

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

In the Matter of the Application of

THE BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW
YORK, and CATHLEEN P. BLACK, as Chancellor of
the Board of Education of the City School District of
the City of New York,

NOTICE OF PETITION

Index No.

Petitioners,

~~11400107~~

For a Judgment and Order Pursuant to Article 75 of the
Civil Practice Law and Rules,

11400108

- against -

STEVEN OSTRIN,

Respondent.

FILED
JAN 13 2011
NEW YORK
COUNTY CLERK'S OFFICE

PLEASE TAKE NOTICE that upon the annexed petition, verified on January 13, 2011, and the exhibits annexed thereto, Petitioners will move this Court, in the Submissions Part, located at Room 130, 60 Centre Street, New York, New York, on the 22nd day of March, 2011, at 9:30 a.m., or as soon thereafter as counsel can be heard, for a judgment, pursuant to Article 7511(b)(iii) of the New York Civil Practice Law and Rules ("CPLR"), Section 3020-a(5) of the Education Law and New York State public policy as embodied in statute or decisional law, vacating the penalty imposed in the Opinion and Award of the Hearing Officer Howard C. Edelman ("Hearing Officer"), dated December 27, 2010 ("Award"), that directed only that Respondent be suspended for one-half year without pay, and ordered that, at the expiration of such period, Respondent be returned to work as a classroom teacher, on the grounds that the penalty is grossly inadequate, inconsistent with the Hearing Officer's own findings in this

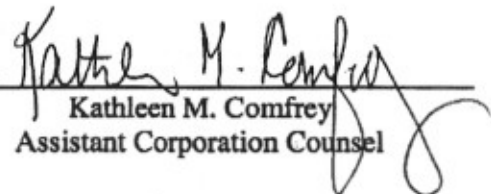
proceeding, and violates public policy; remanding this matter to the Hearing Officer for the imposition of termination of Respondent's services to the Department, and granting Petitioners such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to Section 7804(c) of the CPLR, respondent's answer, supporting affidavits, and memoranda of law, if any, shall be served on the undersigned at least five (5) days before the return date herein; and reply papers, if any, shall be served at least one day before the return date herein.

Dated: New York, New York
January 13, 2011

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Petitioners
100 Church Street, Room 2-314
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By:


Kathleen M. Comfrey
Assistant Corporation Counsel

ADAM COLLYER,
Of Counsel (Awaiting Admission)

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SUPREME COURT OF THE STATE OF NEW YORK
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YORK, and CATHLEEN P. BLACK, as Chancellor
of the Board of Education of the City School
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Petitioners,

For a Judgment and Order Pursuant to Article 75 of the
Civil Practice Law and Rules,

- against -

STEVEN OSTRIN,

Respondent.

NOTICE OF PETITION

MICHAEL A. CARDOZO

Corporation Counsel of the City of New York
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Adam Collyer
(Awaiting Admission)
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Matter No.: 2011-000543

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

In the Matter of the Application of

**THE BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW
YORK, and CATHLEEN P. BLACK, as Chancellor of
the Board of Education of the City School District of
the City of New York,**

VERIFIED PETITION

Index No.

Petitioners,

For a Judgment and Order Pursuant to Article 75 of the
Civil Practice Law and Rules,

- against -

STEVEN OSTRIN,

Respondent.

Petitioners, **THE BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK ("DOE" or the "Department"), and
CATHLEEN P. BLACK, as Chancellor of the Board of Education of the City School District
of the City of New York, by their attorney, Michael A. Cardozo, Corporation Counsel of the City
of New York, as and for their verified petition herein, respectfully allege as follows:**

PRELIMINARY STATEMENT

1. Steven Ostrin ("Respondent") is a teacher with the DOE who was found guilty of making sexually suggestive comments toward a female student while inappropriately touching her shoulder and neck. Hearing Officer Howard C. Edelman ("Hearing Officer") determined that he should be returned to the classroom after serving a one-half year suspension without pay. Petitioners now challenge this shockingly and inappropriately minor penalty and

request that this proceeding be terminated
for the imposition of the only appropriate penalty — termination.

2. Petitioners bring this proceeding pursuant to Civil Practice Law and Rules ("CPLR") § 7511(b) and Education Law § 3020-a(5) seeking a judgment vacating the disciplinary award imposed by the Hearing Officer that suspended Respondent without pay for a period of one-half year. See award in DOE v. Ostrin, SED #8655, dated December 27, 2010, ("Award"), which is annexed hereto as Ex. "1" at 24.

PARTIES

3. Petitioner DOE is a school board duly organized and existing pursuant to the Constitution and laws of the State of New York and in particular, the Education Law.

4. Petitioner Cathleen P. Black is the Chancellor of the DOE and its chief executive officer.

5. Respondent Ostrin is a tenured teacher assigned to the Social Studies Department of Brooklyn Technical High School, which is governed by the DOE.

