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

Decided and Entered: June 27, 2024 CV-23-0756

In the Matter of PARENTS FOR EDUCATIONAL AND RELIGIOUS LIBERTY IN SCHOOLS et al.,
Respondents,
v OPINION AND ORDER

LESTER YOUNG JR., as Chancellor of the Board of Regents, et al.,
Appellants.

Calendar Date: March 28, 2024

Before: Garry, P.J., Egan Jr., Fisher, McShan and Powers, JJ.

Letitia James, Attorney General, Albany (*Beezly J. Kiernan* of counsel), for appellants.

Troutman Pepper Hamilton Sanders LLP, New York City (*Avi Schick* of counsel), for respondents.

Christopher Hazen, Staten Island, for Young Advocates for Fair Education Inc., amicus curiae.

Pepperdine Caruso School of Law, Malibu, California (*Michael A. Helfand* of counsel), for Union of Orthodox Jewish Congregation of America and others, amici curiae.

Dennis Rapps, New York City, for Bobover Yeshiva Bnei Zion, amicus curiae.

Bienstock PLLC, New York City (*Martin Bienstock* of counsel), for Educational Institute Oholei Torah and others, amici curiae.

Garry, P.J.

Appeal from a judgment of the Supreme Court (Christina L. Ryba, J.), entered March 27, 2023 in Albany County, which, among other things, partially granted petitioners' application, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, to declare invalid certain regulations promulgated by respondent Commissioner of Education.

The compulsory education law (Education Law art 65, part I) of this state requires parents and those in a similar custodial role to ensure that children between the ages of 6 and 16 attend "full time instruction" (Education Law § 3205 [1] [a]; *see* Education Law § 3212 [2] [b]), for the purpose of ensuring "that children are not left in ignorance, that from some source they will receive instruction that will fit them for their place in society" (*Matter of Andrew TT.*, 122 AD2d 362, 364 [3d Dept 1986] [internal quotation marks and citation omitted]). This instruction may occur "at a public school or elsewhere" (Education Law § 3204 [1]). However, if the student receives instruction "elsewhere than at a public school" it must "be at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides" (Education Law § 3204 [2]).

Local public school officials are largely responsible for determining whether nonpublic schools within their boundaries are providing substantially equivalent instruction to their students (*see* Education Law §§ 2 [12]; 3204 [2] [i]; 3205, 3210 [2]). In 2018, the Education Law was amended to, among other things, set forth criteria for assessing the substantial equivalence of instruction at certain nonpublic schools, and to empower respondent Commissioner of Education to make substantial equivalency determinations for them (*see* Education Law § 3204 [2] [ii]-[v], as added by L 2018, ch 59, part SSS, § 1).[1] Following unsuccessful efforts that included an attempt to issue

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[1] The schools subject to the 2018 amendments are "nonpublic elementary and middle schools that are: (1) non-profit corporations, (2) have a bi-lingual program, and (3) have an educational program that extends from no later than nine a.m. until no earlier

guidelines for assessing substantial equivalency that was invalidated as violative of the State Administrative Procedure Act (*see Matter of New York State Assn. of Ind. Schs. v Elia*, 65 Misc 3d 824, 830 [Sup Ct, Albany County 2019]), the Commissioner ultimately promulgated regulations governing substantial equivalency determinations that took effect in September 2022. The regulations establish multiple routes by which a nonpublic school may be deemed to provide a substantially equivalent education to its students; most of these involve a local school district finding, subject to the Commissioner's review, that the nonpublic school had used state-approved assessments or had obtained one of several forms of accreditation or approval from various governmental or outside educational entities (*see* 8 NYCRR 130.3). For nonpublic schools outside of those categories, local school officials conduct a substantial equivalency review and either render a substantial equivalency determination or, if the nonpublic schools fall under the 2018 amendments, forward the matter to the Commissioner with a recommendation for a determination (*see* 8 NYCRR 130.2).

