

2025 WL 5281079

Only the Westlaw citation is currently available.
United States Court of Appeals, Second Circuit.

DEFENDING EDUCATION,

Plaintiff-Appellant,

v.

**CROTON-HARMON UNION FREE
SCHOOL DISTRICT**, Croton-Harmon

Board of Education, Stephen Walker, in his official capacity as Superintendent of Croton-Harmon Union Free School District, [John Griffiths](#), in his official capacity as Assistant Superintendent of Croton-Harmon Union Free School District, Laura Dubak, in her official capacity as President of Croton-Harmon High School, Mark Maxam, in his official capacity as Acting Principal of Croton-Harmon High School, [Sarah Carrier](#), in her official capacity as President of Croton-Harmon Board of Education, Neal Haber, in his official capacity as Vice President of Croton-Harmon Board of Education, Anamika Bhatnagar, Ana Teague, Joshua Diamond, Omar Mayyasi, and Theo Oshiro, in their official capacities as Board Trustees of Croton-Harmon Board of Education, Defendants-Appellees. #

No. 24-1900

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August Term, 2024

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Submitted: April 22, 2025

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Decided: April 22, 2025

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On Reconsideration: September 15, 2026

On Appeal from a Judgment of the United States District Court for the Southern District of New York.

Attorneys and Law Firms

[J. Michael Connolly](#), [James F. Hasson](#), Daniel M. Vitagliano, Paul R. Draper, Consovoy McCarthy PLLC, Arlington, VA; [Patrick Strawbridge](#), Consovoy McCarthy PLLC, Boston, MA, for Plaintiff-Appellant.

[Steven C. Stern](#), Sokoloff Stern LLP, Carle Place, NY, for Respondents-Appellees.

Before: [Calabresi](#), Parker, and [Nardini](#), Circuit Judges.

Opinion

[William J. Nardini](#), Circuit Judge:

*1 Defending Education is an association of parents, students, and concerned citizens that brought this action pursuant to [42 U.S.C. § 1983](#) challenging a set of student speech policies adopted by the Croton-Harmon Union Free School District (“Croton-Harmon” or the “District”) in New York for alleged violations of the First and Fourteenth Amendments to the Constitution. Defending Education represents three of its parent-members whose children attend school in the District and espouse social and political views that they wish to share but do not because their speech is likely prohibited by Croton-Harmon’s speech policies. Defending Education moved for a preliminary injunction against the enforcement of the District’s challenged policies. The district court denied that motion and dismissed the action for lack of subject matter jurisdiction under [Aguayo v. Richardson](#), 473 F.2d 1090 (2d Cir. 1973), in which this Court held that associations lack standing to sue on behalf of their members for claims brought under [§ 1983](#). Defending Education appealed the district court’s decision to our Court but, acknowledging [Aguayo](#), moved for summary affirmance, which we granted. Defending Education now petitions for reconsideration *en banc*, asking us to overrule [Aguayo](#) and to remand the case to the district court so that it can pursue its lawsuit against Croton-Harmon.

After circulating this opinion to all active members of our Court and receiving no objection, we overrule [Aguayo](#)’s holding with respect to associational standing under [§ 1983](#). In its place, we adopt the rule outlined by the Supreme Court in [Hunt v. Washington State Apple Advertising Commission](#), 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977), and adopted by our sister circuits, which provides: A membership organization has standing to bring suit on behalf of its members under [§ 1983](#) when (1) those members would

otherwise have standing to sue in their own right, (2) the interests protected are germane to that organization's purpose, and (3) the participation of individual members in the lawsuit is not necessary for the claim asserted or the relief requested. Accordingly, we REVERSE the judgment of the district court and REMAND for further proceedings in accordance with this opinion.

I. Background

On June 12, 2024, Defending Education filed a complaint in the United States District Court for the Southern District of New York, alleging that a set of student speech policies adopted by the Croton-Harmon Union Free School District's Board of Education infringed upon the First and Fourteenth Amendment rights of several of its members' children under 42 U.S.C. § 1983. This action was brought on behalf of three anonymous parent-members of Defending Education—identified in the Complaint as Parents A, B, and C—“who live in the Croton-Harmon Union Free School District and whose children are enrolled in Croton public schools.” *Parents Defending Educ. v. Croton-Harmon Union Free Sch. Dist.*, No. 7:24-CV-04485, Docket No. 1 (“Complaint”) ¶ 13.

