

640922



THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, Chancellor

OFFICE OF THE CHANCELLOR

51 Chambers Street, Room 604 New York, NY 10007

MEMORANDUM

To: Eric Nadelstern  
Senior Instructional Superintendent

From: Theresa Europe *TE*  
Deputy Counsel to the Chancellor

By: Cheryl Smith, Esq. *CS*  
Administrative Trial Unit

Date: January 19, 2007

Re: Closing case against tenured teacher, **Steve Ostrin** - Assigned  
to Public School 430, Brooklyn Technical High School, District 13, Brooklyn  
**File # 640922** [REDACTED]

The Department of Education (DOE) has employed Steven Ostrin (hereinafter Respondent) for approximately sixteen (16) years. In the instant case, it was alleged that the Respondent inappropriately touched a female student and made lewd suggestions to her. As a result of the allegations, the Respondent was arrested and was charged with Endangering the Welfare of a Minor and Harassment in the Second Degree under Kings County Docket Number 2005KN017284. Frank Laghezza was the Assistant District Attorney who tried the case. The Respondent was acquitted after the criminal trial. This case also received significant media attention.

The Respondent was the subject of an investigation by the Office of the Special Commissioner of Investigation (SCI) and the allegations were unsubstantiated. The matter was referred to the Office of Legal Services (OLS), Administrative Trials Unit (ATU). In an effort to bring 3020-a charges against the Respondent, ATU contacted the students who made the allegations. The students and their parents were uncooperative with bringing 3020-a charges. ATU researched the possibility of having the criminal record unsealed to determine if the Respondent made any inculpatory statements wherein ATU could use to bring 3020-a charges against the Respondent. The case law did not support unsealing the case.

The District Attorney's office stated that the complainant came across as being overly sensitive and sheltered because of the witness's family life and extra-scholastic activities. The complainant's father, who also testified, came across as a very strict and regimented parent who unrealistically sheltered the complainant to her detriment. The

father also provided inconsistent testimony because he often had difficulty remembering names and dates. The ADA also found the complainant to be incredible.

The school's principal, Lee McCaskill<sup>1</sup> testified. The same day, Mr. McCaskill tendered his resignation to the DOE in an effort thwart criminal charges. Mr. McCaskill's misconduct also received significant media attention and also cast a dark shadow on his credibility. Mr. McCaskill's actions had a negative impact on the criminal trial in that the ADA was forced to concede certain points to prevent Mr. McCaskill from being re-called as a witness.

At trial, Mr. Ostrin provided numerous solid character witnesses, including present and former students. The character witnesses testified they benefited because of the Respondent's unorthodox teaching style and his personal involvement in their lives. One character witness, a former student of the Respondent and an employee at a prestigious investment bank, testified that the Respondent took the witness shopping and suggested what he should wear for his interview with his current employer. The Respondent produced multiple photos of the Respondent and other staff members of various levels embracing different students on varied occasions.

The DOE made additional efforts to contact the complainant and her parents and they have proven to be non-responsive.

Based on the above, the Office of Legal Services is closing this case.

Please see to it that all pertinent parties within the Department of Education and in your district get informed of the same. If there are any questions regarding the above referenced matter, do not hesitate to call me at (212) 374-4116.

cc:	Gary Barton	Lawrence Becker	Virginia Caputo
	Victoria Campbell	Mitchell Dodell	Sunilda Nunez
	Theresity Smith	Valerie Shannon	Karen Ditolla
	Vincent Clark	Donna Rey	Lorraine Smith
	Kisha Toure	Theresa Europe	Maxine Forrester-Lyons
	Debra Maldonado	Jessica Garcia	Randy Asher
	Andy Gordon	File	

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<sup>1</sup> Mr. Lee McCaskill and his wife are both employees of the DOE and residents of New Jersey. The McCaskill children were enrolled in schools within the New York City School system. Mr. McCaskill and his wife failed to get permission and failed to pay the attendant fees to have their children attend New York City Schools. They also claimed to be New York residents.

## Howard Schoor

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From: Europe Theresa [TEurope@schools.nyc.gov]  
Sent: Tuesday, February 06, 2007 1:48 PM  
To: Claude Hersh  
Subject: RE: Steven Ostrin (Formerly assigned to K430)

Did I respond to this? ATU is not going forward with this case.

-----Original Message-----

From: Claude Hersh [mailto:cherh@nysutmail.org]  
Sent: Thursday, February 01, 2007 7:17 PM  
To: Europe Theresa  
Subject: Steven Ostrin (Formerly assigned to K430)

Terrie: Steve Ostrin is a teacher who has been in the Reassignment Center for quite awhile. The UFT heard a rumor that he was going to be put back in the classroom soon. Do you know what is happening with him?