Where this review by local school officials or the Commissioner results in a preliminary finding that a nonpublic school is failing to offer substantially equivalent education, local school officials collaborate with the nonpublic school to develop a plan for attaining substantial equivalency within a reasonable period of time (*see* 8 NYCRR 130.6, 130.8). However, in the event of a final determination that a nonpublic school is not providing substantially equivalent instruction, the regulations state that the school "shall no longer be deemed a school which provides compulsory education fulfilling the requirements of" the Education Law (8 NYCRR 130.6 [c] [2] [i]; 130.8 [d] [7] [i]). Parents of students at such school are then obliged "to enroll their children in a different appropriate educational setting, consistent with Education Law § 3204" within a reasonable time period (8 NYCRR 130.6 [c] [2] [ii]; 130.8 [d] [7] [ii]), and "[l]egally required services to the nonpublic school and students" will be discontinued (8 NYCRR 130.6 [c] [2] [iv]; 130.8 [d] [7] [iii]).

In October 2022, petitioners, five yeshivas that are subject to the 2018 amendments (hereinafter collectively referred to as the petitioner yeshivas) and three organizations representing yeshivas and parents of their students (hereinafter collectively referred to as the petitioner organizations), commenced this combined CPLR article 78 proceeding and declaratory judgment action challenging the validity of 8 NYCRR part

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than four p.m. for grades one through three, and no earlier than five thirty p.m. for grades four through eight, on the majority of weekdays" (Education Law § 3204 [2] [iii]).

130.[2] As relevant here, respondents answered and moved to dismiss the petition/complaint upon the grounds that petitioners lacked standing and that, in any event, they had failed to state a cause of action. Supreme Court ultimately issued a judgment in which it, among other things, dismissed the bulk of the petition/complaint for failure to state a claim and declared all of 8 NYCRR part 130 to be valid with the exception of two provisions, 8 NYCRR 130.6 (c) (2) (i) and 130.8 (d) (7) (i). Supreme Court declared those provisions to be invalid on the basis that the Commissioner lacked statutory authority to directly penalize a nonpublic school or order its closure upon a finding that it did not provide substantially equivalent instruction. Respondents appeal.

At the outset, we reject respondents' contention that petitioners lacked standing to sue. Respondents having raised the issue, petitioners bore "the burden of demonstrating an injury in fact and that the alleged injury falls within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the government has acted in order to have standing to challenge that action" (*Matter of Stevens v New York State Div. of Criminal Justice Servs.*, 40 NY3d 505, 515 [2023] [internal quotation marks, brackets and citations omitted]; *see Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 775 [1991]; *Matter of Clean Air Coalition of W. N.Y., Inc. v New York State Pub. Serv. Commn.*, 226 AD3d 108, 114-115 [3d Dept 2024]). Respondents assert that petitioners failed to satisfy the requirement of an injury in fact by demonstrating that they had "an actual legal stake in the matter being adjudicated and ha[d] suffered a cognizable harm that is not tenuous, ephemeral, or conjectural but is sufficiently concrete and particularized to warrant judicial intervention" (*Matter of Mental Hygiene Legal Serv. v Daniels*, 33 NY3d 44, 50 [2019] [internal quotation marks and citations omitted]; *see Matter of Friends of the Shawangunks v Town of Gardiner Planning Bd.*, 224 AD3d 961, 963 [3d Dept 2024]).

It is undisputed that the petitioner yeshivas will be directly subject to the regulations. The petitioner organizations represent both yeshivas in that position and the parents of yeshiva students who have an obvious interest in the education of their children. Although we recognize that to date no negative substantial equivalency determination has been rendered, we do not find the possibility that such will occur to be unduly speculative. A local school district has sought to conduct additional review to ensure that one of the petitioner yeshivas is providing instruction in compliance with the

[2] A yeshiva is defined, in relevant part, as "a Jewish day school providing secular and religious instruction" (Merriam-Webster.com Dictionary, yeshiva [https://www.merriam-webster.com/dictionary/yeshiva]).

regulations. Petitioners also provided evidence suggesting that, although in the abstract the curricula at the petitioner yeshivas align with accepted educational standards, the regulations will compel changes to render their curricula "substantially equivalent" to that available in public education; they assert that this will interfere with the religious instruction at the core of a yeshiva's mission. "A fundamental tenet of our system of remedies is that when a government agency seeks to act in a manner adversely affecting a party, judicial review of that action may be had," and the foregoing satisfies us that at least some petitioners have alleged that they are reasonably certain to suffer imminent harm from the regulations so as to afford standing to sue (*Matter of Dairylea Coop. v Walkley*, 38 NY2d 6, 10 [1975]; *see Matter of Lawyers for Children v New York State Off. of Children & Family Servs.*, 218 AD3d 913, 915 [3d Dept 2023]; *Police Benevolent Assn. of N.Y. State Troopers, Inc. v Division of N.Y. State Police*, 29 AD3d 68, 70 [3d Dept 2006]).

