

EXHIBIT C

NEW YORK STATE EDUCATION DEPARTMENT

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In the Matter of the Disciplinary Charges Proffered by

NEW YORK CITY DEPARTMENT OF
EDUCATION,

SED File No. 24,504

Department,

-against-

JOHN LEFTRIDGE.

Respondent.
-----X

APPEARANCES:

FOR THE DEPARTMENT:

**COURTENAYE JACKSON-CHASE, ESQ., GENERAL COUNSEL TO
THE CHANCELLOR**

Nancy Ryan, Esq., of Counsel

FOR THE RESPONDENT:

RICHARD A CASAGRANDE, ESQ., GENERAL COUNSEL

Steven Friedman, Esq., of Counsel

BEFORE: David J. Reilly, Esq., Hearing Officer

PRELIMINARY STATEMENT

The Department proffered charges against Respondent, John Leftridge, a tenured teacher assigned to P.S. 93 in Brooklyn, New York, stating that during the 2013 - 2014 school year, he engaged in neglect of duty, insubordination and conduct unbecoming his profession. (Joint Exhibit 1.) In accordance with §3020-a of the New York State Education Law (“§3020-a”), I was appointed as the Hearing Officer in this matter pursuant to the applicable collective bargaining agreement (the “Agreement”). (Joint Exhibit 4.) Thereafter, I held a pre-hearing conference on May 16, 2014, at which the issues raised by Respondent’s Demand for Bill of Particulars and Request for Production of Documents and the Department’s proposed responses were addressed. (Joint Exhibit 2.)

Hearings on the Charges and Specifications against Respondent commenced on June 6, 2014, and subsequently continued on June 9, 2014, June 13, 2014 and June 16, 2014, at the Department’s offices in New York, NY. During that time, both parties were afforded full opportunity to introduce evidence and present arguments in support of their respective positions. They did so. A stenographic record of the hearing was taken.¹ Following my receipt on June 27, 2014 of the transcript of the June 16, 2014 hearing, I declared the record closed.

¹ The hearing transcript consists of 159 pages, including the record of the May 16, 2014 pre-hearing conference. References to the hearing transcript will be designated as “Tr.” followed by the applicable page number(s).

BACKGROUND

Leftridge has been employed by the Department as a teacher for twelve years, including most recently at P.S. 93, William Prescott Elementary (the "School"). (Tr. 96.) He has no record of prior discipline. (Tr. 97.)

During the 2013-2014 school year, he was assigned to teach the third grade. (Tr. 96-97.) His class roster included approximately twenty students. (Tr. 143-144.)

The Charges and Specifications

The Charges and Specifications against Respondent read as follows:

John Leftridge (hereinafter referred to as "Respondent") is a tenured teacher under File # [REDACTED], last assigned to P.S. 93, William H. Prescott in Brooklyn. During the 2013-2014 school year, Respondent engaged in neglect of duty, insubordination and conduct unbecoming his profession as follows:

In Particular

SPECIFICATION 1: On or about November 25, 2013, Respondent failed to properly supervise and/or monitor and/or safeguard his classroom, and specifically, Student A*, assigned to Respondent's class, and as a result:

- a. Student A left respondent's classroom unsupervised.
- b. Student A wandered the school hallways unsupervised.
- c. Student A exited P.S. 93 unsupervised.
- d. Student A walked the streets prior to walking home from P.S. 93, during school hours, unsupervised and/or without authorization.
- e. Respondent exposed Student A to unreasonable and/or unnecessary risks of harm and/or injury.
- f. Respondent exposed the DOE to unreasonable and/or unnecessary legal liability by his misconduct.

SPECIFICATION 2: On or about November 25, 2013, Respondent's failure to properly supervise and/or monitor his classroom and/or Student A continued for an unreasonable period of time in that Respondent failed to properly discover Student A's absence in a timely fashion.

SPECIFICATION 3: On or about November 25, 2013. Respondent failed to immediately inform his Principal that Student A was missing from his classroom.

SPECIFICATION 4: By committing one, all, or some of the actions delineated in the above-mentioned specifications 1, 2, and/or 3, Respondent acted in a manner likely to be injurious to the physical, mental or moral welfare of a child and/or children less than seventeen years old.

