



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, Corporation Counsel

Press Release

Web: nyc.gov/html/law/home.html

For Immediate Release

**FEDERAL COURT OF APPEALS RULES UNANIMOUSLY IN FAVOR OF
THE DEPARTMENT OF EDUCATION IN MELZER “NAMBLA” CASE**

***ASSERTS THE DEPARTMENT’S RIGHT TO DISMISS A TEACHER
WHOSE BELIEFS ARE DISRUPTIVE TO A SCHOOL***

Contact: Kate O’Brien Ahlers, Communications Director, (212) 788-0400, kahlers@law.nyc.gov

New York, July 18, 2003 – The United States Court of Appeals for the Second Circuit ruled unanimously yesterday in favor of the New York City Department of Education in *Melzer v. Board of Education*. Affirming the District Court’s dismissal of the complaint, the Second Circuit held that the Board of Education, the predecessor to the Department, was justified in terminating the employment of Peter Melzer as a teacher at the Bronx High School of Science, because his “association and his degree of active involvement” in the North American Man/Boy Love Association (NAMBLA) “caused disruption to the school’s mission and operations.” NAMBLA is a group that advocates the abolition of laws banning sex between men and underage boys.

Mr. Melzer had brought the lawsuit claiming that his constitutional rights to freedom of association and speech were violated when he was dismissed from his position. He also alleged that the action was taken in retaliation for his membership in NAMBLA.

“We are very pleased that the Court has reaffirmed the importance of ensuring that children in New York City schools are in a safe, secure and appropriate educational environment,” said Corporation Counsel Michael A. Cardozo, whose office litigated the case.

While noting that Mr. Melzer’s “freedom to associate with and advocate for NAMBLA is protected by the First Amendment,” the Second Circuit stressed that his position as a teacher in a public school “by its very nature requires a degree of public trust not found in many other positions of public employment” and that “in the context of teaching schoolchildren, Melzer’s activities strike such a sensitive chord that, despite the protection afforded his activities, the disruption they cause is great enough to warrant the school’s action against him.” In elaborating on that disruption, the Second Circuit emphasized that it was “entirely reasonable for the Board to believe that many parents and students had a strong negative reaction” to Mr. Melzer based on their knowledge of his association with NAMBLA, which had become public knowledge.

The Second Circuit cited expert testimony that “students would likely be unable to concentrate” in Mr. Melzer’s class or would be “uncomfortable asking him for help after class or in any other one-on-one situation” and concluded that parents would “fear his influence and predilections.” Moreover, concerned parents might remove their children from the school, “thereby interrupting the children’s education, impairing the school’s reputation and impairing educationally desirable interdependency and cooperation among parents, teachers and administrators,” as well as “compromise the competitive position of this high school vis-à-vis other elite high schools in New York City.” Finally, the Second Circuit pointed out that disruption also might arise from Mr. Melzer’s admission that “it would be difficult for him to decide whether to report an incident of child molestation at the school,” even though, as the Court stressed, the reporting

of such incidents is “a part of any teacher’s duties.”

The case was handled in the Second Circuit by Leonard Koerner, Chief Assistant Corporation Counsel and Chief of the Appeals Division of the New York City Law Department as well as Ronald E. Sternberg, a Senior Counsel in that Division. Jonathan Pines, a Deputy Chief in the Law Department’s General Litigation Division, represented the Department of Education in the lower court, also called the District Court.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600’s, the Department’s 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department’s attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

###