

YSUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

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A.B. and C.D. by their parent and next friend,
JANE ROE, *et al.*

Plaintiffs,

vs.

KATHY HOCHUL, as Governor of the State of
New York, *et al.*

Defendants,

Index No. 532364/2025

Assigned Judge:
Hon. Katherine A. Levine, J.S.C.

**AFFIRMATION OF STEVEN
BARSHOV IN SUPPORT OF
MOTION TO INTERVENE**

YESHIVA MOSDOS CHASIDEI SQUARE BORO
PARK, YESHIVA MOSDOS CHASIDEI SQUARE
OF WILLIAMSBURG, YESHIVA TORAH V'YIRAH
BAIS ROCHEL, YECHIEL EINHORN, CHAIM
MEIR ISRAEL, ABRAHAM SEKULA, YAKOV
SILBERMAN, JACOB KALISCH, YOSEF KLEIN,
ANN KOENIG, MOSHE WEISS, JOSEF WEBER,
MOSHE FRIEDMAN, ELIAZER WERZBERGER,
YITZCHOK UNGER, and AVROHOM FRIESEL,

Proposed Intervenor-Defendants.

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Steven Barshov, an attorney duly licensed to practice before the Courts of the State of New York, hereby affirms that the following statements are true and correct under penalty of perjury. SBarshovLaw PLLC is counsel to the Proposed Intervenor-Defendants (the "Proposed Intervenor-Defendants"). I submit this Affirmation in support of the Proposed Intervenor-Defendants' Motion to Intervene (the "Motion") in the above captioned litigation (the "Litigation").

1. The Proposed Intervenor-Defendants include the Yeshiva schools and parents of children enrolled in those Yeshivas who previously prevailed (the "Prevailing Parties") in litigation overturning the determination by the Commissioner of the New York State Department of Education (NYSDOE) that these Yeshivas were ineligible to utilize New York State Education

Law § 3204(6) to establish their compliance with Education Law requirements. *See* the Decision and Order in *Yeshiva Mosdos Chasidei Square Boro Park, et al. v. New York State Department of Education* (“*Yeshiva Mosdos Chasidei*”), Index No. 906775-25 (Sup. Ct. Albany Co. 2025), a true and correct copy of which is appended hereto as Exhibit A and incorporated herein. The Prevailing Parties seek to intervene in this litigation, in part, because the complaint filed by the Anonymous Plaintiffs¹ complaint attacks the legality and constitutionality of Education Law § 3204(6) and demands invalidation of the very statute the Prevailing Parties relied upon to satisfy Education Law requirements and to overturn the NYSDOE’s determination that the Yeshivas had lost their status as nonpublic schools.

2. The Anonymous Plaintiffs’ head-on attack on Yeshiva education alleges that the Yeshivas do not provide the type of education which, according to the Anonymous Plaintiffs, is constitutionally mandated. Thus, the Anonymous Plaintiffs demand that Education Law § 3204(2)(ii), (iii) and (iv) and NYSDOE’s implementing regulations² be thrown out and the State Defendants be ordered to adopt and implement new statutes, regulations policies and practices that would force Yeshivas to provide the version of student education which the Anonymous Plaintiffs prefer and which they erroneously contend is constitutionally mandated.

3. The parties obviously missing from this Litigation are the very Yeshivas and Parents of Yeshiva students whose rights would be directly and concretely impacted if the Anonymous Plaintiffs were to prevail in this Litigation. The Proposed Intervenors include both Yeshivas (the “Intervenor Yeshivas”), as well as parents of children who attend Yeshivas (the “Intervenor Parents”), all of whom would be directly impacted by the claims pled and relief

¹ The Plaintiffs have been allowed to proceed under pseudonyms in this Litigation per this Court Order (Doc. No. 51) dated December 5, 2025 and accordingly, for ease of reference, are referred to as the “Anonymous Plaintiffs” hereafter.

