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January 14, 2009

Arthur A. Riegel, Esq.
Hearing Officer
1 Willow Lane
Hewlett Harbor, NY 11557


Re: Williams, Natalie M. advs. BOE, CSD, CNY
Our File No.: 250144-T240

Dear Arthur:

Enclosed please find Respondent's Motion to Dismiss, Demand for Bill of Particulars, Request for Production of Documents, and Demand for Public Hearing in the above referenced case. Proof of service is enclosed.

Very truly yours,

JAMES R. SANDNER

By: 
MITCHELL H. RUBINSTEIN
Senior Counsel

MHR:da
Encl.

c. Minerva John-Stull, Esq.
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New York State United Teachers
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UNIVERSITY OF THE STATE OF NEW YORK
STATE EDUCATION DEPARTMENT: OFFICE OF
SCHOOL DISTRICT EMPLOYER-EMPLOYEE RELATIONS
BEFORE: ARTHUR RIEGEL, ESQ.

In the Matter of

BOARD OF EDUCATION
OF THE CITY OF NEW YORK

Complainants,

-against-

NATALIE WILLIAMS,

Respondent-Tenured Teacher,

**MOTION TO DISMISS;
DEMAND FOR BILL OF
PARTICULARS; REQUEST
FOR PRODUCTION OF
DOCUMENTS; AND DEMAND
FOR PUBLIC HEARING**

Pursuant to the Provisions of Education Law §3020-a and
the Collective Bargaining Agreement between the Board
of Education and the UFT.

PLEASE TAKE NOTICE, that respondent, through her attorney James R. Sandner
(Mitchell H. Rubinstein, Of Counsel), moves to dismiss the charges for reasons set forth below.
Further, respondent requests a written decision on this motion before the hearing commences.

PLEASE TAKE FURTHER NOTICE, that respondent hereby demands service upon the
undersigned a verified bill of particulars setting forth the information requested and that the
Board produce the requested documents. Please take further notice that the Respondent demands
a public hearing.

Respondent is a tenure teacher, assigned. Education Law §3020-a charges were preferred
on or about May 24, 2007 and respondent timely demanded a hearing (Exhibit "1").

AS AND FOR A MOTION TO DISMISS

Before proceeding to the merits of the underlying motion, it is important to explain the standard of review that must be employed.

Education Law §3020-a hearings have recently been described as “formal disciplinary proceedings”, *Remus v. Board of Education*, 96 N.Y.2d 271 (2001). They are not like ordinary arbitrations. Education Law §3020-a Hearing Officers are more like administrative law judges. There are detailed procedural rules that must be followed before the teacher is charged, attorney fees can be taxed against the Board of Education if any of the charges are frivolous and recent case law suggests that the arbitration standard of judicial review is not applicable because §3020-a is not voluntary, like arbitration. Rather, the standard of judicial review is the same as the judicial review applicable to other administrative determinations. *Matter of Bernstein v. Norwich City School District*, 282 A.D.2d 70 (3d Dep’t 2001). *But see, Matter of Board of Education v. Ziparo*, 275 A.D.2d 411 (2d Dep’t 2000); *Matter of Fischer v. Smithtown Central School District*, 262 A.D.2d 560 (2d Dep’t 1999).

The law requires that §3020-a of the Education Law be strictly construed in favor of the teacher because the Education Law protects the constitutionally recognized interest of government employees to continue employment, is penal in nature, and is in derogation of the common law rights of employers to discharge employees at will. *See, Adrian v. Board of Education*, 60 A.D.2d 840, 400 N.Y.S.2d 570 (2d Dep’t, 1978); *Clayton v. Board of Education of Central Dist. No. 1*, 49 A.D.2d 343, 375, N.Y.S.2d 169, *rev’d on other grounds*, 41 N.Y.2d 966, 394 N.Y.S.2d 882 (1977); *Moritz v. Board of Education*, 60 A.D.2d 161, 166, 400 N.Y.S.2d 247 (4th Dep’t, 1977), McKinney’s Cons. Laws of New York, Book 1, Statute, §271.

Tenured teachers, such as respondent, have a property interest in their position “which raises due process considerations when a teacher is faced with termination of his employment.” *Elmore v. Plainview-Old Bethpage Central School District*, 273 A.D.2d 307, 708 N.Y.S.2d 712 (2d Dep’t 2000)(vacating post-1994 §3020-a decision because teacher was deprived of his right to confer with counsel while on the witness stand). Thus, Hearing Officers must protect the procedural process. As the court stated:

As stated by the Court of Appeals, ‘it is imperative that the integrity of the process, as opposed to the correctness of the individual decision, be maintained. *Id.*, quoting *Matter of Goldfinger v. Lisker*, 68 N.Y.2d 225, 230, 508 N.Y.S.2d 159.