SPECIFICATION 5: On or about and during November 25, 2013, being aware that Student A was missing. Respondent:

- a. Failed in his obligation to the DOE to ensure a safe and/or secure learning environment for Student A.
- b. Breached his duty to the parent(s) of Student A to provide a safe, secure learning environment for Student A while under the care, custody and control of the Respondent and the Department of Education.
- c. Was insubordinate in that Respondent disregarded and/or failed to carry out directives provided to him by the Department of Education through training, regulations, policy and/or as a manager of children and/or mandated reporter of the within described conduct.

The Foregoing Constitutes:

- Just Cause for disciplinary action under Education Law §3020-a;
- Conduct unbecoming Respondent's position or conduct prejudicial to the good order, efficiency or discipline of the service;
- Substantial cause rendering Respondent unfit to perform properly his obligations to the service;
- Violation of the by-laws, rules and regulations of the Chancellor, Department, School and/or District;
- Neglect of duty;
- Insubordination;
- A violation of A-412;
- Misconduct; and
- Just cause for termination.

November 25, 2013 Incident Involving Student WA

All of the charges in this case stem from an incident that took place on November 25, 2013, in which Student WA, an eight-year-old assigned to Respondent's third grade class, left the classroom, exited the school and walked to his home during school hours. The essential facts, including the areas of dispute, can be stated as follows:

Student WA, describing a day when he left school early, testified that Respondent had directed him to go to Ms. Keppel's classroom. (Tr. 63.)² He related that upon arriving at Keppel's classroom, he was angry, but a short time later, became calm and elected to return to Respondent's classroom. However, as he walked towards the classroom, he became angry again and chose instead to leave the School and return to his home, which is located approximately "three blocks" away. (Tr. 64.)³ He recalled that it was 1:30 p.m. when he exited the school building. (Tr. 64.)

Principal Sandra Phillip testified that it was not until approximately 2:20 p.m. on November 25, 2013, that she first learned Student WA was missing from his classroom. (Tr. 28.) She recalled that upon entering the main office at that time, School Aide Bonita Anderson informed her of the situation. According to Phillip, Anderson related that after receiving a report from Guidance Counselor Eze that Student WA had failed to appear for a scheduled appointment, she called the classroom and learned he was not there. (Tr. 28-29.)

Phillip recounted that in response, she put the building on a "soft lockdown" and, with Assistant Principal Janeice Bailey, searched the building for Student WA. (Tr. 29-30)

² On cross-examination, Student WA was unable to identify the date of this incident or even the season in which it occurred. (Tr. 65.)

³ Student WA could not recall the cause of his anger. (Tr. 67.)

& 50.)⁴ When the search proved unsuccessful, she instructed staff member. Kim Spencer to telephone Student WA's home. In doing so, Spencer spoke with WA's father, who confirmed he was there. (Tr. 30 & 51-52.)

Katherine Higginbotham, a confidential investigator with the Department's Office of Special Investigations, testified that she was assigned to investigate this matter. She recounted that in doing so, she interviewed Student WA, as well as Student KJ, who she learned had been involved in a "disagreement" with WA on the day in question. She also took statements from several other students randomly selected from Respondent's class roster. (Tr. 76 – 77.) According to Higginbotham, the account provided by Student WA was similar to his testimony here. (Tr. 78-79 & Department Exhibit 6.)

Ultimately, Higginbotham determined that Respondent had failed to supervise properly his students based upon fact that Student WA, while under Respondent's supervision, left the classroom unaccompanied and subsequently exited the building to return home. She also concluded that Respondent violated Chancellor's Regulation A-412 by failing to notify Principal Phillip of this "school-related incident" involving Student WA. (Tr. 80 & Department Exhibit 5.)⁵

Phillip testified that after receiving Higginbotham's investigative report, she met with Respondent and his Union Representative, Mary Wade, on February 28, 2014. She related that although offered an opportunity to provide an account of the incident,

⁴ A soft lockdown is a security procedure invoked when School administration or security staff must conduct a sweep of the building. During a soft lockdown, each teacher is required to lock the door to his/her classroom, turn off all lights and locate the students and him/herself in an area of the room not visible from the door. They must remain there until advised that the lockdown has been lifted. (Department Exhibit 3, pp. 34-35.)