² Collectively, Education Law § 3204(2)(ii), (iii), (iv) and (6) are referred to hereinbelow as the “Education. Laws” and the implementing NYSDOE regulations as the “DOE Regulations.”

requested in the Anonymous Plaintiffs' complaint. The named State Defendants do not and cannot represent the interests of the Proposed Intervenors. Indeed, during the recent appearance before this Court, counsel for the State Defendants explicitly confirmed on the record that they represent only the interests of the State of New York.

4. The Anonymous Plaintiffs believe that their alleged individual educational experiences at unnamed Yeshivas entitles them to speak for and litigate on behalf of all 100,000 Yeshiva students and to assert constitutional and statutory attacks on Yeshiva education. Thus, the Anonymous Plaintiffs will seek to have themselves certified as representatives of a class of the approximately 100,000 Yeshiva students. The class that the Anonymous Plaintiffs will seek to certify includes the children of the Intervenor Parents and the children educated at the Intervenor Yeshivas. Thus, the Proposed Intervenors have a concrete and direct interest in whether such a class is certified and whether the Anonymous Plaintiffs should be designated as the representatives of that purported class.

5. The Proposed Intervenors move to intervene as of right under CPLR § 1012, or, alternatively, for permissive intervention under CPLR § 1013. The Prevailing Parties have concrete and protectable interests in preserving their previously adjudicated eligibility to utilize Education Law § 3204(6). All of the Proposed Intervenors have concrete and protectable interests in the continued existence of the Education Laws, especially as those statutes would be properly interpreted.

6. In addition, all of the Proposed Intervenors have concrete and protectable interests in preserving the religious liberty of Yeshivas and their constitutionally protected religious right to provide education in accordance with Judaic Law as has been provided for literally thousands of years under the direction of generation after generation of Yeshiva Rabbis. These concrete and

protectable interests include but are not limited to preserving and protecting the Education Laws, properly interpreted, to confirm that Yeshivas education does not violate either New York Const. Article I, § 6 nor Article XI, § 1.

7. None of these articulated concrete and protectable interests are adequately represented by the Defendants. Accordingly, intervention is warranted as of right under CPLR § 1012(a). *See* Point I, *infra*.

8. In the alternative, intervention should be granted permissively under CPLR § 1013. The Motion is timely, shares common questions of law and fact with the Anonymous Plaintiffs' complaint, and the Defendants cannot adequately represent Proposed Intervenors' distinct interests in the proper interpretation of the Education Laws and the resolution of the constitutional issues presented. *See* Point II, *infra*.

9. The claims and defenses of the Proposed Intervenors will aid the Court in resolving issues of constitutionality, statutory construction, and administrative implementation, all without prejudice or delay. Defendants have not yet moved or answered, and they are not required to do so for approximately one month from now. In addition, judicial economy will be promoted by granting the Motion because the Court will have before it the parties whose actual interests are the defense of the very Yeshiva education the Anonymous Plaintiffs attack. *See* Point III, *infra*.

10. For all of the foregoing reasons, analyzed in greater detail hereinbelow, the Motion should be granted and Proposed Intervenors permitted to file the Answer appended hereto as Exhibit B (the "Proposed Answer").

STATEMENT OF FACTS

11. The Proposed Intervenors include the Prevailing Parties in *Yeshiva Mosdos Chasidei*:

(a) Yeshivas: Yeshiva Mosdos Chasidei Square Boro Park, Yeshiva Mosdos Chasidei Square Of Williamsburg, and Yeshiva Torah V'yirah Bais Rochel; and

(b) Yeshiva Parents: Yecheil Einhorn, Chaim Meir Israel, Abraham Sekula, Yakov Silberman, Jacob Kalisch, Yosef Klein, and Ann Koenig. The Yeshiva Parents' children attend the aforementioned Yeshivas.

