

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of  
PHILIP NOBILE,

Plaintiff,

-against-

BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK; CARMEN  
FARINA, in her official capacity as Chancellor of the  
CITY SCHOOL DISTRICT OF THE CITY OF NEW  
YORK; and, KAREN SCOTT, in her official capacity as  
Superintendent, District 14 of the CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK,

Defendants.

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**AFFIRMATION OF  
JORDANA SHENKMAN IN  
SUPPORT OF  
DEFENDANTS' CROSS  
MOTION TO DISMISS AND  
OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
A PRELIMINARY  
INJUNCTION**

Index No. 150914/17

I, **JORDANA SHENKMAN**, an attorney admitted to practice before the Courts of the State of New York, affirms, pursuant to Rule 2106 of the Civil Practice Law and Rules ("CPLR") and under penalty of perjury, that:

1. I am an attorney with the New York City Department of Education's ("DOE") Office of Legal Services.

2. I was assigned to represent the DOE in its Education Law § 3020-a charges brought against Plaintiff Philip Nobile on April 21, 2016.

3. On October 7, 2016, I attended a pre-hearing conference in the matter in front of Hearing Officer ("HO") Mary O'Connell. At the conference, Plaintiff was represented by New York State United Teachers Union attorney Christopher Callagy.

4. During the pre-hearing conference, HO O'Connell had denied Plaintiff's motion to dismiss the charges. Thereafter, we went off the record to discuss settlement and reached an agreement in which the DOE agreed to discontinue the § 3020-a hearing in exchange for Plaintiff's irrevocable retirement from the DOE, effective January 31, 2017.

5. I recorded the agreement in a document entitled "Post-Charge Stipulation of Settlement." Attached here as Exhibit A. I included four signatures lines in the agreement – for Plaintiff, his attorney, Plaintiff's supervisor (District 14 Superintendent Karen Watts) and myself as the DOE attorney.

6. Ms. Watts was not present at the pre-hearing conference; however, it is DOE's practice to include the employee's supervisor's signature on such agreements.

7. As the DOE attorney, I have authority to negotiate and enter into such stipulations of settlement and bind the DOE by signing stipulations.

8. We then went back on the record to inform the HO that an agreement had been reached. A copy of the Stipulation was provided to the HO, who asked Plaintiff a series of questions about his understanding of the Stipulation and his intention to enter into it.

9. After the HO adjourned the pre-hearing conference, Plaintiff, his attorney, and I all signed the Stipulation.

10. A copy of the pre-hearing conference transcript is attached as Exhibit B.

11. I recall having a conversation with Plaintiff and his attorney during the signing of the Stipulation regarding the process for providing Plaintiff with a copy of the agreement once Ms. Watts had signed it. I do not recall the exact words used in the conversation. At no time was there any discussion about whether Plaintiff had a right to rescind the agreement and his irrevocable resignation.

12. Thereafter, Plaintiff's matter was removed from the DOE's trial calendar and I forwarded the Stipulation to Ms. Watts for her signature.

13. On October 11, 2016, Mr. Callagy notified me that Plaintiff wished to rescind the agreement and his resignation. At no time did I ever indicate to Mr. Callagy that DOE would accept Plaintiff's rescission.

Dated: New York, New York  
February 14, 2017

  
\_\_\_\_\_  
**JORDANA SHENKMAN**

# Exhibit A

THE STATE EDUCATION DEPARTMENT  
THE UNIVERSITY OF THE STATE OF NEW YORK

X

**In the Matter of the Disciplinary Proceeding  
NEW YORK CITY DEPARTMENT OF EDUCATION**

Complainant,

-against-

**POST-CHARGE  
STIPULATION  
OF  
SETTLEMENT**

**PHILIP NOBILE,**

**SED File # 29,258**

Respondent.