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Thank you,

CLAUDE I. HERSH

Department of Education · City of New York  
**THE LEON M. GOLDSTEIN HIGH SCHOOL FOR THE SCIENCES**  
at KINGSBOROUGH  
1830 Shore Boulevard  
Brooklyn, New York 11235

*"Academic Excellence in a Caring Community"*



Joseph Zaza  
Principal

Tel: 718/368-8500  
Fax: 718/368-8555

February 5, 2007

To Whom It May Concern:

This is to certify that Steve Ostrin was interviewed by me today for a Social Studies position. He was at Leon M. Goldstein High School from 9:45 a.m. to 11:15 a.m.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe F. Zaza", with a long horizontal flourish extending to the right.

Joseph F. Zaza  
Principal

D. Ex. 11

CITY OF NEW YORK  
THE SPECIAL COMMISSIONER OF INVESTIGATION  
FOR THE NEW YORK CITY SCHOOL DISTRICT

80 MAIDEN LANE, 20TH FLOOR  
NEW YORK, NEW YORK 10038

RICHARD J. CONDON  
SPECIAL COMMISSIONER

TELEPHONE: (212) 510-1400  
FAX: (212) 510-1550  
WWW.NYCSCI.ORG

October 30, 2009

Mr. Howard Edelman, Esq.  
Hearing Officer  
119 Andover Road  
Rockville Centre, New York 11570

Dear Mr. Edelman:

At your behest, Cheryl Smith, an attorney assigned to the Office of Legal Services ("OLS") at the New York City Department of Education ("DOE") has asked the Office of the Special Commissioner of Investigation for the New York City School District ("SCI") to produce a particular case file concerning Steven Ostrin. Ms. Smith further requested that an SCI investigator or his supervisor testify before you in December 2009.

Special Commissioner Richard J. Condon is a Deputy Commissioner to New York City Department of Investigation Commissioner Rose Gill Hearn and SCI is independent of the DOE. Moreover, SCI is not a party to or involved in the Ostrin proceeding. The Ostrin hearing, brought pursuant to New York State Education Law § 3020-a, does not stem from an investigation conducted by SCI. Rather, it is based on the sworn testimony of a female student ("Student A") given in a hearing pursuant to Municipal Law § 50-h. SCI was not a party to or involved in that hearing.

My conversations with Ms. Smith revealed factual misconceptions which I wish to address. Ms. Smith indicated that the request for the SCI file was made, at least partially, in the belief that SCI conducted an investigation of the alleged sexual abuse incident, found it to be unsubstantiated and, therefore, that the file might contain exculpatory material. I have reviewed the file. SCI did not conduct an investigation into the matter. Rather, after a preliminary inquiry, SCI deferred to the New York City Police Department ("NYPD"). The principal at Brooklyn Technical High School ("Brooklyn Tech") contacted SCI on March 3, 2005, and was interviewed on March 8, 2005. During his interview, he reported that Student A's parents told him that Student A said that Ostrin rubbed her back and hugged and kissed her against her will.<sup>1</sup>

<sup>1</sup> When he called in the complaint, the principal also gave additional details of the parents' report. He said that the parents also recounted that Ostrin asked Student A if she would strip for him and if she would be his sex slave, and that another identified female student entered the class and Ostrin told both students of his sexual exploits and how he was able to get away with it. According to the principal, the parents said that an unidentified male student entered the class, may have heard part of the comments and then told the girls "stay away from him; he may be a pedophile."

October 30, 2009

The principal informed investigators that he also reported the matter to the NYPD and to his superintendent and that Ostrin had been reassigned. On that same date, an NYPD detective advised an SCI investigator that the Police Department was conducting an investigation. Thereafter, on March 20, 2005, Ostrin was arrested by the NYPD and charged with endangering the welfare of a child. The SCI investigator then monitored the criminal case through CRIMS, a New York State court system database, and ultimately spoke to the assigned prosecutor who reported that Ostrin was acquitted in February 2006.<sup>2</sup> On or about March 13, 2006, SCI closed its file. No witness to the events in question was interviewed by SCI investigators. SCI never made any findings about Student A's allegations and the case was neither substantiated nor unsubstantiated.

In May 2008, OLS Supervisor Theresa Europe requested that SCI attempt to interview two individuals, former students, whom Student A had named as witnesses. However, SCI investigators did not interview either individual. One of the named witnesses was located and refused to be interviewed by investigators. The father of the other purported witness, who had the same name, was spoken to at his job about an incident at Brooklyn Tech in 2005 between a female student and teacher. The father opined that the investigators were probably looking for his son who had attended Brooklyn Tech. He took the investigator's card, and indicated that he would ask his son, who resided with him, to call the investigator. That witness never contacted the investigator. This matter was closed in July 2008 without any findings being made by SCI.