12. The Prevailing Parties commenced the *Yeshiva Mosdos Chasidei* litigation to challenge the determination by the Commissioner of the NYSDOE that the Yeshivas were not eligible to utilize the newly enacted Education Law § 3204(6) and to confirm the right of Yeshiva Parents to enroll their children at the Yeshivas and thereby satisfy all the requirements of the Education Laws. The Prevailing Parties were successful in *Yeshiva Mosdos Chasidei*, and the Court overturned the NYSDOE Commissioner's determination that Prevailing Party Yeshivas were ineligible to utilize Education Law § 3204(6) and that they were had lost their status as nonpublic schools. See Exhibit A, *Yeshiva Mosdos Chasidei* Decision and Order.³

13. This Litigation demands invalidation of Education Law § 3204(6) which would negate the rights the Prevailing Parties established and confirmed in *Yeshiva Mosdos Chasidei*, thereby fundamentally affecting the rights of the Prevailing Parties.

14. In addition to the Prevailing Parties, the Proposed Intervenors also include the following Yeshiva Parents:

a. Moshe Weiss, whose 1 child attends United Talmudical Academy of Kiryas Joel,

³ Prior to issuing the Decision and Order, NYSDOE was temporarily restrained by the Court from enforcing the DOE Commissioner's determination that the Prevailing Party Yeshivas were ineligible to utilize Education Law § 3204(6).

55 Forest Road, Suite 201, Monroe, New York 10950.

b. Josef Weber, whose two children attend Yeshiva Imrei Binah, 244 Viola Road, Monsey New York.

c. Moshe Friedman, whose 2 children attend Yeshiva Ohr Moshe, 1774 58th Street, Brooklyn, New York 11204.

d. Eliazer Werzberger, whose 1 child attends Yeshiva Mosdos Monticello, 10 Hamilton Ave., Monticello, New York 12701, and whose 1 child attends Talmud Torah Imrei Burech, 197 Barnes Blvd., Kiamesha Lake, New York 12751.

e. Yitzchok Unger, whose 5 boys and 2 girls attend Yeshiva Avir Yakov, 766 N. Main Street, Spring Valley, New York 10977.

f. Avrohom Friesel, whose 4 boys and 2 girls attend Yeshiva Avir Yakov, 766 N. Main Street, Spring Valley, New York 10977.

15. All of the Proposed Intervenors have the right to utilize the Education Laws, properly interpreted, to comply with applicable student educational requirements. This Litigation, if successful, would invalidate the Education Laws, thereby fundamentally affecting the rights of all of the Proposed Intervenors.

16. As to the Anonymous Plaintiffs' attack on Yeshiva education itself, all of the Proposed Intervenors have a concrete interest in preserving the constitutional right of Yeshivas to educate Jewish children in accordance with Judaic Law and to defend the constitutionality of the Yeshiva education.

17. On November 14, 2025, an on-the-record proceeding was conducted by the Court at which counsel for the Anonymous Plaintiffs and Defendants appeared. A true and correct copy of the Transcript of the November 14th proceeding (the "Transcript" or "Tr.") is appended hereto

as Exhibit C and incorporated herein by reference.

18. During the November 14th proceeding, the Court inquired whether the Anonymous Plaintiffs “are seeking to make a class action of this or not?” (Tr. at 4, line 2.) Counsel for the Anonymous Plaintiffs responded “Yes, we are. . .”. (Tr. at 4, line 3.) When asked by the Court “[h]ow is that going to work?” counsel for the Anonymous Plaintiffs responded by stating that “the class is all students who were attending these Yeshivas and . . . we think they are similarly situated because the question is whether these schools . . . are complying with legal and constitutional requirements.” (Tr. at 4, line 4, and Lines 11 - 17.) Thus, in open court counsel for the Anonymous Plaintiffs explicitly confirmed that this Litigation is brought for the purpose of adjudicating the rights and interests of the Proposed Intervenors.

19. Your Honor then explicitly asked counsel for Defendants to confirm whether counsel were representing the interests of Yeshivas: “[Y]ou’re not defending . . . the Yeshivas, correct, you are just defending the decision that was made as to why certain things should be implemented and why certain should not.” (Tr. at 7, lines 22 - 25.) Counsel for Defendants confirmed Your Honor’s understanding of their clearly circumscribed role by stating definitively “We only represent the [S]tate.” (Tr. at 8, line 1 (emphasis added).) Thus, counsel for Defendants confirmed unequivocally that the interests of the Prevailing Parties and the other Proposed Intervenor Yeshivas and Parents are not represented at all by any party in the Litigation.