Turning to the merits, this case tests the ability of the Commissioner to enforce the minimal standards of our Education Law – that is, to ensure that the children of our State receive a sound basic education, as the law mandates (Education Law §§ 3205 [a]; 3212 [2] [b]). Our State most clearly supports the discretion of parents and guardians in choosing the most appropriate educational setting for the children under their care, including the incorporation of local community values, culture and identity. The compulsory education requirement neither circumvents nor thwarts that discretion. However, the Education Law does balance this parental discretion with a child's right to a sound basic education, as necessary to ensure their ability to meaningfully participate in society and government, a goal that "is of paramount State concern" (*Matter of Andrew TT.*, 122 AD2d at 364; *see generally Campaign for Fiscal Equity v State of New York*, 100 NY2d 893, 905 [2003]; *Maisto v State of New York*, 196 AD3d 104, 111 [3d Dept 2021]).

It is to this end that the Education Law provides that the compulsory education requirement may be fulfilled by attendance at a nonpublic school only when that school provides instruction "substantially equivalent" to that offered in the local school district (Education Law § 3204 [2] [i]), and charges the Commissioner with the supervision of the enforcement of this standard (*see* Education Law § 3234 [1]). The 2018 amendments to Education Law § 3204 (2) (*see* L 2018, ch 59, part SSS) set forth the criteria by which nonpublic schools are to be evaluated for their compliance with the substantial equivalency requirement and transferred the authority to initially review "the entirety of the curriculum" of certain schools from local school authorities directly to the State Education Department (Education Law § 3204 [2] [ii]), expressly providing that "[t]he

[C]ommissioner shall be the entity that determines whether nonpublic elementary and secondary schools are in compliance" with the statute (Education Law § 3204 [2] [v]).[3]

The regulation provisions at issue here simply provide, in identical language, that upon a final negative substantial equivalency determination, "the nonpublic school shall no longer be deemed a school which provides compulsory education fulfilling the requirements . . . of the Education Law" (8 NYCRR 130.6 [c] [2] [i]; 130.8 [d] [7] [i]). These provisions are thus a direct, measured exercise of the Commissioner's vested authority to determine whether a nonpublic school is in compliance with the substantial equivalency requirement, and to supervise the enforcement of this standard. The regulations "merely fill in the details of broad legislation describing the over-all policies to be implemented" (*Boreali v Axelrod*, 71 NY2d 1, 13 [1987]; *see Matter of Juarez v New York State Off. of Victim Servs.*, 36 NY3d 485, 491-492 [2021]) – that is, that only nonpublic schools that provide substantially equivalent instruction may retain their status. As the provisions at issue are authorized by the Education Law and are meaningfully designed to meet the statutory mandate, we find that Supreme Court improperly invalidated these two provisions, and that the Commissioner's ability to enforce the statutory directives must be upheld (*see Garcia v New York City Dept. of Health & Mental Hygiene*, 31 NY3d 601, 608-609 [2018]; *Matter of LeadingAge N.Y., Inc. v Shah*, 153 AD3d 10, 21-22 [3d Dept 2017], *affd* 32 NY3d 249 [2018]).

Petitioners contend that the subject regulation provisions impose a penalty upon nonpublic schools that fail to meet the statute's educational standard, an argument accepted by the dissent – but "penalty" is not an accurate characterization. First, prior to any negative substantial equivalency determination, nonpublic schools under review are engaged in a lengthy collaborative process, specifically designed to assist them in meeting the basic educational standards set forth within the Education Law (*see* 8 NYCRR 130.6 [a] [1] [iii]; 130.8 [d] [2]). To be sure, the Commissioner is statutorily authorized to impose civil and criminal penalties against a parent or guardian who fails to fulfill their duty under the compulsory education requirement (*see* Education Law §§ 3233, 3234), and to withhold certain public moneys from any city or district that

[3] The Commissioner is further empowered to "execute all educational policies determined upon by the [B]oard of [R]egents" (Education Law § 305 [1]), which itself is tasked with "establish[ing] rules for carrying into effect the laws and policies of the state . . . relating to education" (Education Law § 207). The Commissioner is also responsible for providing guidance to school officers with respect to their duties under the Education Law (*see* Education Law § 305 [2]).

