Legislation Details (With Text)

File #:	Res 1155-2011	**Version:**	A	**Name:**	Amending the NYS Education Law to afford houses of worship maximum access to school property.
Type:	Resolution			**Status:**	Adopted
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Title: Resolution calling upon the New York State legislature to pass and the Governor to sign legislation amending the New York State Education Law to afford houses of worship equal access to school property.

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Date	Ver.	Action By	Action	Result
12/8/2011	*	City Council	Introduced by Council	
12/8/2011	*	City Council	Referred to Comm by Council	
2/2/2012	*	Committee on Education	Hearing Held by Committee	
2/2/2012	*	Committee on Education	Laid Over by Committee	
5/21/2013	*	Committee on Education	Hearing Held by Committee	
5/21/2013	*	Committee on Education	Amendment Proposed by Comm	
5/21/2013	*	Committee on Education	Amended by Committee	
5/21/2013	A	Committee on Education	Approved by Committee	Pass
5/22/2013	A	City Council	Approved, by Council	Pass

Res. No. 1155-A

Resolution calling upon the New York State legislature to pass and the Governor to sign legislation amending the New York State Education Law to afford houses of worship equal access to school property.

By Council Members Cabrera, Arroyo, Chin, Comrie, Crowley, Dickens, Dilan, Foster, Gentile, Greenfield, James, Lander, Levin, Mealy, Nelson, Palma, Reyna, Rodriguez, Rose, Vallone, Vann, Williams, Wills, Vacca, Jackson, Weprin, Barron, Ferreras, Fidler, Eugene, King, Halloran, Ignizio, Koo, Oddo, Ulrich and the Public Advocate (Mr. de Blasio)

Whereas, Section 414(1)(c) of the New York State Education Law currently allows school property to be used for social, civic and recreational meetings and entertainment, as well as for other uses pertaining to the welfare of the community; and

Whereas, State law further holds that such meetings, entertainment and uses shall be non-exclusive and shall be open to the general public; and

Whereas, Section 414(1)(c) of the State Education Law also indicates that civic meetings shall include, but not be limited to meetings of parent associations and parent teacher associations; and

Whereas, However, the rules promulgated pursuant to this section have had a more restrictive effect on religious organizations seeking to use school property than would appear to be required by the Establishment Clause of the United States (U.S.) Constitution; and

Whereas, For example, in 1994, the Bronx Household of Faith church ("Bronx Household"), based in New York City, was not permitted to use space in a Bronx public middle school for its Sunday morning worship service because the City's Department of Education ("DOE") had a policy that prohibited school property from being used for religious services or instruction; and

Whereas, When Bronx Household sued the DOE, arguing that its policy constituted viewpoint discrimination in violation of the First Amendment of the U.S. Constitution, a federal district court disagreed and upheld the DOE's policy, a decision that was later affirmed by the U.S. Court of Appeals for the Second Circuit ("Second Circuit"); and

Whereas, Since then, however, the law has evolved, and in 2001 the U.S. Supreme Court ruled in Good News Club vs. Milford Central School that it was unconstitutional for a public school district in upstate New York to exclude from its facilities "a private Christian organization for children;" and

Whereas, The Supreme Court reasoned in the Good News Club case that Milford's policy constituted viewpoint discrimination in violation of the First Amendment because it denied the club access to the school's limited public forum on the ground that the club was religious in nature; and

Whereas, Subsequent to the Supreme Court's holding in the Good News Club case, the DOE denied Bronx Household's re-application to utilize school property for religious services, leading Bronx Household to file a new lawsuit and ultimately obtain permission, on a temporary basis during the pendency of the litigation, to use the school for its Christian worship service on Sundays; and

Whereas, During the litigation, the DOE revised its old policy and replaced it with a new one, which prohibits the use of school property for "religious worship services, or otherwise using a school as a house of worship," while allowing that "[p]ermits may be granted to religious clubs for students that are sponsored by outside organizations . . . on the same basis that they are granted to other clubs for students that are sponsored by outside organizations;" and

Whereas, Ultimately, on June 2, 2011, the Second Circuit upheld the DOE's new policy and its decision to deny Bronx Household's re-application under the new policy, reasoning that the policy did not constitute viewpoint discrimination because "While the conduct of religious services undoubtedly *includes* expressions of a religious point of view, it is not the expression of that point of view that is prohibited by the rule. Prayer, religious instruction, expression of devotion to God, and the singing of hymns, whether done by a person or group, do not constitute the conduct of worship services. Those activities are not excluded."; and

Whereas, In addition, the Court held that the policy was reasonable because, by excluding religious worship services, the DOE was properly trying to avoid violating the Establishment Clause of the U.S. Constitution; and

Whereas, Specifically, the Court expressed concerns that using school premises for religious worship services may violate the Establishment Clause when: the school facilities are "principally available for public use on Sundays [which] results in an unintended bias in favor of Christian religions;" the school bears the majority of the cost for the space, including rental fees and utility costs, which means "[t]he City thus foots a major portion of the costs of the operation of a church;" and on an indefinite basis, worship services take place in schools at the same time and day every week, which could lead to "long-term conversion of schools into

state-subsidized churches on Sundays;" and

Whereas, The U.S. Supreme Court declined to hear the case; and

Whereas, In June of 2012, the U.S. District Court for the Southern District held that the DOE's regulation prohibiting worship services on school premises did not pass constitutional standards because it violated the Free Exercise clause and the Establishment clause and resulted in an "impermissible degree of [government] entanglement" with religion; and

Whereas, In light of the aforementioned reasons, the court permanently enjoined the DOE from enforcing a policy that would deny an application of an individual or entity to rent space on school premises for meetings that include religious worship; and

Whereas, There is a pending appeal of the District Court's decision; and

Whereas, However, providing access to school facilities to the general public, including but not limited to houses of worship, promotes the laudable and worthy goal of maximizing the utilization of public space for multiple purposes, and for all groups, which is especially necessary in New York City, where such space is at a premium; and

Whereas, The Second Circuit's decision may leave room for the State to clarify and amend the Education Law to afford houses of worship the utmost access to schools in a manner consistent with the Establishment Clause, for example, by ensuring that access is offered to all religious groups, that the public does not bear an undue share of the costs of utilizing the space, and that no one house of worship can permanently occupy the space; and

Whereas, Assemblyman Marcus Crespo has sponsored legislation A00265, that would amend Section 414 of the New York State Education Law to authorize religious meetings and worship on school property; and

Whereas, Such amendment would specify that school facilities may be utilized during non-school hours for religious activities, including "meetings, services, and worship"; and

Whereas, The proposed legislation would also provide that in New York City, the community school

board may adopt regulations governing when school property may be used for such religious activities, and the community school board may not prohibit the use of school property for religious activities that would otherwise be legally permissible; and

Whereas, The proposed legislation would provide the New York City Department of Education with the opportunity to allow religious houses of worship equal access to school property, while still complying with constitutional mandates; now, therefore, be it

Resolved, That the New York City Council calls upon the New York State legislature to pass and the Governor to sign legislation amending the New York State Education Law to afford houses of worship equal access to school property.

MB/AS
LS 2799
5/20/13
12:00pm