20. Finally, in response to counsel for Defendants confirmation that they only represent the State, Your Honor correctly anticipated that there would likely be an intervention motion by intervenor defendants: “So there may be . . . intervention motions on the defendant’s side. . .”. (Tr. at 8, lines 2 - 4.) This Motion is precisely what Your Honor anticipated would be filed.

21. The Proposed Intervenors have timely moved to intervene. The Defendants are

required to move or answer by January 16, 2025. Thus, this Motion will not delay the Litigation.

POINT I

PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS OF RIGHT PURSUANT TO CPLR § 1012(a)

22. CPLR § 1012(a)(2) authorizes intervention if “the representation of the person’s interest by the parties is or may be inadequate and the person is or may be bound by the judgment.” CPLR § 1012(a)(3) separately authorizes intervention if “the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment.” New York courts construe these provisions liberally to permit intervention when a proposed intervenor has a real and substantial interest that may be impaired by the outcome and that is not adequately represented by existing parties. *Vantage Petroleum v. Board of Assessment Review of Town of Babylon* (“*Vantage Petroleum*”), 61 N.Y.2d 695, 698 (1984); *Board of Education Levittown UFSD v. Nyquist*, 57 N.Y. 27 (1982); *Romeo v. New York State Department of Education*, 39 A.D.3d 916 (3d Dept. 2007). *Berkoski v. Board of Trustees of Inc. Village of Southampton* (“*Berkoski*”), 67 AD3d 840, 843 (2d Dept 2009). Intervention as of right is warranted under both CPLR §§ 1012(a)(2) and (3).

A. Proposed Intervenors Have a Substantial and Direct Interest in the Subject of the Litigation

23. An interest sufficient to support intervention as of right is one that is “real and substantial,” not remote or contingent. *Wells Fargo Bank, N.A. v. McLean*, 70 A.D.3d 676, 677 (2d Dept 2010). Here, the Prevailing Parties have a real and substantial present interest in their continued ability to utilize Education Law § 3204(6), as was explicitly confirmed in *Yeshiva Mosdos Chasidei*. That right would be entirely eviscerated if the Anonymous Plaintiffs prevail in this Litigation and cause the Education Laws to be invalidated. Thus, the Prevailing Parties have a real and substantial present interest in this Litigation.

24. All of the Proposed Intervenors have the right to utilize the Education Laws, properly interpreted and applied, to establish the compliance with law of the Yeshiva education. The Anonymous Plaintiffs' claims demanding invalidation of the Education Laws substantially, directly and presently affect all of the Proposed Intervenor Yeshivas and Yeshiva Parents, because invalidation of the Education Laws would preclude Yeshivas from utilizing the Education Laws to meet applicable educational requirements and would deprive Yeshiva Parents of the right to enroll their children in such Yeshivas to satisfy obligations under the law. Thus, all of the Proposed Intervenors have a real and substantial present interest in this Litigation.

25. The same is true as to the claims asserted by the Anonymous Plaintiffs that the actual education provided at Yeshivas violates alleged constitutional education mandates. Thus, both the Yeshivas as well as the Parents of children attending Yeshivas have a real and substantial present interest in defending their constitutional right to provide Jewish Yeshiva education as mandated by Jewish Law to Jewish children. Since the Proposed Intervenors include both Yeshivas and Parents of children attending such Yeshivas, the Proposed Intervenors would be fundamentally affected by this Court's adjudication of the constitutional claims pled by the Anonymous Plaintiffs.

26. For all of these reasons, the Proposed Intervenors possess a substantial and direct interest in the subject of the Litigation warranting intervention as of right.