X

Pursuant to Education Law §3020-a.  
Arbitrator Mary O'Connell

**WHEREAS,** the Department of Education of the City of New York commenced disciplinary charges against Philip Nobile, ("Respondent"), a tenured teacher currently assigned to the Absent Teacher Reserve ("ATR") in District 14, pursuant to Education Law §3020-a and the Collective Bargaining Agreement; and

**WHEREAS,** the parties desire to eliminate the need for a formal hearing, have held discussions where they were represented by counsel, have had all terms and conditions of this Stipulation of Settlement thoroughly explained and now freely consent to enter into this Stipulation of Settlement; such consent not having been induced by fraud, duress, or any other influence; and

**WHEREAS,** no other person not a party to this proceeding has an interest in its outcome, and no party to this proceeding is an infant or incompetent person for whom a committee has been appointed; and

**WHEREAS**, the parties have reached an agreement as to the complete and final resolution of this matter;

**NOW IT IS HEREBY AGREED AND STIPULATED** by and between said parties that this matter shall be fully resolved as follows:

1. Subject to the terms and conditions enumerated in this Stipulation of Settlement, the Department agrees to discontinue the disciplinary hearing against Respondent with regards to disciplinary charges preferred on April 21, 2016 and further agrees that it will take no further disciplinary action against Respondent relating to the same.
2. Respondent agrees to irrevocably retire from his employment with the New York City Department of Education, effective close of business January 31, 2017. Respondent's written irrevocable retirement is annexed hereto as Exhibit "A".
3. Respondent is to remain assigned to the ATR pool, until his retirement date as stated above, pursuant to the current contract between the DOE and the United Federation of Teachers.
4. Respondent understands that this irrevocable retirement may or may not affect his ability to work for a vendor doing business with the DOE. The DOE represents that in any case where the DOE has denied a vendor the ability to employ a person by virtue of the individual's irrevocable retirement, a review of the matter will be done by Human Resources. Although the DOE has the final decision concerning employment, the DOE will not unreasonably deny a vendor from hiring former DOE employee who has irrevocably retired.

5. The parties to this Stipulation of Settlement knowingly waive their right to make any legal or equitable claims or to initiate legal or administrative proceedings of any kind against each other or against their respective employees, relating to or arising out of this matter, except to enforce this Stipulation of Settlement. Respondent further agrees to withdraw any charges, grievances, claims or actions relating to or arising out of this matter.
6. Respondent affirms that he has entered into this agreement freely, knowingly and openly, without coercion or duress and that he has voluntarily waived all statutory, contractual, constitutional or other rights he may have held in this matter for a hearing in accordance with Education Law §3020-a and the applicable collective bargaining agreement.
7. The Respondent affirms that he has had access to counsel in reaching this agreement and has consulted with counsel regarding the terms of this Stipulation of Settlement and has entered into this agreement with the advice and consent of his counsel.
8. Nothing in this Stipulation shall be deemed to be a practice or policy of the New York City Department of Education or District 14.
9. The parties agree that all signatures obtained by facsimile are deemed to be originals.
10. This written agreement contains all the terms and conditions agreed upon by the parties hereto and no other agreement, oral or otherwise, regarding said allegations and charges shall be deemed to exist or to bind the parties hereto or to vary any of the terms contained herein.

11. Respondent understands that a copy of this Stipulation shall be maintained in his personnel file, the files maintained at the Office of Legal Services of the Department of Education, and the files maintained by District 14.

Dated: October 7, 2016

Philip Nobile  
Philip Nobile  
Respondent

Dated: 10/7/16

Richard E. Casagrande  
RICHARD E. CASAGRANDE  
Attorney for Respondent  
52 Broadway, 9<sup>th</sup> Floor  
New York, New York 10004  
BY: Chris Callagy, Esq., of Counsel

Dated: 10/13/16

Karen Watts  
Karen Watts  
Superintendent  
District 14

Dated: 10/7/16

Jordana Shenkman  
LAURA BRANTLEY, ESQ.  
Attorney for Complainant  
Office of Legal Services  
NYC Department of Education  
100 Gold Street, Suite 3401  
New York, NY 10007  
By: Jordana Shenkman, Esq.

**EXHIBIT "A"**

Philip Nobile  
421 Degraw Street  
Brooklyn, New York 11217

Date: October 7, 2016

Karen Watts  
Superintendent  
District 14

Dear Ms. Watts:

I hereby irrevocably retire from the New York City Department of Education, effective close of business January 31, 2017.

  
Philip Nobile

# Exhibit B

10-07-16 SED No. 29,258 In the Matter of Mr. Nobile

Sheet 1

THE STATE EDUCATION DEPARTMENT  
THE UNIVERSITY OF THE STATE OF NEW YORK

In the Matter of  
NEW YORK CITY DEPARTMENT OF EDUCATION  
v.