"wil[l]fully omits and refuses to enforce" relevant statutory provisions (Education Law § 3234 [1]). The Education Law does not provide for any direct penalty upon nonpublic schools.

However, a declaration that a school does not meet the required standards is simply that; although the loss of status as a substantially equivalent nonpublic school is a serious consequence, it is merely, or no more than, the logical result of such a determination. By definition, a nonpublic school that fails to demonstrate substantial equivalency necessarily fails to fulfill the requirements of the compulsory education mandate (*see generally Matter of Spence v State Univ. of N.Y.*, 195 AD3d 1270, 1273-1274 [3d Dept 2021]). Parents are obligated to comply with this mandate and, as such, the Commissioner's declaration that a particular institution fails to meet the statutory standards required to meet that duty is no more, or less, than a necessary advisory to parents.

Further, contrary to petitioners' assertion, the loss of status as a substantially equivalent nonpublic school is not equivalent to closure; the institutions may in fact continue to operate and provide some form of instruction. Contrary to the concerns raised in the dissent, the Education Law, and the corresponding regulations, do not limit the parents' opportunity to enroll their children in any extracurricular instruction or activities that they deem appropriate and helpful, and nothing in the regulations prohibits the children from being enrolled in such institutions – the sole limitation is that the statutory mandate must be met (*see* 8 NYCRR 130.6 [c] [2] [i]; 130.8 [d] [7] [i]). In this regard, it bears clearly stating that the Commissioner's authority to determine the substantial equivalency of nonpublic schools at issue here is limited in application to those nonpublic schools that have lengthy enrollment periods, encompassing a full school day on the majority of school days (*see* Education Law § 3204 [2] [ii] [3]). The flaw in the reasoning of the dissent arises from a failure to consider these time limitations. A child attending an institution for a full, lengthy school day period who is not receiving or obtaining a substantially equivalent education in the basics of arithmetic, English, science and history (*see* Education Law § 3204 [2] [ii]) cannot adequately supplement this substandard curriculum in the few hours remaining in the week.

In sum, parents and guardians have a duty under the Education Law to ensure that the children in their care attend proper educational instruction (*see* Education Law § 3212 [2] [b]). Parents and guardians cannot discharge their statutory duty by relying upon a nonpublic school that fails to meet the minimal standards of our state law, and the regulations at issue here are the direct application of the Commissioner's statutory

authority to enforce compliance with that standard. We accordingly modify Supreme Court's judgment, finding the remaining portions of the regulations to be validly enacted.

Fisher, McShan and Powers, JJ., concur.

Egan Jr., J. (dissenting).

Because I believe that the portions of the regulations invalidated by Supreme Court – namely, the provisions that a nonpublic school found wanting following a review of its curriculum "shall no longer be deemed a school which provides compulsory education fulfilling the requirements of" the Education Law, triggering certain consequences for the school and the parents of its students (8 NYCRR 130.6 [c] [2] [i]; 130.8 [d] [7] [i]) – were without statutory authorization, I respectfully dissent from the majority's conclusion to the contrary and would affirm the judgment of Supreme Court in its entirety.

Attendance at a nonpublic school by itself will only satisfy the compulsory education requirements of the Education Law if the school provides instruction "substantially equivalent" to that on offer in the local school district (Education Law § 3204 [2] [i]). That said, the Education Law imposes the duty to "cause [a student] to attend [that] instruction" upon the student's parent or one in a similar position, not the school that the student attends (Education Law § 3212 [2] [b]; *see* Education Law § 3212 [2] [d]). The Education Law further fails to provide for any remedy against a school that does not provide a substantially equivalent education, instead authorizing civil and criminal penalties against the parent of a student or someone in a similar position who fails to facilitate the student's education (*see* Education Law § 3233) and empowering respondent Commissioner of Education to withhold public monies from a local school district that "willfully omits and refuses to enforce the" compulsory education provisions of the Education Law (Education Law § 3234 [1]). "It is a canon of statutory interpretation that a court cannot by implication supply in a statute a provision that it is reasonable to suppose the Legislature intended to omit," and, in view of the Legislature's failure to provide remedies against nonpublic schools when it amended the Education Law to alter the process for determining the adequacy of their curriculum, it is improper for a court to imply the existence of such remedies (*Matter of Matzell v Annucci*, 183 AD3d 1, 6 [3d Dept 2020]; *see* McKinney's Cons Laws of NY, Book 1, Statutes § 74; *People v Finnegan*, 85 NY2d 53, 58 [1995], *cert denied* 516 US 919 [1995]).