B. Disposition of this Litigation May Impair or Impede Proposed Intervenors' Ability to Protect Their Interests

27. If a judgment may "as a practical matter impair or impede" nonparties' ability to protect their interests, intervention of right is proper. *Alizio v. Feldman*, 82 A.D.3d 804, 804–805 (2d Dept. 2011). If the Anonymous Plaintiffs succeed in invalidating Education Law § 3204(6), whether individually or as part of an invalidation of the entirety of the Education Laws, the

Prevailing Parties would no longer be able to utilize that statutory mechanism, thus impairing and impeding the rights the Prevailing Parties obtained in obtained in *Yeshiva Mosdos Chasidei*.

28. Similarly, all of the Proposed Intervenors would lose their ability to utilize the Education Laws, properly interpreted, if the Anonymous Plaintiffs were to prevail and cause these Laws to be invalidated. Indeed, a judgment on the constitutionality and legality of the Education Laws and Yeshiva education would be binding or, at a minimum, have preclusive or practical effects on the Proposed Intervenors' rights. Thus, intervention as of right is required. *Cf. Vantage Petroleum*, 61 N.Y.2d at 698.

C. The Defendants Do Not Adequately Represent Proposed Intervenors' Interests

29. The adequacy threshold is minimal, and it is enough to show that representation "may be" inadequate. CPLR §1012(a)(2). *Berkoski*, 67 A.D.3d at 843. Here, there is no doubt that the State Defendants do not and will not represent the interests of the Proposed Intervenors. Any doubt in that regard was conclusively resolved by the representation made by counsel for the Defendants in open court and on the record that counsel for the Defendants represents only the interests of New York State. Under such circumstances, intervention as of right is warranted. *Roman Catholic Diocese of Brooklyn v. New York City Dept. of Educ.*, 134 A.D.3d 13, 22 (2d Dept. 2015) (allowing intervention where governmental defendants' defense of policy did not fully align with intervenor's interests); *Matter of Pier v. Board of Assessors of County of Nassau*, 224 A.D.2d 282, 283 (2d Dept. 1996) (permitting intervention where existing party's interests diverged).

30. The Prevailing Parties will bring distinct defenses and evidence about the functioning of Education Law § 3204(6), and the Education Laws more generally, including but not limited to the reliance interests arising from the prior judgment in *Yeshiva Mosdos Chasidei*

overturning NYSED's ineligibility determination. Such positions and perspectives will not be duplicative of the Defendants' likely defenses.

31. The same is true regarding the entirety of the Proposed Intervenors who will present distinct defenses and evidence about the proper interpretation of the Education Laws and the constitutionally protected religious rights of Yeshivas and the Parents of Yeshiva to provide Yeshiva students with Yeshiva education. Given the State's focus on its own interests, these positions will not be duplicative of the State's defenses.

D. The Motion Is Timely and Causes No Prejudice

32. Timeliness is judged by all the circumstances, including knowledge of the action, the stage of litigation, and prejudice. *Yuppie Puppy Pet Prods., Inc. v. Street Smart Realty, LLC* ("Yuppie Puppy"), 77 A.D.3d 197, 201–202 (1st Dept. 2010). Proposed Intervenors moved before the Defendants are required to move or answer, and thus without prejudice to any party. No scheduling order will be disrupted, and intervention will not expand issues beyond those already pled in the Anonymous Plaintiffs' 58-page complaint.

E. Conclusion

33. For all of the foregoing reasons, intervention as of right should be granted under CPLR §§ 1012(a)(2) and (3).

POINT II

ALTERNATIVELY, THE COURT SHOULD GRANT PERMISSIVE INTERVENTION UNDER CPLR § 1013

34. CPLR §1013 authorizes intervention "upon timely motion" when the proposed intervenor's claim or defense and the main action have a common question of law or fact, provided intervention does not unduly delay the determination of the action or prejudice the substantial rights of any party. The statute is to be liberally construed in favor of intervention to avoid

multiplicity of actions and to ensure complete, consistent adjudication. *Roman Catholic Diocese*, 134 A.D.3d at 21–22; *Perlmutter v. Beth David Cemetery, Inc.* (“*Perlmutter*”), 308 A.D.2d 333, 334 (2d Dept. 2003).

