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Supreme Court of the State of New York
County of New York

X

In the Matter of

INDEX Number 06115361

Hipolito Colon,
Plaintiff

Date purchased: October 13, 2006

SUMMONS

-against-

The basis for venue
is the address of Defendants

New York City Board of Education,
Joel Klein, Chancellor; Michael Best,
General Counsel for the NYCBOE; The
Members of The Panel For Educational
Policy, all In Their Individual and
Official Capacities; Liza Caraballo,
Principal of PS 120; James R. Sandner,
Esq., General Counsel. NYSUT, and
Claude I. Hersh, Assistant General Counsel,

Defendants

X

CITY OF N.Y. LAW DEPART.
OFFICE OF CORP. COUNSEL
COMMUNICATIONS SECTION
2006 NOV 9 PM 4 27

To the above named Defendants:

I, Hipolito Colon, am the plaintiff in the above
titled matter and am fully familiar with the facts and
circumstances of this case and hereby affirm the following
under penalty of perjury:

You are hereby summoned to answer the complaint in this
action and to serve a copy of your answer on Plaintiff at
the address below no later than December 8, 2006 after
service of this summons, exclusive of the day of service.

Dated: New York, NY
November 9, 2006

For NYSUT -
Sandner + Hersh
[Signature]

Hipolito Colon

Hipolito Colon
Plaintiff Pro Se

Defendants' addresses:

Corporation Counsel
100 Church Street
New York, NY 10003

NYSUT
52 Broadway
9th floor
New York, NY 10004

Jessie Anderson

JESSIE ANDERSON
Notary Public, State Of New York
No. AN6071907
Qualified In Kings County
Commission Expires 03-25-20 **LD**

Supreme Court of the State of New York
County of New York

X

In the Matter of

INDEX Number 06115361

Hipolito Colon,
Plaintiff

AMENDED COMPLAINT

-against-

New York City Board of Education,
Joel Klein, Chancellor; Michael Best,
General Counsel for the NYCBOE; The
Members of The Panel For Educational
Policy, all In Their Individual and
Official Capacities; PS 120 Principal
Liza Caraballo; James R. Sandner,
Esq., General Counsel. NYSUT, and
Claude I. Hersh, Assistant General Counsel,

Defendants

X

I, Hipolito Colon, the Plaintiff in the above captioned
case, affirms the following under the penalties of perjury:

I am presently the Plaintiff Pro se ("Plaintiff") in the
above captioned action, and am fully familiar with all the
papers and proceedings had herein, and with all the facts
and circumstances hereinafter set forth.

Plaintiff hereby complains as follows:

THE PARTIES

1. Plaintiff HIPOLITO COLON is a tenured teacher in the
employ of the Board of Education of the City School
District of the City of New York ("BOE") and at all relevant

CITY OF N.Y. LAW DEPART.
OFFICE OF CORP. COUNSEL
COMMUNICATIONS SECTION
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times has resided at _____, New York, 11385.

2. On information and belief, Defendant JOEL KLEIN is an individual who resides in New York City and in Croton-on-Hudson, in New York State, and at all times relevant does business as Chancellor of the New York City Board of Education located at 52 Chambers Street, New York City, N.Y., 10007, and as such, is a member of The PANEL FOR EDUCATIONAL POLICY.

3. On information and belief, Defendant MICHAEL BEST is an individual who at all times relevant does business as General Counsel to the Chancellor of the New York City Board of Education located at 52 Chambers Street, New York City, N.Y. 10007, and is a member of THE PANEL FOR EDUCATIONAL POLICY.

4. On information and belief, Defendant THE PANEL FOR EDUCATIONAL POLICY ("PEP") is a eighteen member body designated as the Board of Education in section 2590-g of the Education Law. The PEP is, therefore, an entity, organization, and/or volunteer membership group which does business as a part of the governance structure responsible for the City School District of the City of New York, subject to the laws of the State of New York and the regulations of the State Department of Education. The

members are appointed: one member is appointed by each Borough President, eight members, including the Chancellor who serves as chairperson, are appointed by the Mayor. All members serve at the pleasure of the official who appointed them. This policy-making body does business under color of law for the New York City Board of Education, and their main office is at 52 Chambers Street, New York City, NY 10007.

5. On information and belief, Defendant Liza Caraballo is an individual who works as Principal at PS 120 on Beaver Street in Brooklyn, took retaliatory measures against Plaintiff after he wrote a letter complaining about her and harm to children by her in PS 120 where he was a teacher, and is violating State and Federal Laws.