PHILIP NOBILE

Section 3020-a Education Law Proceeding (File #29,258)

DATE: October 7, 2016

TIME: 10:00 a.m. to 2:50 p.m.

LOCATION: NYC Department of Education  
Office of Legal Services  
100 Gold Street, 3rd Floor  
New York, NY 10038

BEFORE: MARY J. O'CONNELL, ESQ.  
HEARING OFFICER

APPEARANCES: FOR THE COMPLAINANT:  
JORDANA SHENKMAN, ESQ., of Counsel  
NYC Department of Education  
Office of Legal Services  
49-51 Chambers Street  
New York, NY 10007  
Telephone: (212) 374-6741  
jshenkman@schools.nyc.gov

FOR THE RESPONDENT:  
CHRIS CALLAGY, ESQ., of Counsel  
Office of Richard E. Casagrande  
52 Broadway, 9th Floor  
New York, New York 10004  
Telephone: (212) 533-6300  
ccallagy@nysutmail.org

Ubiquis Reporting, Inc. 10-07-16 SED No. 29,258 In the Matter of Mr. Nobile

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Sheet 2

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DEPARTMENT OF EDUCATION DESCRIPTION I.D. IN EV. 9

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PHILIP NOBILE - 10/07/2016  
 [OFF THE RECORD, Getting copies]  
 [ON THE RECORD, Getting copies, 10:25 a.m.]  
 THE HEARING OFFICER: Back on the record in this pre-hearing conference. I note that this matter has been assigned another hearing officer and it's the first I'm seeing of a motion to dismiss and the Respondent's demand for a bill of particulars. At this point, why don't I listen to your argument on the motion to dismiss and then we'll kind of take it from there.  
 So, first in support of the motion?  
 MR. CALLAGY: Well--good morning, everybody. Madam Hearing Officer, it is, I think, pretty clearly demonstrated by the number of decisions, one of which is cited in our brief motion and that is that these proceedings are not designed to or intended to determine whether or not criminal conduct had been committed. We have not taken a position nor do we today that in any way the DOE is prohibited from going after underlying conduct that may have formed a basis for some other allegation or arrest or

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1 PHILIP NOBILE - 10/07/2016  
 2 (The hearing commenced at 10:00 a.m.)  
 3 THE HEARING OFFICER: Good morning.  
 4 We're here in the matter of New York City  
 5 Department of Education and Philip Nobile. Did  
 6 I pronounce that correctly, sir?  
 7 MR. PHILIP NOBILE: Almost.  
 8 THE HEARING OFFICER: Okay.  
 9 MR. NOBILE: Nobile.  
 10 THE HEARING OFFICER: Nobile, okay.  
 11 State Education Department File Number 29,258.  
 12 My name is Mary O'Connell, the hearing officer  
 13 assigned to this matter. Today is Friday,  
 14 October 7th, 2016. Counsel, may I have your  
 15 appearances, please?  
 16 MS. JORDANA SHENKMAN: Jordana  
 17 Shenkman for the Department of Education.  
 18 MR. CHRIS CALLAGY: Chris Callagy for  
 19 the Respondent and the general counsel in our  
 20 office who is Richard E. Casagrande.  
 21 THE HEARING OFFICER: And I note,  
 22 obviously, for the record that the Respondent is  
 23 present. At this time, we are going to go off  
 24 the record to attend to a few administrative  
 25 matter.

1 PHILIP NOBILE - 10/07/2016  
 2 conviction under some penal statute.  
 3 But the underlying conduct would be  
 4 the issue. It is our position that, you know,  
 5 under 3020-a, hearing officers simply do not  
 6 have the power to say yes, that would have been  
 7 a crime. They just don't have the authority to  
 8 do so. That belongs to other parties.  
 9 Obviously, it's about misconduct. And that's  
 10 why the underlying conduct is fair game, of  
 11 course.  
 12 But that's really the substance of why  
 13 part of the charges we've moved to dismiss to  
 14 the extent it's asking you to reach a conclusion  
 15 regarding whether or not conduct is criminal.  
 16 Obviously, there may be introduced into  
 17 evidence, evidence of conviction of some  
 18 offense, that we don't object to is piece of  
 19 evidence. But the underlying conduct would  
 20 remain the nature of the proceeding and if not,  
 21 anything that goes to something conclusory  
 22 should be dismissed as beyond their authority.  
 23 So, that's simply what it is.  
 24 THE HEARING OFFICER: Ms. Shenkman?  
 25 MS. SHENKMAN: I believe this notion