⁵ In her investigative report, Higginbotham states, in substantiating this finding, "The preponderance of the evidence indicates that, after determining that Student A. was missing, [Respondent] called the security desk in hopes of finding Student [WA], instead of immediately informing administrators so that proper action could be taken." (Department Exhibit 5.)

Respondent declined to do so. (Tr. 33-34.) Concurring with Higginbotham's findings, Phillips stated that on March 3, 2014, she issued Respondent a letter to file citing his failings in connection with the November 25, 2013 incident. (Department Exhibit 4.)

In testifying concerning the events of November 25, 2013, Respondent detailed that as he lined up the class to return from lunch at approximately 1:10 p.m., a physical altercation ensued between Students WA and KJ. (Tr. 98-99.) According to Respondent, although they initially complied with his directive to cease this behavior, they had repeated flare-ups while walking to the classroom and upon arriving there, which required his repeated intervention. (Tr. 99-100.) Consequently, he directed Student WA to go to Ms. Keppel's classroom to "cool down," and instructed the remainder of the class, including Student KJ, to enter the room and be seated. (Tr. 100.) He stated that he observed Student WA walk to and enter Keppel's classroom. (Tr. 128.)

He recalled that when Student WA returned to the classroom a short time later at approximately 1:20 p.m., he and Student KJ exchanged words and quickly resumed fighting, as well as throwing books and pencils. (Tr. 101, 104-105.) When Respondent intervened, Student WA remarked that he was "sick of it" and did not want to remain in class. Respondent then directed him to gather his belongings and wait by the door. (Tr. 105.) Despite initially complying, Student WA left the room. According to Respondent, after successfully directing him to return to the classroom, WA left once again while Respondent was acting to prevent an altercation between KJ and another student. This time, he did not return. (Tr. 105-106.)

Respondent related that upon realizing Student WA had left the classroom again, he called school safety/security and spoke with School Aide Bonita Anderson, who was

covering the safety/security desk. He advised that WA had left the classroom, and she agreed to notify Phillip of the situation. (Tr. 107-108.) He also reported calling Guidance Counselor Eze, but she was unavailable. (Tr. 109.) He explained that Student A, who had a habit of leaving the classroom without permission, often went Eze's office or the main office when he did so. (Tr. 109-110.)

Next, at approximately 1:30 p.m., he called Phillip's office, but she did not answer. (Tr. 111.) Although her telephone is equipped with voicemail, he did not leave a message. Instead, he telephoned the main office and spoke with Student Secretary Williams, informing her that Student WA had left the classroom and failed to return. In response, Williams stated she would get a message to Phillip informing her of the situation. (Tr. 111.) Respondent related that shortly after his conversation with Williams, there was an announcement over the building's public address system instructing Student WA to return to his classroom. (Tr. 114.)

Respondent recounted that when relieved by the cluster teacher at 1:40 p.m., he began to search the building for Student WA along with School Safety Agent Simmons. (Tr. 115-116.)⁶ At approximately 2:10 p.m., they encountered Phillip, whereupon Simmons informed her of the situation. (Tr. 116-117.) Subsequently, he and Simmons located a fourth grade student in the hallway who reported seeing WA. When they brought this student to Phillip, he stated that WA had indicated he was going home. (Tr. 119.) Respondent recalled that this information eventually resulted in the call to WA's home and the resulting confirmation that he was there with his father. (Tr. 120.)

⁶ Respondent also met in-person with Eze, who reported that she had not seen WA. (Tr. 115-116.)

DISCUSSION AND FINDINGS

Positions of the Parties

The Department asserts that it has established all of the charges against Respondent by a preponderance of the evidence. It submits that termination is the appropriate penalty for his proven failings, which severely jeopardized student safety.

Addressing Specifications 1(a) – 1(f), it asserts that the events stated in the factual recitation are not in question. Instead, the dispute, it notes, turns upon who bears responsibility for those events. It concludes that the evidence plainly demonstrates that Respondent brought about these circumstances by failing to supervise and safeguard his classroom.