JURISDICTION AND VENUE

6. This Court has jurisdiction to hear this proceeding based on CPLR § 7511(b).

7. Pursuant to CPLR § 506(b), venue is proper in New York County on the ground that the DOE has its principal place of business in New York County.

FACTS

A. Background

8. Respondent has been employed by the Department for about twenty three years. Respondent was previously assigned as a teacher in the Social Studies Department at Brooklyn Technical High School.

9. In 1992 and 1993, Respondent received letters from the Department admonishing him for using profanity, rubbing students' arms and backs, and telling stories with sexual details. Award at 8 - 9.

10. On or about March 2, 2005, Respondent had an encounter with a female student ("G.O.").

11. During the March 2, 2005 encounter, Respondent inappropriately rubbed his hands on the female student's neck and shoulder. During this inappropriate contact, Respondent made explicit comments to the female student for the purpose of soliciting sex.

12. Shortly after the encounter with Respondent, G.O. reported what had occurred to the principal of Brooklyn Technical High School and her parents. Respondent was placed in the Teacher Reassignment Center and was criminally charged with endangering the welfare of a child. Award at 2.

13. On or about April 26, 2007, Respondent was arrested for criminal possession of marijuana and patronizing a prostitute.

B. The Charges

14. Following these incidents, the Department elected to pursue disciplinary action against Respondent for both incidents. Respondent was served with two sets of charges, *inter alia*:

SPECIFICATION 1 OF FIRST SET OF CHARGES: On or about March 2, 2005, Respondent touched Student G.O. on the shoulder and said words to the effect of:

- a) G.O. was pretty.
- b) G.O. could give Respondent a quick strip tease.
- c) G.O. has a pretty smile and that's enough to tease Respondent.

- d) G.O. has nice skin, a nice neck and nice hair.
- e) The Respondent has sexual expeditions with other students.
- f) A fellow teacher had a sexual relationship with a student and that teacher got the student pregnant, they got married and lived happily ever after.
- g) The Respondent slept with his high school Spanish teacher.
- h) Since Respondent and G.O. were not going to exchange any bodily fluids that G.O. could cook chicken for the Respondent.
- i) Orgasm.

SPECIFICATION 1 OF SECOND SET OF CHARGES: On or about April 26, 2007, Respondent:

- a) Agreed to pay a person a fee pursuant to an understanding that, in return therefore, the person would engage in fellatio with the Respondent.
- b) Was in possession of a quantity of marijuana.

SPECIFICATION 2 OF SECOND SET OF CHARGES: On or about April 26, 2007, Respondent was arrested for Patronizing a Prostitute, Criminal Possess of Marijuana and Unlawful Possession of Marijuana as articulated above within Specification 1 and failed to immediately report said arrest in violation of Chancellor's Regulation C-105.

Award at 4 – 5.

C. The Hearing On The Charges

15. In accordance with Education Law § 3020-a, a disciplinary hearing on both sets of charges was conducted before the Hearing Officer on January 5, February 3, March

5, April 1, June 11, September 15, October 2, and December 2, 2009, and March 31, April 22, June 11, August 16, August 17, November 9, and December 2, 2010.

16. At this hearing, G.O. testified that Respondent had rubbed her shoulder while suggesting that G.O. could "give him a strip tease." Award at 12. G.O. also testified that Respondent told her that she had "a pretty smile, smooth skin, [and] nice hair." Id.

17. G.O. further testified that Respondent hugged her and spoke to her about being his "sex slave" before taking a quiz. Award at 15. G.O. also stated that Respondent spoke about his own "sexual expeditions" and that she could cook chicken for him. Id.

18. Respondent testified on his own behalf at the hearing, and admitted to using "salty language" when interacting with students in order to create a connection with them. Award at 10.

D. The Award

19. Based on the evidence presented at Respondent's disciplinary hearing, the Hearing Officer substantiated Specification 1(a), (b), (c), (d), and (h) of the First Set of Charges. Award at 23. The other charges were not substantiated.

20. The Hearing Officer issued his Award which directed that Respondent be suspended for one-half year without pay. Award at 24.

21. The Hearing Officer correctly characterized Respondent's behavior as "far from benign" and stated that there are many types of interaction between teachers and students that, "even if they only occur once, justify discharge." Award at 21.

22. The Hearing Officer took into account that Respondent has been reprimanded in the past for using foul language and inappropriately touching students. Award at 22.

23. The Hearing Officer inexplicably chose to give Respondent yet another chance to correct his abusive and inappropriate behavior by merely imposing a half-year suspension instead of terminating him. Award at 22.

24. The penalty imposed for Respondent's sexual banter and outrageous and harmful behavior is shockingly inadequate. After finding that Respondent engaged yet again in "offensive conduct" by making sexually explicit remarks toward a shy, introverted student, the Hearing Officer imposed a lenient penalty that does nothing to put Respondent on "unequivocal notice that any repeat behavior of the type for which he was charged will lead to his dismissal." Award at 22 - 23.