The core claim advanced in the Complaint is that the District's policies prohibiting discrimination, harassment, and bullying by students both on and off school grounds “discriminates based on viewpoint, requires a student to affirm another student's gender identity when inconsistent with that student's sex, prohibits a substantial amount of protected speech, and uses vague terms that an average student cannot understand.” *Id.* ¶ 39.¹ Defending Education asserts that such speech codes are unlawful content- and viewpoint-based restrictions, which are impermissibly overbroad, and void for vagueness. Moreover, Defending Education alleges that its members' children are “compelled to mouth support for views on sensitive topics that they disagree with,” Complaint ¶ 148, and that these children experience “a realistic danger” that their constitutionally protected speech is being chilled by fear of running afoul of Croton-Harmon's policies, *id.* ¶ 177 (quoting *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 801, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) (internal quotation marks omitted)).

*2 The day after filing this lawsuit, Defending Education moved to preliminarily enjoin Croton-Harmon from enforcing its policies, acknowledging that success on the merits of both its lawsuit and its motion for preliminary injunction was, at that time, foreclosed by two of our Court's

precedents. One of these precedents was *Aguayo*, which as noted above categorically barred associational standing under § 1983. The other precedent was *Do No Harm v. Pfizer Inc.*, 96 F.4th 106 (2d Cir. 2024) (“*Do No Harm I*”), which held that an association suing under 42 U.S.C. § 1981 (as well as certain other legal provisions) must identify by name at least one injured member for purposes of establishing Article III standing under a summary judgment standard applicable to a motion for a preliminary injunction. *Id.* at 118–19. Without such a showing, a reviewing court could not “consider the merits of the preliminary injunction motion” and was instructed to “dismiss the action in its entirety.” *Id.* at 120.

On July 12, 2024, relying on both *Aguayo* and *Do No Harm I*, the district court entered an order denying Defending Education's motion for a preliminary injunction and dismissing the action *sua sponte* without prejudice. Defending Education appealed that decision to this Court, petitioning for an initial hearing *en banc* to overturn both *Aguayo* and *Do No Harm I*, which we denied. Defending Education then moved for summary affirmance, so that it could seek reconsideration by our Court *en banc*, or else petition the Supreme Court, to overturn *Aguayo* and *Do No Harm I*. While Defending Education's motion was pending, the panel in *Do No Harm I* vacated and revised its decision,² leaving only “*Aguayo* [to] independently bar[] [Defending Education's] standing.” 2d Cir., No. 24-1900, App. Doc. 33, at 1. We agreed that *Aguayo* barred Defending Education's standing to bring its lawsuit. Accordingly, on April 22, 2025, we entered an order granting Defending Education's motion for summary affirmance.

On May 6, 2025, Defending Education promptly petitioned for reconsideration *en banc*, arguing that *Aguayo*'s bar on associational standing in § 1983 cases should be overruled. The Court has now considered the parties' supplemental briefing on this petition.

II. Discussion

Defending Education's appeal presents us with an occasion to correct a governing rule in this Circuit—that an organization lacks standing to sue under § 1983 for violations of the rights of its members—which we adopted in *Aguayo* more than fifty years ago and which, plainly put, has “outlived its usefulness.” *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 122 (2d Cir. 2017) (Jacobs, J., dissenting). Although our Court has relied

on *Aguayo* in past cases, see, e.g., *Nnebe v. Daus*, 644 F.3d 147, 156 (2d Cir. 2011); *League of Women Voters of Nassau Cnty. v. Nassau Cnty. Bd. of Supervisors*, 737 F.2d 155, 160–61 (2d Cir. 1984), developments in the law lead us to conclude that *Aguayo*’s rule barring associational standing in pursuit of a § 1983 claim is inconsistent with prevailing Supreme Court decisions as well as the uniform holdings of our sister circuits. See Fed. R. App. P. 40(b)(2)(B)–(C). Accordingly, it must be overruled.