It argues that Respondent's own testimony confirms these failings on his part. In particular, it cites Respondent's act of directing Student WA to go to Keppel's classroom without communicating with her or even confirming she was present there. In addition, it highlights that Respondent, following Student WA's return from Keppel's classroom, allowed him to gather his belongings and wait by the door despite being very angry and having a propensity for leaving without permission. Further, it submits that Respondent's assertion that it was necessary to separate WA from KJ's wild and violent behavior is not credible. His account of Student KJ's misconduct, it reasons, is rebutted by his failure to contact security or file any reports concerning her behavior.

In sum, it concludes, Respondent's failure to supervise and safeguard his classroom resulted in WA leaving unsupervised, which, in turn, triggered the balance of the events and circumstances charged in this Specification.

Turning to Specifications 2 and 3, the Department argues that the evidence establishes Respondent's guilt on these charges as well, which concern his failings after Student WA left the classroom. The testimony, it points out, confirms that WA left the classroom at 1:30 p.m.; yet, Phillip did not receive notice that WA was missing until nearly an hour later, and when she did, it came from a school aide and not Respondent. In addition, it maintains that Respondent's own account reveals that the actions he took upon discovering WA missing were plainly deficient. Rather than notifying a school aide and security, his obligation, it avers, was to locate and personally inform Phillip or Assistant Principal Bailey of the situation, as they had the authority to order the necessary soft lockdown. His inability to reach Phillip by telephone does not excuse this failure. It reasons that there were measures he could have taken, such as arranging for coverage of his class, that would have allowed him to locate and personally notify Phillip or Bailey of the situation in a timely manner.

Accordingly, it avers, these undisputed facts substantiate the charges set forth in these two specifications. It submits that by allowing nearly one-hour to elapse between WA's disappearance and the calling of the soft lockdown, Respondent is plainly guilty of Specification 2. Further, by failing to give immediate notice to either Phillip or Bailey that WA was missing, Respondent, as charged in Specification 3, committed a per se violation of Chancellor's Regulation A-412, the requirements of which he either knew or can be deemed to have known under the circumstances.

Next, it asserts that proof of the charges stated in Specifications 4 and 5 follows automatically from its substantiation of Specifications 1 – 3. Simply put, given Respondent's failings as established relative to Specifications 1 – 3, it must be found that

Respondent acted in a manner likely to be injurious to Student WA and breached his duties and obligations as to providing and ensuring a safe and secure learning environment and carrying out the Department's directives.

Finally, on the issue of penalty, it avers that Respondent breached his most basic and essential responsibility, which is to safeguard the students entrusted to him. Such dereliction of duty, it submits, warrants discharge.

Respondent, on the other hand, argues the Department has failed to meet its burden to prove the instant charges. He highlights that the charges, which arise solely from the November 25, 2013 incident in which WA went missing from the classroom, involve two essential elements: a failure to supervise; and a failure to provide timely notice of WA's disappearance. He avers that the record lacks evidence substantiating either alleged failure.

Quite the contrary, he stresses that in the face of a very chaotic situation, he acted diligently to intervene and halt the repeated physical altercations that took place that afternoon between WA and KJ. Initially, he directed WA to go Keppel's adjacent classroom in order to cool down. When WA returned to the classroom and yet another altercation ensued with KJ, he separated them by instructing WA to wait by the door. Then, as he necessarily directed his attention to KJ, WA managed to leave the room without his knowledge.

Further, Respondent highlights that when he became aware of WA's absence moments later, he acted immediately to make the required notification. He called Phillip's office, but there was no answer. He then called the main office and informed Student Secretary Williams of the situation, who, in turn, agreed to advise Phillip. He

also telephoned the safety/security desk and spoke with School Aide Anderson. He notified her that WA was missing, and she, too, agreed to inform Phillip. These actions, he points out, also led to a public address announcement directing WA to return to his classroom. Finally, once he had coverage for his class, he joined School Safety Agent Simmons in the search for WA. Upon discovering a student who believed WA had gone home, Respondent and Simmons brought this information to Phillip.

Reviewing Chancellor's Regulation A-412, Respondent highlights that it directs Department employees upon learning of a school-related non-criminal incident, to notify the principal or his/her designee. Respondent notes, however, that on November 25, 2013, uncertainty existed as to the identity of Phillip's designee for this purpose. Therefore, having attempted unsuccessfully to contact Phillip, he submits that he cannot be faulted for, nor deemed to have violated Regulation A-412 by, reporting WA's disappearance to Anderson at the safety/security desk and Williams in the main office, both of whom agreed to notify Phillip. Providing notification of the situation in this manner, he contends, was entirely logical and perfectly appropriate.