A. Common Questions of Law and Fact Abound

35. Proposed Intervenors intend to defend the legality and constitutionality of the Education Laws, including but not limited Education Law § 3204(6), as well as to present arguments and evidentiary showings concerning the constitutionality of the Yeshiva education. These are coincident with the subject matter of the claims raised in the Anonymous Plaintiffs’ complaint issues and the questions already before the Court in this Litigation. *Roman Catholic Diocese*, 134 A.D.3d at 21–22 (allowing intervention where intervenor’s defenses raised same questions of law and fact as main action); *Jalil v. N.Y. State Dept. of Educ.*, 145 A.D.3d 1228, 1229–1230 (3d Dept. 2016) (permissive intervention where common questions existed and no prejudice shown).

B. No Undue Delay or Prejudice

36. Permissive Intervention will not delay the proceedings. Proposed Intervenors agree to abide by existing schedules. Indeed, the Proposed Answer appended hereto to gives notice to all parties of the Proposed Intervenors’ positions in this Litigation prior to the time that the State Defendants must move or answer. In addition, Courts routinely grant permissive intervention where, as here, intervenors add perspective without expanding the issues being litigated. *Yuppie Puppy*, 77 A.D.3d at 201–202; *Perlmutter*, 308 A.D.2d at 334.

C. The Court’s Discretion is Properly Exercised to Grant Intervention to Parties with a Direct Stake and a Prior Related Judgment

37. The equities favor intervention where parties have secured prior relief bearing on a statute’s application to them and where a ruling in subsequent litigation could negate that relief or

frustrate reliance interests. *Berkoski*, 67 A.D.3d at 843 (liberal construction of intervention statutes to protect substantial interests); *Matter of Guardian Life Ins. Co. v. Housing Preserv. & Dev. Admin.*, 162 A.D.2d 230, 231 (1st Dept. 1990) (recognizing discretion to allow participation of parties with concrete stake). The Prevailing Parties have precisely such interests in the preservation of the rights confirmed in *Yeshiva Mosdos Chasidei*.

D. Conclusion

38. For these reasons, permissive intervention should be granted under CPLR § 1013.

POINT III

**PROPOSED INTERVENORS' PARTICIPATION WILL
AID PROPER RESOLUTION AND JUDICIAL ECONOMY**

39. Allowing intervention ensures a more complete record regarding the legality of the Education Laws, including but not limited to the consequences of their potential invalidation upon Yeshivas, Parents of students attending Yeshivas, and the students themselves. By assuring a more complete record and the inclusion of the parties who would be adversely affected by an adjudication in favor of the Anonymous Plaintiffs, intervention serves judicial economy and avoids inconsistent judgments. *Roman Catholic Diocese*, 134 A.D.3d at 21–22; *Perlmutter*, 308 A.D.2d at 334.

40. In addition, to the extent that summary resolution of this Litigation can be achieved, in whole or in part, the Proposed Intervenors will be able to proffer appropriate motions to substantially narrow the issues before the Court

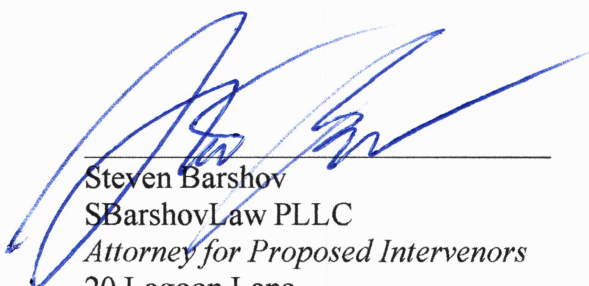
CONCLUSION

41. For the foregoing reasons, the Court should grant the Motion and permit the Proposed Intervenors to intervene as of right pursuant to CPLR § 1012(a)(2) and (3). In the alternative, the Court should exercise its discretion and grant permissive intervention pursuant to

CPLR §1013.

42. Proposed Intervenors respectfully request such other and further relief as the Court deems just and proper.

Dated: Haverstraw, New York
December 19, 2025



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