In reaching that conclusion, we acknowledge that a panel of our Court is “bound by the decisions of prior panels until such time as they are overruled either by an *en banc* panel of our Court or by the Supreme Court ... and thus that it would ordinarily be neither appropriate nor possible for us to reverse an existing Circuit precedent.” *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58, 67 (2d Cir. 2009) (internal quotation marks and citation omitted). That is why, on initial consideration, this panel considered itself bound by *Aguayo* and therefore affirmed the judgment of the district court.

*3 Our Court has long followed, however, the salutary practice of allowing a panel to revisit the holding of a prior panel in extraordinary circumstances such as these, where it has become pellucid that our earlier precedent is erroneous. See *United States v. Smith*, 949 F.3d 60, 65 (2d Cir. 2020) (collecting cases). We have colloquially described this process as a “mini *en banc*,” *Michel v. I.N.S.*, 206 F.3d 253, 268 n.2 (2d Cir. 2000) (Cabranes, J., concurring), and we invoke it only when the issue in question enjoys the fullest consensus on our Court. To ensure the existence of such consensus, a panel of our Court will circulate “its proposed opinion to the active judges of the court, with copies to the senior judges, and, in the absence of objection or call for an *en banc* poll, files the opinion” with a notation to that effect. Jon O. Newman & Marin K. Levy, *Written & Unwritten: The Rules, Internal Procedures, and Customs of the United States Courts of Appeals* 112–13 (2024). We have proceeded in that manner here and have received no objection.

A. Reexamining *Aguayo*

When we decided *Aguayo* in 1973, we were among the earliest federal courts to consider the ability of associations to sue on behalf of their members under § 1983—and the first court of appeals to hold that membership associations lacked standing to do so.

In the more than fifty years that followed, not one of our sister circuits has reached the same conclusion. We now stand alone as the sole federal circuit that bars associations from suing on behalf of their members for § 1983 claims. See, e.g., *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Boston*, 89 F.4th 46, 55–56 (1st Cir. 2023) (applying *Hunt*, 432 U.S. at 343, 97 S.Ct. 2434, in finding organization’s associational standing to bring a § 1983 claim); *Contractors Ass’n of E. Pa., Inc. v. City of Philadelphia*, 945 F.2d 1260, 1264 (3d Cir. 1991) (same); *N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 301 (4th Cir. 2020) (same); *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020) (same); *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 763–65 (6th Cir. 2019) (same); *Milwaukee Police Ass’n v. Flynn*, 863 F.3d 636, 639–40 (7th Cir. 2017) (same); *Pharm. Rsch. & Mfrs. of Am. v. Williams*, 64 F.4th 932, 946–48 (8th Cir. 2023) (same); *Columbia Basin Apartment Ass’n v. City of Pasco*, 268 F.3d 791, 798–99 (9th Cir. 2001) (same); *Roe No. 2 v. Ogden*, 253 F.3d 1225, 1230 (10th Cir. 2001) (same); *Greater Birmingham Ministries v. Sec’y of State for State of Ala.*, 992 F.3d 1299, 1316–17 (11th Cir. 2021) (same); *Metro. Wash. Chapter, Assoc. Builders & Contractors, Inc. v. District of Columbia*, 62 F.4th 567, 572–73 (D.C. Cir. 2023) (same).

In step with the holdings of our sister circuits, the Supreme Court has regularly decided cases brought by associations asserting the rights of their members under § 1983, including, as relevant here, parents suing school districts on behalf of their children. See, e.g., *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718–19, 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007). Because *Aguayo* places our Circuit’s rule of associational standing in direct conflict with current Supreme Court decisions,³ as well as every other circuit that has opined on the issue, the time is ripe for its reexamination.

*4 Since *Aguayo* was decided, it has become increasingly clear that its special treatment of § 1983 lacks a doctrinal basis. In *Aguayo*, we reasoned that § 1983 “confers a cause of action on any citizen of the United States or other person within the jurisdiction thereof who has been deprived under color of state law of any rights, privileges, or immunities secured by the Constitution and laws,” and that “[n]either this language nor the history” of § 1983 suggested that “an organization may sue ... for the violation of rights of members.” 473 F.2d at 1099 (internal quotation marks and citations omitted). We did not point to anything in the text or history of § 1983’s originating statute—the Civil Rights Act of 1871—that expressly bars associational organizations