SCI files are confidential and are disclosable only to the extent required by law. An investigation which has no substantiated findings is not subject to disclosure. Regarding Steven Ostrin, SCI did not conduct an investigation and made no findings. Thus, SCI cannot comply with the request for its file(s).

In lieu of producing the file(s), an SCI investigator could appear before you to testify that no SCI investigation took place.

If you have any questions, please contact me at (212) 510-1493. Thank you for your consideration.

Very truly yours,

  
Ann E. Ryan  
Special Counsel

AER:gm

c: Cheryl Smith  
Timothy Taylor

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<sup>2</sup> Some other records were also obtained from other agencies. Some of those records are also covered by non-dissemination agreements.

D.12

**Smith Cheryl A.**

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**From:** Tim Taylor [ttaylor@nysutmail.org]  
**Sent:** Thursday, October 15, 2009 10:19 AM  
**To:** Smith Cheryl A.  
**Subject:** Re: Ostrin Case - Request for in camera review of documents

Dear Cheryl and Howard, at this point in the hearing the fair position to take is full disclosure. The respondent objects to any in camera review and respectfully requests the full disclosure and production of all documents or other materials in any form whatsoever relating to Mr. Ostrin.

**Smith Cheryl A.**

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**From:** HCEARB@aol.com  
**Sent:** Tuesday, November 03, 2009 2:38 PM  
**To:** Smith Cheryl A.; ttaylor@nysutmail.org  
**Subject:** NYC D/E v. Ostrin

I have reviewed e-mail correspondence regarding the above referenced matter. Based upon that review I find that the following should be disclosed.

E-mail dated May 15, 2008, 4:23 p.m., sent by C. Smith.

The victim names M.V. as the person who walked into the room while the victim was with Ostrin. The victim names M.S. as her outcry witness and says M.S. 'heard that Ostrin is a pedophile.' Ostrin denies pretty much all of the allegations but says the victim was not doing well in his class.

E-mail dated May 6, 2008, 3:52 p.m. send by R. Loughran

We [NYCSCI] did not investigate the acquittal. We had been monitoring the NYPD's arrest and closed our fate when the criminal case was done. It was neither sub'd nor unsub'd.

Howard C. Edelman

Marilyn Villacruze Villacruz  
Michael Sikouts.



D.14

**Smith Cheryl A.**

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**From:** Smith Cheryl A.  
**Sent:** Monday, November 09, 2009 11:44 AM  
**To:** 'HCEARB@aol.com'; ttaylor@nysutmail.org  
**Subject:** Steven Ostrin

Good Morning Gentlemen:

I am in receipt of a letter addressed to Mr. Edelman from Ann E. Ryan, Special Council of SCI dated October 30, 2009 wherein both Mr. Taylor and I were copied. The Department is requesting that this document become part of the record in this case and admitted as the next Department exhibit. To date, based on Ms. Ryan's letter the Department does not anticipate calling any additional witnesses on December 2, 2009. So Mr. Taylor should be prepared to begin his case on that day. The Department requests that Mr. Taylor send his witness list and any discoverable documents to the Department in advance of the December 2, 2009 hearing date.

Sincerely,

**Cheryl Smith, Esq.**

NYC Department of Education  
Office of Legal Services  
49/51 Chambers Street  
Room 604  
New York, New York 10007  
(212) 374-4116  
(212) 374-1074 fax

D. 15

Smith Cheryl A.

**From:** Tim Taylor [ttaylor@nysutmail.org]  
**Sent:** Tuesday, November 10, 2009 10:35 AM  
**To:** HCEARB@aol.com; Smith Cheryl A.  
**Subject:** Re: Steven Ostrin

Mr. Edelman, the correspondence that I receive raises more questions than it answers. We require at a minimum that the investigator be called, and that the person who initiate the process be called ,the principal . We also would demand that Grace be recalled based upon prior inconsistent statements regarding touching and what was said by Mr. Ostrin. The Department's inconsistent and self serving statements hardly resolve the issues concerning withholding exculpatory evidence or withholding previously demanded materials. The Department should prepare to have Grace available on December 2 at 1:30pm.