In sum, Respondent concludes that the events of November 25, 2013, represent a very unfortunate situation. However, his conduct in connection therewith does not rise to the level of a disciplinable offense. Accordingly, he asks that the charges be dismissed in their entirety.

Opinion

After a careful and thorough review of the record and giving due consideration to the arguments advanced by both parties, I find there is insufficient record evidence to

sustain the charges alleged in Specifications 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 2, 3, 4 and 5. Accordingly, all of these charges are dismissed.

In examining Specifications 1(a) - 1(f), it is obvious in light of the evidence presented that no material dispute exists concerning Student WA's actions on November 25, 2013 or the potential consequences thereof as recited in these Specifications. The record shows that WA left Respondent's classroom unsupervised, wandered the hallways, exited the School, and ultimately walked to his home, all of which placed him at risk of harm or injury and exposed the Department to unreasonable or unnecessary legal liability. The only question to be decided then is whether those actions and potential consequences resulted from Respondent's failure to supervise his classroom. On review, I must conclude that the Department has not carried its burden of proof in this regard.

In deciding this issue, the critical factual matter to be resolved is how WA came to leave Respondent's classroom unsupervised on November 25, 2013. Indeed, WA's subsequent actions that day and the potential consequences thereof, all flow from his unsupervised departure from the classroom.

Respondent's action of sending WA unescorted to Keppel's classroom to cool down, no doubt, represents a failure to supervise. This conclusion is not altered by Respondent's testimony that he observed WA as he walked to Keppel's room. By his own admission, Respondent did not arrange to transfer responsibility for WA's supervision to Keppel, nor did he even confirm that Keppel was present to receive WA.

However, this failure did not result in WA leaving the classroom unsupervised and ultimately exiting the School and walking home.⁷

Contrary to Student WA's testimony, I am satisfied that after subsequently leaving Keppel's room he did not immediately exit the school, but instead, returned to Respondent's classroom. WA's alternate account defies basic common sense. According to WA, he cooled down in Keppel's room and decided to return to Respondent's classroom. Yet, in the short time it took him to walk across the hall, and without any intervening event, he somehow became angry and chose to leave the school building. This account simply does not ring true.

Respondent's testimony concerning these events, including both directing WA to go to Keppel's room and WA's subsequent return to his classroom, were clear, consistent and convincing. Likewise, I credit his account of how WA came to leave the classroom following his return. I am satisfied that after Respondent separated WA and KJ and then directed his attention towards KJ, WA exited the classroom without his knowledge.

Under these circumstances, I cannot conclude that Respondent was guilty of a failure to supervise or safeguard his classroom that resulted in WA exiting unsupervised. With the benefit of hindsight, choices that Respondent made in addressing the ongoing altercation that afternoon between WA and KJ are certainly open to legitimate criticism, such as his decision to place WA near the door after separating the two. However, in evaluating Respondent's conduct, I must recognize that he was required to respond in real time to a potentially dangerous situation, which required halting the conflict between WA and KJ and safeguarding his other students. Therefore, I am compelled to find that WA's

⁷ For this reason, Respondent's failure in this regard does not provide a basis to find him guilty of Specification 1. The Specification expressly charges Respondent with a failure to supervise that resulted in Student WA's unsupervised departure from the classroom and his subsequent actions.

departure from the classroom while Respondent's attention was focused on KJ does not establish the charged conduct. Stated otherwise, I cannot conclude on the evidence presented that Respondent's supervision of his classroom that afternoon fell to a level that can be deemed a neglect of duty or misconduct.

Specifications 1(a) – 1(f) are therefore dismissed.

Specification 2 charges that by virtue of his failure to supervise properly and safeguard his classroom on November 25, 2013, Respondent failed to discover WA's absence in a timely manner. On review of the record, I find no evidence substantiating this charge. The Department's reliance on Phillip's testimony that nearly an hour elapsed before she learned of WA's absence and instituted the soft lockdown is unavailing. Her testimony serves to establish only when she became aware of the situation. It says nothing as to when Respondent learned WA had gone missing. Moreover, Respondent's testimony that he discovered WA's absence moments after he left the room, which I found credible, stands un rebutted.⁸

Accordingly, I find that Respondent is not guilty of Specification 2.