from vindicating the “rights, privileges, or immunities” of their members who are “citizen[s] of the United States or other person[s] within the jurisdiction thereof.” 42 U.S.C. § 1983. Instead, we based our holding primarily on *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939), in which the Supreme Court dismissed organizational plaintiffs (while affirming a holding in favor of individual plaintiffs) on the basis that the Constitution's Privileges and Immunities Clause, *id.* at 514, 59 S.Ct. 954 (opinion of Roberts, J., joined by Black, J.), and the liberty guarantee of the Due Process Clause, *id.* at 527, 59 S.Ct. 954 (opinion of Stone, J., joined by Reed, J.), apply only to “natural, not artificial, persons,” *id.* Although the suggestion from *Hague* was that associational organizations could not sue on their own behalf when they lack the rights they would seek to vindicate,⁴ “[*Hague*] says nothing about whether [such organizations] can stand in the place of their members.” *Centro de la Comunidad Hispana*, 868 F.3d at 122 (Jacobs, J., dissenting).

Tellingly, *Aguayo's* reliance on *Hague* to deduce a restrictive rule on associational standing is out of step with the Supreme Court's embrace of associational standing. For instance, in *Warth v. Seldin*, the Supreme Court rejected any categorical bar on associational standing for § 1983 claims and confirmed (at least, in dicta) that “[e]ven in the absence of injury to itself, an association may have standing solely as the representative of its members.” 422 U.S. 490, 511, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). *Warth* followed a Second Circuit decision in which we concluded that an associational plaintiff lacked standing because it was “highly doubtful that an organization has standing to represent its members in most cases under [§ 1983].” *Warth v. Seldin*, 495 F.2d 1187, 1194 (2d Cir. 1974). Although the Supreme Court ultimately affirmed our Court's judgment because the organizational plaintiff did not adequately plead “any basis from which to infer that the controversy between respondents and [the organizational plaintiffs' members] ... remained a live, concrete dispute when th[e] complaint was filed,” *Warth*, 422 U.S. at 517, 95 S.Ct. 2197, it expressly diverged from our Court's view on associational standing, stating that so long as an association “allege[s] that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit and so long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause, the association may be an

appropriate representative of its members, entitled to invoke the court's jurisdiction.” *Id.* at 511, 95 S.Ct. 2197.

In *Hunt*, the Supreme Court relied on *Warth* to formulate its general three-part test for associational standing under Article III: “that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” 432 U.S. at 343, 97 S.Ct. 2434.

As *Hunt* illustrates, to the extent that our decision in *Aguayo* held that federal courts lack subject matter jurisdiction under Article III when an association sues on behalf of its members, we were simply wrong. We would be directly contradicting the Supreme Court if we continued to say that there is no such thing as associational “standing,” as a jurisdictional matter, when it comes to § 1983 claims.

*5 In the wake of these decisions by the Supreme Court and other circuits, we have nevertheless considered ourselves bound by *Aguayo*. At times, we have tried to rationalize its holding by shifting away from the vocabulary of standing, and we have instead said that § 1983 does not permit associational plaintiffs to sue in a representative capacity because “the rights it secures” are “personal.” *League of Women Voters of Nassau Cnty.*, 737 F.2d at 160. Yet, in truth, § 1983 does not itself secure any specific rights; it merely “provides a federal cause of action” to vindicate rights that are created by other provisions of federal law. *Wallace v. Kato*, 549 U.S. 384, 387, 127 S.Ct. 1091, 166 L.Ed.2d 973 (2007). That many federal rights are indeed “personal,” *see, e.g., Malloy v. Hogan*, 378 U.S. 1, 10, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964), does not rule out associational standing—which, after all, still requires that an associational plaintiff allege that its members have “such a personal stake in the outcome of the controversy as to warrant [their] invocation of federal-court jurisdiction,” *Summers v. Earth Island Inst.*, 555 U.S. 488, 493, 129 S.Ct. 1142, 173 L.Ed.2d 1 (2009) (internal quotation marks and citation omitted).