25. Nothing in the record gives assurance to the Department, students or their parents or guardians that Respondent will not continue to inappropriately touch or speak to students. Accordingly, the penalty is inconsistent with the Hearing Officer's own findings, is irrational and violates public policy. Therefore, the Award must be vacated, and termination imposed.

FIRST CAUSE OF ACTION

26. Petitioners repeat and reallege each and every allegation set forth above as if fully set forth here.

27. The penalty imposed by the Award is inconsistent with the Hearing Officer's own findings in this proceeding and shockingly disproportionate to the Respondent's misconduct.

28. Pursuant to the contract between the DOE and the United Federation of Teachers, if a teacher is found guilty of "sexual misconduct," there is a mandatory penalty of discharge. See Article 21(G)(6) of the Collective Bargaining Agreement, which is annexed hereto as Exhibit "2." "Sexual misconduct" is defined as any sexual touching, serious or

repeated verbal abuse of a sexual nature, or any action that could reasonably be interpreted as soliciting a sexual relationship. Id.

29. While the Award does not use the phrase "sexual misconduct," it does say that Respondent engaged in "sexual banter," which could be reasonably interpreted by a student as soliciting a sexual relationship.

30. The Award characterizes this outrageous behavior as "a single event in which a teacher touched a student on her arm and made inappropriate comments." Award at 21. Yet the Award also states that Respondent received reprimand letters for making offensive comments and inappropriately touching students in the past. Award at 8, 22. This is not a "single event," but is a clear pattern of behavior that cannot be tolerated. By acknowledging the offensive and repetitive nature of Respondent's behavior while declining to put an end to such behavior once and for all, the penalty imposed by the Hearing Officer is irrational given the circumstances. Thus, the penalty must be vacated and termination imposed.

SECOND CAUSE OF ACTION

31. Petitioners repeat and reallege each and every allegation set forth above as if fully set forth here.

32. The penalty imposed by the Award violates public policy.

33. The Award orders that a teacher who is guilty of inappropriately touching students in a sexual manner and making sexually charged comments to a student only be suspended without pay for one-half year, rather than be terminated.

34. The Department is responsible for the education and training of New York's children and an important component of that instruction centers around respect for all persons. Teachers play an important function in society, in that they are instrumental in instructing New York's children.

35. Given the nature and seriousness of Respondent's misconduct, terminating Respondent is the only appropriate penalty. The record simply does not support the Hearing Officer's assertion that this discipline will prevent Respondent from committing similar misconduct in the future, particularly because Respondent has shown a pattern of identical misconduct and a glaring lack of contrition. Thus, the Hearing Officer's decision to not terminate Respondent violates public policy and must be vacated.

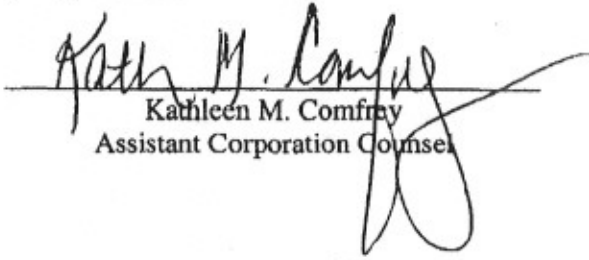
36. No prior request has been made for the relief requested herein.

WHEREFORE, petitioners respectfully request a judgment vacating the Award, and remanding this proceeding to the Hearing Officer for the imposition of a penalty consistent with this Court's decision, and terminating Respondent's services with the DOE, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 13, 2011

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Petitioners
100 Church Street, Room 2-314
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(212) 788-8688

By:


Kathleen M. Comfrey
Assistant Corporation Counsel

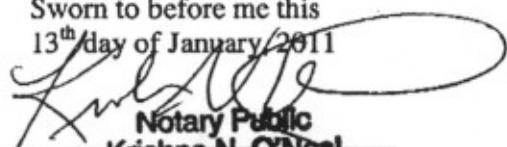
ADAM COLLYER,
Of Counsel (Awaiting Admission)

VERIFICATION

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

MARVIN POPE, being duly sworn, states that he is an attorney employed by the New York City Department of Education; that he has read the foregoing NOTICE OF PETITION AND PETITION in The Board of Education of the City School District of the City of New York, and Cathleen P. Black, as Chancellor of the City School District of the City of New York v. Ostrin, to be filed in the Supreme Court of the State of New York, County of New York, and knows the contents thereof to be true, except as to the matters therein alleged upon information and belief and as to those matters, he believes them to be true, that the source of this information and the basis for his belief are the books and records of the New York City Department of Education and from statements made to him by certain officers or agents of the New York City Department of Education.


Marvin Pope

Sworn to before me this
13th day of January 2011

Notary Public
Krishna N. O'Neal
Bronx N.Y.
Reg. No. 02ON6063277
Commission Expires 12/21/13