6. On information and belief, Defendant JAMES R. SANDNER, ESQ., ("Sandner") is an individual who works as General Counsel for NYSUT, a membership group that represents 575,000 teachers, school-related professionals, academic and professional faculty in high education, professionals in education and health care and retirees. NYSUT is affiliated with the American Federation of Teachers, National Education Association and the AFL-CIO, and is located at 52 Broadway, New York, N.Y. 10004.

7. On information and belief, Defendant CLAUDE I HERSH ("Hersh") is an individual who works as Assistant to Defendant James R. Sandner at NYSUT in the New York City office at 52 Broadway, New York, N.Y. 10004, and assigns lawyers under his Supervision to represent teachers charged under Education Law and about to be terminated at 3020-a hearings.

8. The actions of Defendants complained of herein are final in nature and cannot be adequately reviewed by another court, entity, or officer.

9. This Court has jurisdiction to decide this petition pursuant to Education Law 3020-a and 42 U.S.C. §1983, because the determination made by Defendants is a final determination made in violation of lawful procedure, affected by an error of law, is arbitrary and capricious, is an unauthorized assertion of power and collusion, is malicious and acted upon in bad faith, and violates State and Federal Constitutions.

10. New York County is the proper venue for this petition because the Defendants made the determination complained of in New York County, and all other events material to this matter took place there. CPLR §506 (b).

FACTUAL BACKGROUND

11. Plaintiff has been in the employ of the Department for 19 years.

12. Plaintiff was assigned to a reassignment center on January 10, 2006, located at 25 Chapel Street in Brooklyn New York, suddenly and without notice of any charges, and in retaliation for whistleblowing the illegal actions of Principal Lisa Caraballo at PS 120/ District 14, 18 Beaver Street, Brooklyn.

13. Plaintiff was not given advance notice of having been reassigned until late in the afternoon the day before Plaintiff was to report to the reassignment office.

Plaintiff was not told what the charges that caused the sudden re-assignment, were.

14. Plaintiff remains without the packet of specifications with evidence of the charges that removed him from his job and placed him on the Ineligible/Inquiry List before any hearing on the charges has taken place.

15. On June 28, 2006 Plaintiff went out of state and remained there for approximately three weeks. Prior to leaving, he did not check his P.O. Box.

16. Plaintiff returned to New York City at the end of July 2006.

17. Upon his return, Plaintiff discovered three certified mail receipts in his P.O. Box, dated June 28, 2006 and July 5, 2006.

18. Plaintiff went to the Post Office in an attempt to pick up the certified mail and was informed that the certified mail had been returned to the sender.

19. Plaintiff never saw these documents.

20. Plaintiff never received any documents by regular mail from the New York City Board of Education that described any charges against him, and Education Law 3020-a clearly prohibits sending notices or documents after the school year has ended:

§ 3020-a. Disciplinary procedures and penalties. 1. Filing of charges. All charges against a person enjoying the benefits of tenure as provided in subdivision three of section one thousand one hundred two, and sections two thousand five hundred nine, two thousand five hundred seventy-three, twenty-five hundred ninety-j, three thousand twelve and three thousand fourteen of this chapter shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the actual opening and closing of the school year for which the employed is normally required to serve

21. Plaintiff never received notice of any charges either by regular or by certified mail.

22. On August 29, 2006, Plaintiff received a letter dated August 22, 2006, postmarked August 26 2006, and signed by the Defendant BEST, saying that Plaintiff was served by certified mail on June 23, 2006 with Education Law §3020-a charges and that he failed to timely request a hearing.

23. Plaintiff has never received the charges that removed him from his job at PS 120. As he has not seen said 3020-a charges, he could not have requested a timely hearing within the 10-day limit as specified in Education Law 3020-a, and Commissioner's Regulations Part 82.

24. Plaintiff never waived his right to receive the charges against him nor his right to have a hearing based upon those charges.

25. Plaintiff considers any action that terminates his employment at the NYC Board of Education without a fair and just hearing, unconstitutional and a violation of his 42 U.S.C. 1983, First, and Fourteenth Amendment rights.

26. Plaintiff contacted NYSUT several times, and spoke with Defendant HERSH about scheduling a hearing on the charges, and receiving the charges and specifications.