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Sheet 3

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1 PHILIP NOBILE - 10/07/2016  
 2 is not really applicable to the charges that you  
 3 have at hand because, clearly, if you read the -  
 4 - [00:01], the same specifications, they don't  
 5 ask you to make any determination about whether  
 6 or not a crime was committed. They only talk  
 7 about specifically, whether or not he violated  
 8 the regulation in C-105, which, yes, does  
 9 mention the word crime or violation and arrest,  
 10 because it's laid out in this particular  
 11 regulation that an employee is obligated if  
 12 they're arrested on a violation or a crime to  
 13 report that to his or her employers and also,  
 14 obligated to report a conviction of a crime or  
 15 violation. So to that extent those words appear  
 16 in here, but we are not asking you to make any  
 17 conclusion about the Respondent committing a  
 18 crime. We're only asking you to evaluate as in  
 19 Specification 3 the underlying conduct which  
 20 defense counsel, I think, can see it's fair game  
 21 here. So, that's our response to that.  
 22 MR. CALLAGY: If I may say one thing  
 23 to Ms. Shenkman, the motion had been submitted,  
 24 which we're talking about now, is about the  
 25 preamble and then the foregoing. There is a

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1 PHILIP NOBILE - 10/07/2016  
 2 mention of criminal conduct in the preamble to  
 3 this specification as is there in what the  
 4 foregoing constitutes to the degree that that  
 5 means that there has to be some, I think it  
 6 does, judgement made by the hearing officer to  
 7 determine whether criminal conduct had occurred.  
 8 To that degree, I think those phrases should be  
 9 dismissed from the proceeding.  
 10 Also, I think, it may not be--I don't  
 11 know how it could be known to the hearing  
 12 officer, but the one of the things which I don't  
 13 think is in dispute, is the nature of the  
 14 offense that forms, at least, part of the  
 15 charges was not a crime. That's the other  
 16 thing. We're not even talking about a crime.  
 17 We're talking about a conviction, in part, that  
 18 goes to harassment, but not a criminal  
 19 conviction. That's all.  
 20 MS. SHENKMAN: Right. That's correct  
 21 and we can get into this later if it's  
 22 necessary, but just to clarify what Mr. Nobile  
 23 was convicted was is under the New Jersey penal  
 24 code, so it's a little bit different than what  
 25 we're used in New York. But it's more like the

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1 PHILIP NOBILE - 10/07/2016  
 2 equivalent of a violation here. It's actually  
 3 in between, in New Jersey, what he was convicted  
 4 of is actually in between a violation and what  
 5 would be equivalent of a violation and a B  
 6 misdemeanor here. But, yes, like a violation,  
 7 it's not considered a crime, it's considered a  
 8 criminal offense. We will argue later how C-105  
 9 still contemplates the conviction of a violation  
 10 as it states that in C-105.  
 11 But as to the point that the motion to  
 12 dismiss refers to the preamble or the foregoing  
 13 portion, in my opinion, I think that the  
 14 preamble and the foregoing portion is just a  
 15 description of what the conduct that's charged  
 16 may or may constitute under the education law  
 17 and the rule and regulations of New York State  
 18 and 3020-a. When you have a set of  
 19 specification in front of you, you're not asked  
 20 to make a determination about the foregoing or  
 21 the preamble, you're only asked to make a  
 22 determination about whether or not Respondent is  
 23 guilty of Specification 1, 2, 3 and 4. So I  
 24 still think that it shouldn't really be an issue  
 25 here.

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1 PHILIP NOBILE - 10/07/2016  
 2 MR. CALLAGY: That's a very  
 3 interesting point which I'd like to agree with  
 4 you on, but I think it's kind of favorable to  
 5 Respondents generally, but I don't think it's  
 6 true. I think the charges, the foregoing  
 7 constitute, and even though we rarely dwell on  
 8 that, I think does have legal meaning and I  
 9 think does go to the range of possible penalties  
 10 or remedies the hearing officer can enter into  
 11 at the end of the case if any.  
 12 So, I do think it matters, although I  
 13 understand your point, Ms. Shenkman, that it's  
 14 fundamentally it's talking the specifications.  
 15 I understand that, but I do worry that--I don't  
 16 want to waive any possible argument to say that  
 17 no, we're not, we shouldn't be talking about and  
 18 we're not, in fact, talking about, in any event,  
 19 criminal conduct.  
 20 THE HEARING OFFICER: Okay. What I'd  
 21 like to do because I just received this and I  
 22 want to review the specification is, at some  
 23 point, go off the record and let me consider  
 24 this, but I think I certainly can have a  
 25 decision for you today.