**Smith Cheryl A.**

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**From:** Smith Cheryl A.  
**Sent:** Friday, November 13, 2009 5:00 PM  
**To:** 'HCEARB@aol.com'  
**Cc:** 'Tim Taylor'  
**Subject:** Ostrin Matter - Response to Taylor e-mail dated 11/10/09

Good Afternoon Mr. Edelman:

The Department opposes all of the requested relief sought by Mr. Taylor's email and writes to ensure a clear record as to what has really happened here. Moreover, we ask that the Respondent be directed to be ready to begin their case, if they choose to put on a case, on December 2, 2009. Counsel for the Respondent continues to try allege a discovery violation when, after receipt of Ms. Ryan's letter, it is clear there was no such alleged violation. We ask that a determination be made that Mr. Taylor's quest to make this a case about the Department's conduct be put to an end. We ask that the very simple and true purpose of this hearing - determining the guilt or innocence of Mr. Ostrin recommence.

Regarding your e-mail addressed to both Mr. Taylor and me, dated November 3, 2009 2:38 pm. You ruled that an e-mail dated May 15, 2008 pm at 4:23 pm ("4:23 pm") sent by me should be disclosed to Mr. Taylor. It included the following language: The victim names M.V. as the person who walked into the room while the victim was with Ostrin. The victim names M.S. as her outcry witness and says the M.S. 'heard that Ostrin is a pedophile.' Ostrin denies pretty much all of the allegations but says the victim was not doing well in his class.

It is the Department's position that when viewed in conjunction with an earlier e-mail sent at 3:51 pm wherein there is a discussion about a review of the 50-h transcripts, the 4:23 pm e-mail is attorney work product since it's a summary of my information about the contents of the 50-h transcripts and should not have been disclosed. Specifically, the first and second sentence came from my review of the 50-h transcripts of Grace Olamijulo as discussed in the e-mail and the third sentence came from my conversation with an attorney about the substance of Ostrin's 50-h deposition. No portion of what I wrote in my email was a prior recorded statement of a witness that was not provided to Respondent, nor was any portion of what I wrote exculpatory information.

Also there was typographical error in your transcription of the disclosed May 6, 2008, 3:52 pm e-mail from R. Loughran, it should read . . . our "file" rather than . . . our "fate".

Regarding the Ms. Ryan's letter:

The letter from SCI's Special Counsel Ms. Ryan is clear: SCI is not part of the DOE; SCI did not and will not give the Department of Education, or Mr. Taylor any file regarding these allegations; there is no exculpatory evidence; there was no investigation by SCI ; and, there were no interviews of any eyewitnesses or outcry witnesses by SCI.

Because the letter is consistent with what the DOE has said all along about SCI's involvement doesn't make it self-serving but rather makes the letter an essential piece of evidence that addresses the puffed up inaccurate claims and allegations that sound in the DOE withholding information. Nothing can be further from the truth, as is now abundantly clear.

Ms. Ryan's letter is a probative and relevant response to the ancillary issues raised that allege the Department was withholding evidence, exculpatory or otherwise The Respondent has now injected these allegations into this proceeding. We therefore ask that the SCI letter be received into evidence as an Arbitrator exhibit. This letter is proper and necessary to preserve the record in this case.

In light of Ms. Ryan's letter, there can be no probative value to calling an SCI investigator at this juncture to testify and to do so would just serve to further delay this proceeding. The purpose of the SCI investigator's testimony was to determine what action SCI took regarding this matter and if there was an SCI investigation, and the nature of that investigation and to probe any information collected. Ms. Ryan provides the information that SCI is able to disclose. At this juncture, to call an SCI investigator to testify that no SCI investigation took place and that SCI deferred to NYPD's investigation is unnecessary.

Additionally, there is absolutely no reason to recall Grace Olamijulo to testify in this proceeding. Ms. Olamijulo testified on June 11, 2009 and the Respondent chose not to cross examine her at all. We took special care to schedule Ms.

Olamijulo's testimony around her school schedule and when she would be in the New York City Area. Mr. Taylor was part of that planning and thus knew more than 60 days in advance the date she was going to testify. I provided Mr. Taylor with her 50-h transcript by e-mail on 12/19/08, before the pre-hearing conference, wherein she testified to exactly the same subject matter. It is no secret in this matter that these allegations have been heavily litigated prior to the beginning of this 3020-a hearing and that many people have given some form of sworn testimony about these allegations. All of this prior testimony is accessible to Mr. Ostrin and yet the Respondent chose not to utilize any of it in cross examining Ms. Olamijulo.

There is no credible claim that any information recorded by the SCI investigator, after speaking with the principal, who spoke to the father, who spoke to Ms. Olamijulo is an inconsistent statement fairly attributable to Ms. Olamijulo. At best, it is four levels of hearsay. Also, since each speaker has placed their own inflection, level of importance, and word choice, memory, etc., on the alleged communication, it would be fundamentally unfair to characterize the result as a prior-inconsistent statement of the victim. The statements allegedly attributed to Ms. Olamijulo, after such an attenuated indirect process are no more or less reliable than a child's game of "telephone."