27. Defendant HERSH told Plaintiff that there was nothing NYSUT could do to assist Plaintiff until AFTER the PEP terminated him at the September 19, 2006 meeting and AFTER he lost his salary; Defendant HERSH told Plaintiff that there was "nothing [he] could do." This showed bad faith on the part of NYSUT.

28. Plaintiff did not want to lose his salary, and tried to obtain another representative for the hearing in front of the PEP or at a 3020-a, but NYSUT would not permit this.

29. Plaintiff found online the US Supreme Court case Kramer v Union Free School District No. 15, 395 U.S. 621, which states very clearly that members of the Board of Education must be elected by all interested parties such as taxpayers, in New York State.

30. Plaintiff is an interested party and wants to have a vote in the election of the PEP, an entity that has been given the power to terminate him from his tenured position without his knowing why he is being terminated.

31. On September 18, 2006, an Affidavit was served on Defendants demanding that this group, Defendants PEP et al., cease and desist in the plan to terminate Plaintiff at the monthly PEP meeting on September 19, 2006, and cease to have Executive Board personnel meetings before the PEP actual meeting began.

32. On September 19, 2006, Defendant KLEIN told Plaintiff that "[I] know all about due process, as I am an Attorney. You will get your charges and will have a hearing."

33. Plaintiff has not received the specifications or hearing notice, and Defendant Hersh was very angry that Plaintiff had filed the Affidavit against being terminated and losing his salary.

34. Plaintiff sits every day in the re-assignment center, or "rubber room", waiting for the hearing, and none of the

Defendants have given him a date for his hearing, or proper notice pursuant to 3020-a rules, and alleges that this is a violation of his right to remain innocent until proven guilty, under 42 U.S.C. 1983 and the US Constitution.

35. A controversy and material fact/issue have arisen and currently exist between Plaintiff and Defendants over their respective legal rights and duties involving employment termination, receiving charges, requesting a hearing, the following causes of action, the appropriate relief to be awarded, and the subject matter jurisdiction of the PEP and whether or not it should exist at all in it's present form as an appointed body.

36. Plaintiff claims protection from retaliation by Defendants for whistleblowing the violations of NCLB Law he saw enacted by Principal Liza Caraballo and administration of PS 120, the school at which he was employed.

37. Plaintiff is a mandated reporter of fraud and corruption, and should not have been placed into a "rubber room for speaking out about what he perceived to be waste of public money and violations of the NCLB and IDEA laws.

38. Society has recognized the value of protecting employees who disclose corruption issues, and at-will employment policies have steadily changed, particularly in the area of public policy exceptions:

"During the 1980's a majority of state jurisdictions modified the strict at-will doctrine, and carved out a public policy exception. This exception protects employees from termination if the discharge is in violation of a state public policy...Today, whistleblowers are regularly protected under both federal statutory and state statutory, or common law...the need to protect people who disclose illegality of dangers to public safety from intimidation is a principle fundamental to democracy." [The Labor Lawyer's Guide To The Rights and Responsibilities of Employee Whistleblowers", pp. 13-14.]

ARGUMENT

39. The Panel for Educational Policy ("PEP") is not an appropriate venue for a discussion of the issues of presented in the above captioned case, and the meeting of the PEP cannot replace a due process hearing that Plaintiff has not been given, as is his right pursuant to 3020-a, and Part 82 of the Commissioner's Regulations.

40. Pursuant to US Supreme Court order in the case Kramer v Union Free School District No. 15, 395 U.S. 621, The Panel For Educational Policy is an invalid forum for hearings on employment issues, as there are no elections for any of the members, and therefore the PEP cannot make any decisions that are legally binding.

41. Procedural constitutional protections involve a panoply of constitutional rights to assure that education administrators treat each employee fairly in employment matters. The United States Constitution mandates that an employee with liberty and property interests in his or her

job is entitled to due process hearings before the employment relationship can be terminated. [Cleveland Board of Education v Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985); Lafferty v Board of Education of Floyd County, 133 F. Supp.2d 941 (E.D. Ky 2001)].

42. As Plaintiff did not receive proper notice of the charges filed against him, if a vote is taken to terminate his employment with the NYC BOE without a proper hearing, he claims a right to relief for wrongful discharge and damages, pursuant to Education Law §2.05[2]; see Chandler v Board of Education, 92 F. Supp.2d 760 (ND Ill. 2000), and the NY State Constitution.