Also absent from the Education Law is any indication that the Legislature intended to restrict where or how the duty of parents and similarly situated individuals to secure a substantially equivalent education for children could be fulfilled. To the contrary, the law explicitly permits such education to occur "at a public school or elsewhere" without limitation (Education Law § 3204 [1]), so long as a parent or similarly situated individual can demonstrate that a child "who is not attending upon instruction at a public or parochial school . . . is attending upon required instruction elsewhere" (Education Law § 3212 [2] [d]). Affording the term "elsewhere" its broad and ordinarily accepted meaning of "in or to another place" (Merriam-Webster.com Dictionary, elsewhere [https://www.merriam-webster.com/dictionary/elsewhere]; *see Gevorkyan v Judelson*, 29 NY3d 452, 459 [2017]) – and noting that other provisions of the Education Law contemplate that "elsewhere" may include "non-public schools or in home instruction" (Education Law § 3205 [2] [c] [ii]; *see also* Education Law § 3602 [1] [n]) – I have no difficulty concluding that the statutory framework affords parents and similarly situated individuals wide discretion in fashioning an acceptable program of instruction, be it in a nonpublic school, homeschooling or a mixture of the two, that fulfills their duty of providing an education to children under their care that is substantially equivalent to that available in public schools (*see e.g. Matter of Franz*, 55 AD2d 424, 427 [2d Dept 1977]; *People v Turner*, 277 App Div 317, 319 [4th Dept 1950]).[1] Indeed, to read the Education Law as restricting that parental discretion may well raise constitutional concerns given the "liberty of parents and guardians to direct the upbringing and education of children under their control" so long as the children receive an appropriate education (*Pierce v Society of the Sisters of the Holy Names of Jesus and Mary*, 268 US 510, 534-535 [1925]; *see Meyer v Nebraska*, 262 US 390, 400 [1923]; *Zorach v Clausen*, 303 NY 161, 173 [1951]; *Packer Collegiate Inst. v University of State of N.Y.*, 298 NY 184, 192 [1948]). I will therefore construe the Education Law "in a way that avoids placing its

[1] Respondents' complaint that the Education Law implicitly forbids parents or similarly situated individuals from employing a mixture of those educational options to fulfill their duty of providing a proper education to children is particularly dubious given that the Commissioner's own regulations contemplate that homeschooling may include "[i]nstruction . . . at a site other than the primary residence of the parents" (8 NYCRR 100.10 [f] [5]), while the State Education Department advises that students receiving homeschooling may be "instructed in a group situation for particular subjects" so long as such does not form the majority of their schooling (New York State Education Department, Home Instruction Questions and Answers, *available at* https://www.nysed.gov/nonpublic-schools/home-instruction-questions-and-answers [last accessed May 2, 2024]).

constitutionality in doubt" (*People v Viviani*, 36 NY3d 564, 579 [2021]; *see Matter of Lorie C.*, 49 NY2d 161, 171 [1980]).

With those observations in mind, an agency is "possessed of only those powers expressly delegated by the Legislature, together with those powers required by necessary implication," and even a grant of "broad rule-making authority" will not permit the agency to " 'promulgate rules in contravention of the will of the Legislature' " (*Matter of Beer Garden, Inc. v New York State Liq. Auth.*, 79 NY2d 266, 276 [1992], quoting *Finger Lakes Racing Assn. v New York State Racing & Wagering Bd.*, 45 NY2d 471, 480 [1978]; *see Matter of Sullivan Fin. Group, Inc. v Wrynn*, 94 AD3d 90, 93 [3d Dept 2012]). The regulations at issue direct that a nonpublic school "shall no longer be deemed a school which provides compulsory education fulfilling the requirements of" the Education Law following a determination that the school does not provide the substantial equivalent of instruction available at a public school (8 NYCRR 130.6 [c] [2] [i]; 130.8 [d] [7] [i]), resulting in parents or similarly situated individuals being forced to "enroll their children in a different appropriate educational setting" under threat of civil and criminal penalties and the termination of legally required services for the nonpublic school and its students (8 NYCRR 130.6 [c] [2] [ii]; 130.8 [d] [7] [ii]; *see* 8 NYCRR 130.6 [c] [2] [iv]; 130.8 [d] [7] [iii]; 130.14). Supreme Court determined, and I agree, that those provisions contravene the scheme of the Education Law in two key respects.