Indeed, without ever expressly considering the impact of *Warth* or *Hunt* on the viability of *Aguayo's* associational standing rule, we have continued to rely on an “implicit determination of prior panels that the [*Aguayo*] rule survives *Warth* until such time as our prior decisions are overruled either by an *en banc* panel of our Court or by the

Supreme Court.” *Nnebe*, 644 F.3d at 156 n.5 (alteration adopted, citation and internal quotation marks omitted). In the meantime, as judges of this Court have noted, in our effort to harmonize *Aguayo* with the Supreme Court’s approach to associational standing, we have indulged “increasingly tenuous and pretextual claims of injury to organizations themselves” under diversion-of-resources theories, *Centro de la Comunidad Hispana*, 868 F.3d at 123–24 (Jacobs, J., dissenting), like the one that the Supreme Court recently rejected as an adequate basis for associational standing, see *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 394–95, 144 S.Ct. 1540, 219 L.Ed.2d 121 (2024) (rejecting medical associations’ argument that “standing exists when an organization diverts its resources in response to a defendant’s actions”; holding that “an organization that has not suffered a concrete injury caused by a defendant’s action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant’s action”).

We will no longer cling to *Aguayo*’s increasingly unpersuasive and anachronistic bar on associational standing in § 1983 cases. Instead, we harmonize our reading of the law to accord with the Supreme Court and a national consensus of our sister circuits. To that end, we overrule *Aguayo*’s holding that our Court lacks jurisdiction over a § 1983 claim brought by an organizational plaintiff asserting associational standing on behalf of its members. See 473 F.2d at 1099–1100. As for subsequent cases in which we relied on *Aguayo* to hold that an organizational plaintiff had no standing to sue under § 1983 solely as the representative of its members, their holdings, too, are overruled. See, e.g., *Knife Rights, Inc. v. Vance*, 802 F.3d 377, 388 & n.9 (2d Cir. 2015); *League of Women Voters of Nassau Cnty.*, 737 F.2d at 160–61; *Lecci v. Cahn*, 493 F.2d 826, 828 (2d Cir. 1974).

We now follow the Supreme Court, and our sister circuits, in holding that when an organizational plaintiff, like Defending Education, submits a claim under § 1983, “the standing requirements of Article III can be satisfied in two ways[:]” first, “the organization can claim that it suffered an injury in its own right,” or, second, “it can assert ‘standing solely as the representative of its members.’ ” *Students for Fair Admissions*, 600 U.S. at 199, 143 S.Ct. 2141 (quoting *Warth*, 422 U.S. at 511, 95 S.Ct. 2197); see also *supra*, at ——— (collecting cases). This Court will not distinguish between an organizational plaintiff’s ability to establish representational standing in pursuit of a § 1983 claim as compared to other contexts in which we have applied *Hunt*’s standard to determine whether organizational plaintiffs had standing to

sue. See, e.g., *Do No Harm II*, 126 F.4th at 117–18 (medical association pursuing claims of race discrimination against private fellowship program); *All. for Open Soc’y Int’l v. U.S. Agency for Int’l Dev.*, 651 F.3d 218, 228 (2d Cir. 2011) (non-governmental organizations pursuing claims of compelled speech as a condition for receipt of government funds); *Bldg. & Constr. Trades Council of Buffalo, N.Y. & Vicinity v. Downtown Dev., Inc.*, 448 F.3d 138, 144 (2d Cir. 2006) (trade association pursuing claims regarding hazardous waste disposal). Thus, to review claims in which organizational plaintiffs assert claims in their representative capacity in this Circuit under § 1983, courts must apply the Supreme Court’s touchstone standard set forth in *Hunt*, 432 U.S. at 343, 97 S.Ct. 2434.

B. Applying *Hunt*

*6 In this case, Defending Education alleges that its members— Parents A, B, and C—live in the Croton-Harmon Union Free School District and that their children attend the District’s public schools. Defending Education further submits that “[t]hese members and their children are suffering concrete injuries as a direct result of the District’s unconstitutional policies” and that “they credibly fear that the expression of their deeply held views is prohibited” in violation of the First and Fourteenth Amendments. Complaint ¶ 84. Because, in this decision, we amend this Circuit’s applicable standard for determining associational standing in § 1983 cases, the question of Defending Education’s standing under *Hunt* should be examined by the district court in the first instance. Accordingly, on remand, the district court must address the disputed issue of Defending Education’s Article III standing and should conduct any further fact-finding that it determines to be required. We express no view on the question of whether, if Defending Education establishes standing in the district court, it has adequately met the standard for seeking a preliminary injunction against the enforcement of Croton-Harmon’s challenged policies. See *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 486–88 (2d Cir. 2013) (applying preliminary injunction standard in the context of alleged First Amendment violation).

