LAW §§ 3201-3219.

\textsuperscript{624} Id. § 3205.

\textsuperscript{625} Id. § 3205(1)(c).

\textsuperscript{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

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\(^{627}\) Id. § 3207.


\(^{629}\) N.Y. EDUC. LAW § 351.

\(^{630}\) Id. art. 15 (“Higher Education Student Financial Aid Programs”).

\(^{631}\) Id. § 604.

\(^{632}\) N.Y. EDUC. LAW §§ 651-695.


\(^{634}\) 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.
637 Id.
638 N.Y. Educ. Law § 3213.
640 See Diploma Requirements for Students Entering Grade 9, supra note 617.
tent with the child’s human dignity. 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.”

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[].” 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.” 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.” 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.” It is unclear under the NYEL whether New York would be in compliance with CRC Articles 19 and 37(a), 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.” 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).
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).
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

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.” Children are easily manipulated and often coerced into committing grave atrocities, including the rape and murder of civilians and even family members. These child soldiers arrive in the United States as asylum seekers; however, because of federal immigration provisions intended to bar their victimizers, 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.

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-