In 1993, the Court of Appeals reaffirmed many of these principles and held that the state legislature has enacted a series of tenure statues which established a “firm policy of safeguarding teachers’ tenure rights,” *Matter of Gould v. Board of Education*, 81 N.Y.2d 446 (1993). The Court also reaffirmed the established principle that it is necessary to construe the tenure system broadly in favor of the teacher. *Id.*

POINT I

SPECIFICATION III AND VI SHOULD BE DISMISSED.

Specification III and VI alleges that:

Specification III: On or about October 28, 2005, Respondent was arrested and charged with two counts of Criminal Trespass after failing to comply with directives from Principal Anthony Rotunno which informed Respondent that under no circumstances is Respondent to return to John F. Kennedy High School without prior authorization and failed to immediately notify the Department of the Respondent's arrest in violation of Chancellor's Regulation C-105.

Specification VI: On or about December 13, 2005, Respondent was arrested and charged with two counts of Criminal Trespass after failing to comply with directives from Principal Anthony Rotunno that under no circumstances was Respondent to return to John F. Kennedy High School without prior authorization and failed to immediately notify the Department of the Respondent's arrest in violation of Chancellor's Regulation C-105.

This Hearing Officer has ruled that an arrest is not misconduct. *Matter of New York City, Board of Education*, SED No. 3,925 (Riegel, 2000), slip at 7. That ruling has been followed by a number of well respected Hearing Officers, *see, Matter of New York City, Board of Education*, SED No. 466721 (Hearing Officer Martin F. Scheinman)(same); *Matter of New York City Board of Education*, SED No. 2852 (Hearing Officer John E. Sands, Aug. 29, 2001, slip at 10)(same); *Board of Education, North Shore Central School District*, SED No. 4,230 (Hearing Officer David Gregory, Oct. 3, 2001); (Exhibit "2").

Since an arrest means nothing and an arrest is not misconduct, the failure to report it is not misconduct. Additionally, the Department knew about the arrests. Therefore, Respondent had no duty to report it. As recognized by Arbitrators Jack Tillem, and Ben Falcigno where the

Board has notice of the arrest, the teacher cannot be charged for failing to report said arrest.

Matter of Community School Dist., No. 32, SED 4,936 (Tillem, July 7, 2004); *Matter of*

Community School Dist. No. 24, SED 4,966 (Falcigno, Feb. 1, 2005). (Exhibit "3")

Accordingly, the charges should be dismissed.

POINT II

BILL OF PARTICULARS AND REQUEST FOR PRODUCTION OF DOCUMENTS

With Respect To All The Charges And Specifications

In the alternative, should the Hearing Officer deny the motion to dismiss, respondent requests the following:

1. Identify any and all witnesses the District intends to call to give testimony during their case. Provide their names, addresses and phone numbers.
2. Identify each and every student, teacher, employee, parent or person each of the charges refers to. Identify to which charge each such student, teacher, employee, parent or person provided pertains. Provide the addresses and phone numbers of each such student, teacher, employee, parent or person.
3. Attach copies of any and all witnesses statement(s), investigatory statement(s), note(s), exculpatory evidence(s), picture(s), reports, report(s) of the Special Commissioner of Investigation, report(s) of the Office of Appeals and Review, alleged corporal punishment incident report(s), police report(s), arrest records(s), certificate(s) of disposition, transcript(s), and the District student record(s). With respect to the student record(s), respondent is only requesting the records of each student witnesses the District intends to call at the instant hearing.
4. Provide a copy of any tape or audio recordings and transcripts of any such recordings which relate to any of the charges or which the Board of Education plans to use at trial.

5. In each charge designate the exact location, date, day of the week and time the alleged conduct took place. Identify whether any other persons, students or witnesses were present during the course of the conduct alleged or observed the conduct alleged. Provide their names, addresses and phone numbers.

6. Attach copies of every warning, memo, letter directive, addendum, observation, time card, punch card, sign in-sheet or time and attendance record referred to in the charges or concerning the charges.

7. Attach copies of every document you plan to introduce into evidence.

8. Provide the name, address, telephone, e-mail address for a student with the first name of Fantasia in Respondent's second period biology class in the fall 2005.

PLEASE TAKE NOTICE, that if you fail to timely provide a Bill of Particulars or you fail to timely produce the requested documents, this is written notice of respondent's additional motion to dismiss the charges for lack of specificity, for lack of compliance with the disclosure provisions of § 3020-a and for a violation of due process.

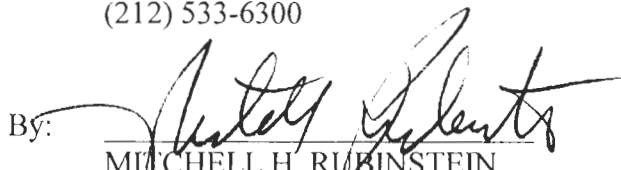
Dated: New York, New York

11/13/09

Yours, etc.

JAMES R. SANDNER
Attorney for Respondent
Office & P.O. Address
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(212) 533-6300

By:


MITCHELL H. RUBINSTEIN
Of Counsel

TO: MINERVA JOHN-STULL, ESQ.
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