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Sheet 4

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1 PHILIP NOBILE - 10/07/2016  
 2 In the meantime, do we wish to go  
 3 through the bill of particulars just to get kind  
 4 of that work done.  
 5 MS. SHENKMAN: Sure.  
 6 THE HEARING OFFICER: Okay.  
 7 MS. SHENKMAN: Oh, sorry, I gave you  
 8 my marked copy, so here's the blank copy.  
 9 MR. CALLAGY: Let the record reflect--  
 10 [Laughter]  
 11 [crosstalk]  
 12 MS. SHENKMAN: So we can just go  
 13 through paragraph by paragraph.  
 14 THE HEARING OFFICER: I think that  
 15 makes sense if that's okay with the Respondent.  
 16 MR. CALLAGY: Yes.  
 17 MS. SHENKMAN: Starting with Paragraph  
 18 1, no objection other than, of course, when  
 19 defense asks for addresses and telephone  
 20 numbers, that would only be work contact  
 21 information. We're not going to give out  
 22 personal addresses or cellphone numbers.  
 23 MR. CALLAGY: That's understood, at  
 24 least, for present purposes, no problem.  
 25 MS. SHENKMAN: As to Paragraph 2, no

1 PHILIP NOBILE - 10/07/2016  
 2 MR. CALLAGY: I think that's true.  
 3 MS. SHENKMAN: To the Respondent.  
 4 MR. NOBILE: They made it available  
 5 but because of all of the postponement and so  
 6 on, I haven't gone by and picked it up. It's  
 7 only four blocks away from my house so I'll try  
 8 to do it today.  
 9 MS. SHENKMAN: So just let me know if  
 10 there's any problem with that. I can make a  
 11 phone call on your behalf, but he should be able  
 12 to do that on his own.  
 13 MR. NOBILE: Thanks.  
 14 MS. SHENKMAN: Where am I? Paragraph  
 15 8. It's not applicable to this case as it does  
 16 not involve students.  
 17 Paragraph 9, no objection other than  
 18 the same thing, again, no personal addresses or  
 19 phone numbers, just work information.  
 20 MR. CALLAGY: No objection to that.  
 21 MS. SHENKMAN: Paragraph 10, not  
 22 really applicable because it doesn't have to do  
 23 with conduct that occurred in class. This is  
 24 conduct between two adults.  
 25 MR. CALLAGY: Okay.

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1 PHILIP NOBILE - 10/07/2016  
 2 objection.  
 3 Paragraph 3, no objection.  
 4 Paragraph 4, I don't think is  
 5 applicable as there's no SCI or OSI  
 6 investigation involved here. This is just the  
 7 C-105 violation which that information is sent  
 8 to us by OPI so there's not a traditional  
 9 investigation like you might have seen in some  
 10 of the other cases.  
 11 Have you done a C-105 case before?  
 12 THE HEARING OFFICER: Not in this  
 13 lifetime.  
 14 MS. SHENKMAN: There's no SCI or OSI  
 15 investigation investigated.  
 16 THE HEARING OFFICER: In a prior  
 17 context, I was familiar with that.  
 18 MS. SHENKMAN: Okay. As to Paragraph  
 19 5, no objection.  
 20 Paragraph 6, no objection.  
 21 Paragraph 7, we do ask that the  
 22 Respondent get ahold of his own personnel file  
 23 and I believe that he--when I talked to the  
 24 secretary at the school, they said that they had  
 25 already provided a copy.

