

# Lawsuit Opposes Expansion Of School for Gay Students

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State Senator Ruben Diaz Sr. of the Bronx has filed a lawsuit to block the expansion of a small public high school for gay students, arguing that the school violates the City Department of Education's antidiscrimination policies and the constitutional rights of heterosexual students.

The lawsuit, filed in State Supreme Court in Manhattan, also charges that city support of the school, the Harvey Milk High School in Greenwich Village, is a waste of tax dollars and asks the court to block the city from giving the school any money for the coming academic year.

The Harvey Milk school has existed as a city-approved high school program for gay and lesbian students for almost two decades, and it eventually grew to serve about 100 students. In 2002, Harold O. Levy, then the schools chancellor, approved a \$3.2 million expansion of the school, which would allow it to admit up to 170 students.

Mr. Diaz, a Democrat, said he believed that the school discriminated against heterosexual students, particularly black and Hispanic youngsters who attend low-performing public schools. "I am opposing segregation in any shape, type or form," Mr. Diaz said.

He disputed a premise of the school's supporters, which is that homosexual students are so vulnerable to abuse in mainstream schools that a more sheltered setting is needed to protect them. Mr. Diaz said that city officials should work to protect all students.

"The money should be better used to protect all children — black, Jewish, Hispanic, Asian, Arabs — all children," he said. "The ones that we have to segregate really are the bullies. Those are the ones with the problems. The homosexual kids, they are not the ones with the problems."

The Education Department said the lawsuit is baseless.

"It's a frivolous lawsuit that attacks a program that has helped children for many years," said Jerry Russo, press secretary to Schools Chancellor Joel I. Klein.

In recent weeks Mayor Michael R. Bloomberg has defended the school as providing essential services to an underserved constituency, and officials have pointed out that all students are welcome to apply, regardless of sexual orientation.

William Rubenstein, a professor at U.C.L.A. Law School who directs the

Charles R. Williams Project on Sexual Orientation Law, said he did not think the lawsuit would succeed.

"I think this school could defend itself by saying, 'The kids we are helping out here are not in the same situation as other kids,'" he said.

Liberty Counsel, a nonprofit legal defense organization based in Orlando, Fla., which describes itself as dedicated to preserving religious freedom, is representing Mr. Diaz.

Mathew D. Staver, the president and general counsel of the organization, said the Harvey Milk school violated the rights of students who are not gay. "Under the New York City school system's own policies it is blatantly discriminatory," he said. "What's next if you start this? What does this lead to?"

The Hetrick-Martin Institute, a community group that operates the Harvey Milk school, has posted a long defense against its critics on its Web site. The site says that the school's students require support "not available to them in a mainstream venue."

Norman Siegel, the former executive director of the New York Civil Liberties Union, said that unlike programs for pregnant girls or new immigrants, the Harvey Milk school was set aside for too broad a class of people, violating heterosexual students' right to equal protection.

And he said Mr. Diaz's lawsuit may have overlooked a strong argument that the school violates New York City's human rights law.

Mr. Siegel, who won a fight against the creation of an all-black, all-boys school in Brooklyn but lost one against an all-girls school in Harlem, said that a school for gay students undermines the principles of an integrated public education system.

"Just saying that anyone can apply is probably not adequate because of the context of the statements they had already made," he said.

He added, "Whether it's in a restaurant or on a bus or in a classroom, we have decided as a society that people should not be separated on the basis of traits such as race, gender and sexual orientation."

Mr. Siegel said that a high school for fewer than 200 gay students would not help thousands of other gay students in the city's public schools. "Why not take on the institutional homophobia?" he asked. Efforts to create better programs city-wide, he said, "are stopped in their tracks because of this program."