III. Conclusion

In sum, we hold as follows:

1. We overrule the holding in *Aguayo v. Richardson*, 473 F.2d 1090, 1099 (2d Cir. 1973), that an organization may not “sue under [42 U.S.C. § 1983] for the violation of rights of members.” An organization pursuing a § 1983 claim may

satisfy its Article III standing requirements in two ways. The organization can show that it has suffered an injury itself or, alternatively, it can establish its “standing solely as the representative of its members.” *Warth v. Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197 (1975).

2. To invoke associational standing as the representative of its members, an organization must demonstrate that “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434 (1977).

3. Aside from our overruling *Aguayo*'s rule barring organizations from suing under § 1983 on behalf of their members, *Aguayo*'s separate holdings remain binding in this Circuit.

For the foregoing reasons, we **REVERSE** the district court's judgment of dismissal and **REMAND** for further proceedings in accordance with this opinion.

All Citations

--- F.4th ----, 2025 WL 5281079

Footnotes

* The Clerk of Court is respectfully directed to amend the official caption as set forth above.

- 1 Croton-Harmon's disputed policies include those pertaining to: (1) sex and gender-identity discrimination and harassment, see Complaint, Exhs. 1 and 2, Policy 0110 (“Sex Discrimination and Sexual Harassment”) and Policy 0110-R (“Sexual Harassment Regulation”) (each last revised March 25, 2021); (2) bullying, discrimination, and harassment of students, see *id.*, Exhs. 3, 4, and 5, Policy 0115 (“Dignity For All Students: Prohibiting Bullying, Discrimination and Harassment of Students”) (last revised May 5, 2022), Policy 0115-R (“Student Harassment and Bullying Prevention and Intervention Regulation”) (last revised May 5, 2022), and Policy 0115-E (“Croton-Harmon School District Bullying/Harassment Report Form”) (maintained as of May 9, 2019); (3) the student code of conduct, see *id.*, Exh. 6, Policy 5300 (“Code of Conduct”) (last revised June 16, 2022); and (4) acceptable-use of computer and electronic communication devices, see *id.*, Exhs. 7 and 8, Policy 4526 (“Access to Computer Network for Use in Instruction”) and Policy 4526-R (“Acceptable Use for Computer and Internet Access Regulation”) (each last revised June 15, 2017).
- 2 In the revised opinion, this Court remanded the question of standing to maintain the action past the pleading stage and left open the possibility that an association's use of pseudonyms does not require dismissal, stressing that in “this Court's decision in *Building and Construction Trades Council of Buffalo, New York and Vicinity v. Downtown Development, Inc.*, 448 F.3d 138 (2d Cir. 2006) ... we concluded that an organizational plaintiff need not identify specific injured members by name at the pleading stage.” *Do No Harm v. Pfizer, Inc.*, 126 F.4th 109, 122 n.7 (2d Cir. 2025) (“*Do No Harm II*”).
- 3 For instance, *Aguayo*'s bar on associational standing in § 1983 cases is hard to square with the Supreme Court's recent decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, where the Court expressly affirmed the petitioning association's standing to assert claims against the University of North Carolina under *Hunt*'s test for associational standing. 600 U.S. 181, 198–201, 143 S.Ct. 2141, 216 L.Ed.2d 857 (2023). The plaintiff association in that case brought claims under both Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment (through § 1983), and the Supreme Court did not appear to distinguish between those claims in its discussion of associational standing. 600 U.S. at 198–201, 143 S.Ct. 2141.
- 4 This suggestion has arguably been tempered by recent Supreme Court decisions that assume a more expansive view of the rights of artificial persons. See, e.g., *Burwell v. Hobby Lobby*, 573 U.S. 682, 708, 134 S.Ct. 2751, 189 L.Ed.2d 675 (2014) (“The term ‘person’ sometimes encompasses artificial persons (as the Dictionary Act instructs)”).