Specification 3 alleges that Respondent failed to immediately notify Phillip that Student WA was missing, which, the Department argues, violated his obligations under Chancellor's Regulation A-412. While it is undisputed that Respondent did not communicate directly with Phillip, the question that must be answered is whether the actions that he did take in providing notice of Student WA's absence preclude finding him guilty of this charge. I conclude that the answer is yes.

⁸ I note that in recounting the events of November 25, 2013, Leftridge stated that upon discovering WA's absence from the classroom at approximately 1:30 p.m., he immediately reported the situation to Student Aide Anderson, who was covering the safety/security desk, and then minutes later, informed Student Secretary Williams in the main office. Neither Anderson nor Williams testified at the hearing in this case.

The notice requirement of Chancellor's Regulation A-412, which was known or should have been known by Respondent, is plainly applicable here. There can be no dispute that a missing student is a "school-related non-criminal incident." requiring follow-up action. As such, Respondent, in accordance with this Regulation, was obligated to notify Principal Phillip or her designee that Student WA had left the classroom without authorization.

On the basis of Respondent's testimony, I am satisfied that he attempted to contact Phillip by telephone to provide this notice, but was unsuccessful because she was out of her office. Phillip did not rebut this testimony stating that while she was inside the School building at 1:30 p.m. on November 25, 2013, she could not recall her exact location.

In view of his inability to reach Phillip, Respondent was required by Regulation A-412 to give such notice to her designee. Phillip testified that her designee for this purpose was Assistant Principal Bailey. However, there is no evidence confirming that she notified Respondent, or any School employee, of such designation of Bailey. Moreover, I note that in reviewing the provisions of the Staff Handbook concerning the monitoring of students, Phillip highlighted the Section titled "Leaving the Classroom – Children." which contains no reference to Bailey. (Department Exhibit 3, pg. 25.) Instead, this section instructs teachers: "If the child leaves the room without permission, please notify the Guidance Counselor, Security or a supervisor immediately." On the basis of Respondent's un rebutted testimony, I find that he adhered precisely to these instructions.

He called the safety/security desk. In doing so, he informed Anderson that WA was missing and requested that she notify Phillip, which she agreed to do. I note that in connection with this conversation, Anderson was not functioning in her general capacity as a School Aide, but rather, serving as the person assigned to cover the safety/security desk in the School Safety Aide's absence.⁹ Further, Respondent telephoned Guidance Counselor Eze, to report WA's absence. Having received no answer, he went to her office and notified her in-person as soon as he had coverage for his class. Finally, although not required by the terms of the Staff Handbook, he also informed Student Secretary Williams of the situation and requested that she advise Phillip.

In sum, the record evidence does not substantiate the charge set forth in Specification 3.

Specifications 4 and 5, as the Department acknowledges, flow directly from, and rest upon, the charges set forth in Specifications 1 – 3. Therefore, having found Respondent not guilty of those charges, I must also conclude that he is not guilty of the charges stated in Specifications 4 and 5.

Accordingly, for all these reasons, the charges against Respondent, as set forth in Specifications 1 – 5, are dismissed.

⁹ In substantiating the violation of Chancellor's Regulation A-412, Investigator Higginbotham concludes, "The preponderance of the evidence indicates that after determining Student [WA] was missing, [Respondent] called the security desk in hopes of finding Student [WA], instead of immediately informing administrators so that proper action could be taken." The record here contains no support for that conclusion. Leftridge made no such admission; and Anderson, the only other person who could possibly provide supporting testimony, was not called as a witness.

AWARD

1. Respondent is not guilty of Specifications 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 2, 3, 4 and 5, and these Charges are dismissed.

Dated: August 18, 2014


David J. Reilly, Esq.
Hearing Officer

STATE OF NEW YORK

COUNTY OF NEW YORK

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) ss.:
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I, David J. Reilly, Esq., affirm that I am the individual described herein and who executed this instrument, which is my Opinion and Award.

Dated: August 18, 2014


David J. Reilly, Esq.
Hearing Officer