Further, Ms. Olamijulo's 50-h testimony includes the information that she reported these allegations to her father and others. On June 11th, once she completed her testimony, Mr. Taylor left the room to confer with Mr. Ostrin, when they returned they chose not to ask a single question of the victim. The record is clear that this decision was a deliberate choice. There is no legal or equitable reason to give the Respondent a second bite at the apple, regarding the decision not to cross-examine this witness. There is no legitimate reason to put the victim through any further discomfort or unease by forcing her to relive the experience some six months later. In all fairness, the Respondent had his chance ask any and all questions and he chose not to do so.

The Department respectfully requests that you admit the Ryan letter in to evidence and that you deny the Respondent's request to recall Ms. Olamijulo. Additionally we request that you direct the Respondent to be prepared to begin their case on December 2. If Respondent truly wishes to call the SCI investigator, he may choose to do so during the Respondent's case.

The Department also asks that all of the emails communicated to the Arbitrator regarding this matter be admitted as Arbitrator exhibits.

Sincerely

**Cheryl Smith, Esq.**

NYC Department of Education  
Office of Legal Services  
49/51 Chambers Street  
Room 604  
New York, New York 10007  
(212) 374 -4116  
(212) 374- 1074 fax

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D.18

Smith Cheryl A.

From: Tim Taylor [ttaylor@nysutmail.org]  
Sent: Monday, November 16, 2009 8:44 AM  
To: HCEARB@aol.com; Smith Cheryl A.  
Subject: Re: Ostrin Matter - Response to Taylor e-mail dated 11/10/09

Due to the various inaccurate , inflammatory and nonconstructive statements made by Ms. Smith in her last e-mail none of which addresses the real issue of whether the newly discovered evidence of a SCI investigation previously denied by Ms. Smith is grounds to have Grace recalled. The respondent's position is that the letter by Ms. Rand states that statements were taken from a Principal who reported what Grace and her father told him. Furthermore, the Principal allegedly reported what the father reported Grace as saying to him. Additionally, the investigator reported that other witnesses allegedly were present but refused to talk to him. I am shocked that this is coming out now since Ms. Smith has denied all along that there was any SCI investigation. I strongly believe that all further communications need to be placed on the official record. I am requesting that both the SCI investigator and Grace be present on Dec.2 for examination.

D,19

**Smith Cheryl A.**

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**From:** HCEARB@aol.com  
**Sent:** Tuesday, November 17, 2009 2:50 PM  
**To:** Smith Cheryl A.; ttaylor@nysutmail.org  
**Subject:** NYC D/E v. Ostrin

I have reviewed the correspondence from Ms. Smith and Mr. Taylor regarding the above referenced matter. Based upon that review I find that the Department must make available the SCI investigator and the Principal to testify about their role in this case. Grace Olamijulo need not be made available at this time. If Mr. Taylor believes that the testimony of the Principal or of the investigator warrants recalling Grace Olamijulo, I shall revisit this issue at a later date.

Howard C. Edelman

Smith Cheryl A.

D. 20

**From:** Smith Cheryl A.  
**Sent:** Monday, November 23, 2009 10:28 AM  
**To:** 'HCEARB@aol.com'; ttaylor@nysutmail.org  
**Subject:** RE: NYC D/E v. Ostrin

Good Morning Mr. Edelman:

I am writing to remind you that the principal of Brooklyn Tech at the time of the allegations, Mr. Lee McCaskill is no longer our employee and as such he is no longer under our control.

I will make efforts to have him appear on December 2.

Sincerely,

**Cheryl Smith, Esq.**

NYC Department of Education  
Office of Legal Services  
49/51 Chambers Street  
Room 604  
New York, New York 10007  
(212) 374-4116  
(212) 374-1074 fax

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**From:** HCEARB@aol.com [mailto:HCEARB@aol.com]  
**Sent:** Tuesday, November 17, 2009 2:50 PM  
**To:** Smith Cheryl A.; ttaylor@nysutmail.org  
**Subject:** NYC D/E v. Ostrin

I have reviewed the correspondence from Ms. Smith and Mr. Taylor regarding the above referenced matter. Based upon that review I find that the Department must make available the SCI investigator and the Principal to testify about their role in this case. Grace Olamijulo need not be made available at this time. If Mr. Taylor believes that the testimony of the Principal or of the investigator warrants recalling Grace Olamijulo, I shall revisit this issue at a later date.

Howard C. Edelman