



THE CITY OF NEW YORK
LAW DEPARTMENT
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February 12, 2009

By Regular Mail

Hipolito Colon
5942 Myrtle Avenue
Ridgewood, NY 11385

Re: Colon v. New York City Board of Education, et al.
Index No. 115361/06

Dear Mr. Colon:

At the compliance conference held in the above-referenced matter on January 28, 2009, the parties were ordered by the Court to, among other things, respond to all outstanding demands for discovery by February 19, 2009. At that time, while before Judge William Leibovitz, I advised you that because your discovery requests included sensitive materials from the personnel files of Department of Education ("DOE") employees other than you, documents DOE deems confidential, production of such documents required that you enter into a Stipulation and Protective Order. At Judge Leibovitz's request, I then explained to you what such stipulation and order entailed. You indicated that you fully understood the nature and purpose of such stipulation and order, namely, to protect the confidentiality of an employee's personnel and personal records disclosed during discovery.

Thereafter, while departing the courtroom, I again advised you that a Stipulation and Protective Order would be drafted and sent to you in advance of February 19, 2009, and would be required for production of personnel and personal records deemed confidential by DOE. You responded that provided that such stipulation and order was reasonable, you had no objection.

Defendants shall comply with the Court's order to respond to your discovery requests by February 19, 2009. Your appearance at this office is not required to effect proper service of such discovery response by such date. Defendants' discovery response will be placed in the mail to you on February 19, 2009, in accordance with the New York Civil Practice Law and Rules.

I am enclosing an additional copy of the Stipulation and Protective Order for your signature. The documents that fall under the protection of that Stipulation and Protective Order will not be produced to you absent your signature on that stipulation and order.

Sincerely yours,



Maxwell D. Leighton
Assistant Corporation Counsel

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

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HIPOLITO COLON,

Plaintiff,

-against-

NEW YORK CITY BOARD OF EDUCATION, et al.,

Defendants.

----- X

**STIPULATION AND
PROTECTIVE ORDER**

Index No. 115361/06

WHEREAS, Plaintiff Hipolito Colon (“Colon” or “Plaintiff *pro se*”) has sought certain documents from Defendant, New York City Board of Education (“BOE” or “Defendant”), doing business as the New York City Department of Education (“DOE”), in discovery in this action, documents which Defendant deems confidential, and

WHEREAS, Defendant objects to the production of those documents unless appropriate protection for their confidentiality is assured,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff *pro se* and Defendant, as follows:

1. As used herein, “Confidential Materials” shall mean all documents and testimony relating to:

- a. personnel or former personnel of the DOE and other persons who are not plaintiffs in this action, including, but not limited to, personnel files, including the information contained therein including, but not limited to, promotions, discipline and evaluations;
- b. copies of any documents containing information about the investigation or discipline of any personnel or former personnel of the DOE who are not plaintiffs in this action, including, but not limited to, copies of investigation files, disciplinary files, and Office of Special Investigation files;

- c. any documents that the Parties agree are subject to this stipulation;
 - d. any documents that the Court directs to be produced subject to this stipulation; and,
 - e. any deposition testimony which reveals the contents of materials produced subject to this order.
2. Plaintiff *pro se* shall not use the Confidential Materials for any purpose other than for the preparation or presentation in Court of Plaintiff's case in this action.
3. Plaintiff *pro se* shall not disclose the Confidential Materials to any person, except under the following conditions:
- a. Disclosure before trial may be made only to an expert who has been retained or specially employed by Plaintiff *pro se* in anticipation of litigation or preparation for this action, to a witness at deposition, or to the Court.
 - b. Before any disclosure is made to a person listed in subparagraph (a) above (other than to the Court or Court officials involved in this action), Plaintiff *pro se* shall provide each such person with a copy of this Stipulation and Protective Order, and such person shall consent in writing, in the form annexed hereto as Exhibit A, not to use the Confidential Materials for any purpose other than in connection with the prosecution of this case in Court and not to further disclose the Confidential Materials except in testimony taken in this case. The signed consent shall be retained by Plaintiff *pro se*. Within ten days of any disclosure Plaintiff *pro se* shall provide Defendants' attorney a copy of the executed consent form annexed hereto as Exhibit A, along with a log of all person to whom the confidential information was disclosed, identifying also the confidential information

disclosed. Plaintiff *pro se* shall also certify that a good faith basis for the disclosure exists.

4. Deposition testimony concerning any Confidential Materials which reveals the contents of such materials shall be deemed confidential, and the transcript of such testimony, together with any exhibits referred to therein, shall be separately bound, with a cover page prominently marked "CONFIDENTIAL." Such portion of the transcript shall be deemed to be Confidential Materials within the meaning of this Stipulation and Protective Order.

5. If any paper which incorporates any Confidential Materials or reveals the contents thereof is filed in this Court, those portions of the papers shall be delivered to the Court enclosed in a sealed envelope bearing the caption of this action, an indication of the nature of the contents, and the following legend:

CONFIDENTIAL

This envelope contains documents or information designated confidential pursuant to an order entered by the New York State Supreme Court, County of New York, in the above-captioned action. This envelope shall not be opened or unsealed without the express direction of a judge of this Court, and its contents shall not be displayed or revealed except as the Court may order. This envelope and its contents shall at all times be maintained separate and apart from the publicly available files of this case.

6. Within 30 days after the termination of this case, including any appeals, the Confidential Materials, including all copies, notes, and other materials containing or referring to information derived there from, shall be returned to Defendants' attorney.

7. Nothing in this Stipulation and Protective Order shall be construed to limit Defendants' use of the Confidential Materials in any manner.

Dated: New York, New York
February 12, 2009

HIPOLITO COLON, Plaintiff *pro se*
5942 Myrtle Avenue
Ridgewood, New York 11385
(917) 696-7967

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street, Room 2-169
New York, New York 10007
(212) 788-0407

Hipolito Colon

By: _____
Maxwell D. Leighton
Assistant Corporation Counsel

SO ORDERED:

EXHIBIT A

The undersigned hereby acknowledges that he/she has read the Stipulation and Protective Order entered in the Supreme Court of the State of New York, County of New York, on _____ __, 200__ in the action entitled, *Hipolito Colon v. New York City Board of Education, et al.*, Index No. 115361/06, and understands the terms thereof. The undersigned agrees not to use the Confidential Materials defined therein for any purpose other than in connection with the prosecution of this case, and will not further disclose the Confidential Materials except in testimony taken in this case.

Date

Signature

Print Name

Occupation