First, although parents and similarly situated individuals must ensure that a child in their care receives an education substantially equivalent to that available in public schools – and they can undoubtedly be penalized if they fail to do so – they can satisfy their obligation by showing that the child was "attending upon required instruction elsewhere" (Education Law § 3212 [2] [d]). The regulations impermissibly prohibit the possibility that "elsewhere" would be a plan of home instruction with a component of lessons at a nonpublic school that, in combination, provided a substantially equivalent education, requiring instead that the parent or guardian remove the child from that school altogether and place him or her "in a different appropriate educational setting" under threat of civil and criminal penalties (8 NYCRR 130.6 [c] [2] [ii]; 130.8 [d] [7] [ii]; *see* Education Law § 3233; 8 NYCRR 130.14 [a]). Second, because the regulations at issue do not afford a parent or similarly situated individual an opportunity to demonstrate the existence of a satisfactory plan of education that includes a component of instruction at that nonpublic school, they impermissibly discontinue "[l]egally required services to the nonpublic school" without limitation (8 NYCRR 130.6 [c] [2] [iv]; 130.8 [d] [7] [iii]). This improperly penalizes a school that could play a valid role in the child's education, particularly because such a penalty "is at variance with the statutory scheme" in that the

Education Law provides no authority to impose such a penalty and, in fact, places no duty upon nonpublic schools at all and instead mandates that the parents or guardians of children ensure that they receive a proper education (*Matter of Meit v P.S. & M. Catering Corp.*, 285 App Div 506, 510 [3d Dept 1955]).[2]

In short, "[a] fundamental rule of statutory construction provides that the Legislature does not act in a vacuum, but is aware of the existing state of the law at the time it enacts new legislation" (*Matter of Delese v Tax Appeals Trib. of State of N.Y.*, 3 AD3d 612, 614 [3d Dept 2004], *appeal dismissed* 2 NY3d 793 [2004]). The Education Law has consistently placed the burden of ensuring that children receive an appropriate education upon their parents and guardians – not schools – and the statutory amendments which eventually led to the regulations at issue here did not authorize consequences for nonpublic schools that are deemed to provide less than a substantially equivalent education. Now it may be that the Education Law should be changed, but the right way to do this is for the Legislature to amend the Education Law to authorize direct consequences for the nonpublic schools. It has not done so. The Commissioner's efforts to impose those consequences via regulatory fiat therefore lack statutory authorization, and this Court does not have the power "to 'correct' a legislative enactment to make it correspond to respondents' belief as to what the Legislature probably meant" (*Matter of Pokoik v Department of Health Servs., County of Suffolk*, 72 NY2d 708, 713 [1988]). I therefore agree with Supreme Court that those portions of the regulations are invalid.

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[2] Respondents suggest that those consequences are appropriately imposed given the authority of the Board of Regents to establish, and the Commissioner to implement, "rules for carrying into effect the laws and policies of the state, relating to education" (Education Law § 207; *see* Education Law § 305 [1]). There is no statutory sanction for those consequences, and Education Law § 207 is not "an all-encompassing power permitting the Regents' intervention in the day-to-day operations of" schools in this state absent specific authorization (*Moore v Board of Regents of Univ. of State of N.Y.*, 44 NY2d 593, 602 [1978]).

ORDERED that the judgment is modified, on the law, without costs, by reversing so much thereof as declared 8 NYCRR 130.6 (c) (2) (i) and 130.8 (d) (7) (i) to be invalid; said provisions are declared valid; and, as so modified, affirmed.

ENTER:

Robert D. Mayberger
Clerk of the Court