1 PHILIP NOBILE - 10/07/2016  
 2 MS. SHENKMAN: Paragraph 11, no  
 3 objection.  
 4 And we would ask, of course, that if  
 5 Respondent has any exculpatory information to  
 6 provide to that us, to make us aware of that as  
 7 well as we would ask for reciprocal discovery  
 8 just in reasonable amount of time to look over  
 9 before whatever witness testifies that day.  
 10 MR. CALLAGY: Understand. We would,  
 11 as you know, it's our practice to give you  
 12 whatever we're going to use or have relied on  
 13 prior to when we begin the defense. If you rest  
 14 your case, we'll give you that information such  
 15 as I have it and I'll give it to you as I go  
 16 along if we acquire more of it or something  
 17 else. No problem.  
 18 THE HEARING OFFICER: And I appreciate  
 19 the parties cooperating in fulfilling their  
 20 mutual discovery obligations.  
 21 Okay, at this point, why don't we go  
 22 off the record. Let me just review the motion  
 23 and we go back about that. Is there going to  
 24 be--why don't we do that and then we can talk  
 25 about future stuff later. Okay.

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Sheet 5

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1 PHILIP NOBILE - 10/07/2016  
2 [OFF THE RECORD, Review documents  
3 [OFF THE RECORD, Review documents,  
4 11:00 a.m.]  
5 THE HEARING OFFICER: Okay, back on  
6 the record. I've had an opportunity to review  
7 the motion and the arguments made by both sides  
8 and the motion to dismiss as well as the  
9 specifications in this matter.  
10 And I find, looking particular at the  
11 specifications that none of the specifications  
12 request that I rule on whether or not an  
13 activity was a crime. They concern whether or  
14 not the Respondent failed to present OPI a copy  
15 of a criminal complaint and certificate of  
16 disposition as well as several other allegations  
17 which do not allege criminal conduct.  
18 So, insofar my charge is to review the  
19 specifications to determine whether or not those  
20 specifications have been proven and that those  
21 specifications do not request that I determine  
22 whether or not criminal conduct has occurred,  
23 the motion is denied.  
24 I'm mindful that the Respondent has  
25 pointed out that the references to criminal

1 PHILIP NOBILE - 10/07/2016  
2 to be discussed further so we will go off the  
3 record to provide time to discuss that more.  
4 [OFF THE RECORD, Settlement  
5 discussion, 12:34 p.m.]  
6 [ON THE RECORD, Settlement discussion,  
7 2:11 p.m.]  
8 THE HEARING OFFICER: Back on the  
9 record. I understand from the parties that a  
10 settlement has been reached in this matter?  
11 MS. SHENKMAN: Yes.  
12 MR. CALLAGY: That's correct.  
13 THE HEARING OFFICER: Okay. Sir, in  
14 order--the next step in this is for me to ask  
15 you a series of questions.  
16 MR. NOBILE: Please.  
17 THE HEARING OFFICER: So, kindly  
18 listen and answer them.  
19 Have you carefully read the post-  
20 charge stipulation of settlement which consists  
21 of five pages?  
22 MR. NOBILE: Can I glance at it  
23 quickly?  
24 THE HEARING OFFICER: Certainly.  
25 MR. NOBILE: Because I know what's in

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1 PHILIP NOBILE - 10/07/2016  
2 conduct occur in the prelude and in the  
3 foregoing. However, that, for the purposes of  
4 this hearing, that is irrelevant. My charge is  
5 to determine the specifications and the  
6 appropriate penalty in the event that I sustain  
7 any of those specifications.  
8 So your motion and argument is noted,  
9 but the motion is denied.  
10 At this point, it's my understanding,  
11 Ms. Shenkman, that the Department has some  
12 discovery which it can provide to the Respondent  
13 per his review at this time.  
14 MS. SHENKMAN: Yes.  
15 THE HEARING OFFICER: And why don't we  
16 go off the record to allow you to do that and  
17 we'll take it up in a bit. Thanks.  
18 [OFF THE RECORD, Review discovery,  
19 11:30 a.m.]  
20 [ON THE RECORD, Review discovery,  
21 12:32 p.m.]  
22 THE HEARING OFFICER: Okay, back on  
23 the record. Just for an update, the Department  
24 has served discovery upon the Respondent and  
25 there's been a settlement proposal which needs