43. Contract termination resulting from disclosure of violations of state law under New York State's whistleblower act is actionable as retaliation, and Defendants have no qualified immunity from prosecution for perpetrating this retaliation.

AS A FIRST CAUSE OF ACTION

44. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through ~~43~~ of the complaint, as if fully set forth herein.

45. It is Plaintiff's constitutional right to know charges against his character or his actions that incur loss of

property and liberty rights that are due to him as a tenured employee of the New York City Board of Education.

46. Plaintiff is entitled to receive the charges for which he was removed from his job at PS 120 pursuant to education Law 3020-a, Part 82 of the Commissioner's Regulations, and 42 U.S.C. 1983, and plaintiff demands that Defendants give him his charges, and proof of their validity, pursuant to his First and Fourteenth Amendment Rights.

AS A SECOND CAUSE OF ACTION

47. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through 46 of the complaint, as if fully set forth herein.

48. Plaintiff has a constitutional right to a fair and open hearing at which he may defend himself against charges that may incur loss of property or liberty rights and fulltime employment.

49. Plaintiff demands a fair and open hearing at which all parties are present to account for the circumstances under which his liberty and property rights to full time employment were taken away.

50. Plaintiff demands a hearing that follows the guidelines of the American Arbitration Association and not Part 82 of the New York State Education Department and those currently implemented by NYSUT, namely that telephone calls of

Principals and Administrators to give testimony and answer questions is permitted. Plaintiff alleges that a hearing must have all parties present and accounted for.

AS A THIRD CAUSE OF ACTION

51. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through 49 of the complaint, as if fully set forth herein.

52. Defendant PEP is an illegal entity, pursuant to the ruling in Kramer v Union School District No. 15, 395 U.S. 621, and must be replaced by a Board of Education whose members are elected by taxpayers over the age of 18 years who want to vote.

53. Defendants intentionally and maliciously caused Plaintiff to suffer severe distress by their actions, loss of liberty and property, and an award of punitive damages against Defendants, jointly and severally is warranted.

AS A FOURTH CAUSE OF ACTION

54. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through 43 of the complaint, as if fully set forth herein.

55. NYSUT has not represented Plaintiff in good faith and Plaintiff makes a demand for exemplary and compensatory damages for the distress endured by the improper actions of his own union to secure his employment and fight for him.

AS A FIFTH CAUSE OF ACTION

56. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through 5~~3~~ of the complaint, as if fully set forth herein.

57. The illegal actions in violation of NCLB and IDEA 2004 that PS 120 Principal Liza Caraballo has and is continuing to take endangers the health, safety, and welfare of children and must be addressed by investigators, so that the whistleblower claim of Plaintiff is substantiated and retaliation proven.

WHEREFORE Plaintiff demands:

1. Declaratory relief under each of the foregoing causes of action;
2. exemplary and punitive damages in the amount of \$5 million, according to proof at trial;
3. all other damages permitted by law for relief from defamation, the intentional infliction of emotional harm, whistleblower protection, and violations of civil rights and due process, as well as condemnation by a PEP that has no legal basis to act;
4. dissolution of the THE PANEL FOR EDUCATIONAL POLICY and reformation of the Board of Education as an elected body;

New York, NY 10003

Mr. James Sandner
NYSUT
52 Broadway
NANY 10004

Mr. Claude Hersh
NYSUT
52 Broadway
NY, NY 10004

5. judgement in favor of Plaintiff and going forward to discovery and trial;
6. injunctive relief to prevent any future condemnation by NYSUT and/or PEP without justification and under color of law;
7. A full investigation of the actions of PS 120 Principal Liza Caraballo;
8. all other equitable relief permitted by law, according to proof at trial;
9. costs of suit;
10. all other and further relief that the Court deems just and proper.

Dated: November 9, 2006

52 Chambers Street
NY NY 10007

Mr. Michael Cardozo
100 Church Street
New York, NY 10003

Mr. James Sandner
NYSUT
52 Broadway
NYNY 10004

Mr. Claude Hersh
NYSUT
52 Broadway
NY, NY 10004

Respectfully,

Hipolito Colon

Hipolito Colon

Sworn To Before Me on the
~~15th~~ day of ~~October~~, 2006

Charles F. Gueli
Notary Public

Mr. Michael Best
NYC BOE General Counsel

Notary Public
State of New York
CHARLES F. GUELI
Reg #01GU6024928

Exp 8/17/07