1 PHILIP NOBILE - 10/07/2016  
2 it, but I actually haven't, I couldn't answer in  
3 good conscience.  
4 THE HEARING OFFICER: Okay.  
5 MS. SHENKMAN: Is there some--what?  
6 MR. NOBILE: Okay, yes, I have.  
7 THE HEARING OFFICER: We need to go  
8 off the record a moment.  
9 [OFF THE RECORD, Discussion with  
10 Respondent, 2:13 p.m.]  
11 [ON THE RECORD, Discussion with Repo,  
12 2:31 p.m.]  
13 THE HEARING OFFICER: Okay, we're back  
14 on the record. Okay, there was a little concern  
15 about some language which has been straightened  
16 out so, Mr. Nobile, we're going to take it from  
17 the top, okay?  
18 Let me ask you these questions again.  
19 Now, have you carefully read the post-charge  
20 stipulation of settlement which is five pages?  
21 MR. NOBILE: Yes.  
22 THE HEARING OFFICER: And do you  
23 understand all the provisions of the  
24 stipulation?  
25 MR. NOBILE: Yes.

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Sheet 6

1 PHILIP NOBILE - 10/07/2016  
 2 THE HEARING OFFICER: And has your  
 3 attorney explained all the provisions of this  
 4 stipulation to you?  
 5 MR. NOBILE: Yes.  
 6 THE HEARING OFFICER: And at this time  
 7 do you have questions concerning any provision  
 8 in the stipulation?  
 9 MR. NOBILE: No.  
 10 THE HEARING OFFICER: And do you  
 11 understand that you have the right to refuse to  
 12 settle this case, in other words, that you have  
 13 the right to go forward with your tenure  
 14 hearing?  
 15 MR. NOBILE: I do?  
 16 THE HEARING OFFICER: You do.  
 17 MR. NOBILE: Yes, I understand.  
 18 THE HEARING OFFICER: You do  
 19 understand that?  
 20 MR. NOBILE: Yes.  
 21 THE HEARING OFFICER: Okay, good. Do  
 22 you understand that you have the right to  
 23 require the Department of Education to prove  
 24 these charges and that this right is guaranteed  
 25 to you under the education law?

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1 PHILIP NOBILE - 10/07/2016  
 2 MR. NOBILE: Would you repeat that?  
 3 THE HEARING OFFICER: Sure. Do you  
 4 understand that you have the right to require  
 5 the Department of Education to prove these  
 6 charges and that this right is guaranteed to you  
 7 under the education law?  
 8 MR. NOBILE: Oh, sure.  
 9 THE HEARING OFFICER: Are you aware  
 10 that if you decide not to settle the case, that  
 11 NYSED would provide you with counsel at your  
 12 tenure hearing free of charge?  
 13 MR. NOBILE: Yes.  
 14 THE HEARING OFFICER: Okay. And do  
 15 you understand that by entering into this  
 16 stipulation of settlement, that you're waiving  
 17 your right to a hearing and that this settlement  
 18 agreement is binding and irrevocable?  
 19 MR. NOBILE: Yes.  
 20 THE HEARING OFFICER: Now in the  
 21 presence of Ms. Shenkman, Mr. Callagy, and  
 22 myself, do you freely waive your rights to a  
 23 hearing and do you enter into this stipulation  
 24 of settlement of your own free will, without any  
 25 coercion or duress?

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1 PHILIP NOBILE - 10/07/2016  
 2 MR. NOBILE: Yes.  
 3 THE HEARING OFFICER: Very well, then.  
 4 Good luck to you, Mr. Nobile. Thank you. Is  
 5 there any other business?  
 6 MS. SHENKMAN: No.  
 7 MR. CALLAGY: Other than just  
 8 explaining to Mr. Nobile what will happen with  
 9 this document after he signs it.  
 10 MR. NOBILE: It'll be framed, I  
 11 presumed, right?  
 12 MS. SHENKMAN: Sure, should we go off  
 13 the record?  
 14 THE HEARING OFFICER: Sure, we can go  
 15 off the record for that.  
 16 (The hearing adjourned at 02:50 p.m.)  
 17

20

CERTIFICATE OF ACCURACY

I, Trisha Ruckart, do hereby certify that the foregoing  
 typewritten transcript of proceedings in the matter of New  
 York City Department of Education v. Philip Nobile, File  
 No. 29,258 was prepared using the required transcription  
 equipment and is a true and accurate record of the  
 proceedings to the best of my ability. I further certify  
 that I am not connected by blood, marriage or employment  
 with any of the parties herein nor interested directly or  
 indirectly in the matter transcribed.  
 Signature:  
 Date: \_\_\_\_\_ October 10, 2016 \_\_\_\_\_

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