

**THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
TEACHER TENURE HEARING UNIT**

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

SED No.

Complainant,

**AFFIRMATION OF
CAROL GERSTL**

-against-

HIPOLITO COLON,

Respondent-Tenured Teacher.

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CAROL GERSTL, an attorney admitted to practice in the Courts of the State of New York, under penalties of perjury, affirms and says:

1. I have been employed by the United Federation of Teachers, Local 2, AFT, AFL-CIO ("UFT") since 1995. I am counsel.
2. I respectfully submit this affirmation in support of the position that no UFT member covered by the collective bargaining agreement between the UFT and the Board of Education of the City School District of the City of New York ("Board") effective from June 1, 2003 to October 12, 2007 ("Agreement") is entitled to the three-person panel as provided by *Education Law* Section 3020-a(2)(c).
3. *Education Law* Section 3020-a(2)(c) states: "Within ten days of receipt of the statement of the charges, the employee shall notify the clerk or secretary of the employing board in writing whether he or she desires a hearing on the charges and when the charges concern pedagogical

incompetence or issues involving pedagogical judgment, his or her choice of either a single hearing officer or a three member panel. All other charges shall be heard by a single hearing officer.”

4. I was intimately involved in the negotiations between the UFT and the Board which resulted in changes to the statutory disciplinary procedures set forth in *Education Law* Section 3020-a. Those changes were first set forth in the collective bargaining agreement between the parties effective from November 16, 2000 through May 31, 2003 although that agreement was not reached until June 10, 2002. Authority to replace the procedures in Education Law Section 3020-a with collectively bargained procedures was specifically authorized in an amendment to Education Law Section 3020(4), which applied to any agreement on or after June 10, 2002. The changes were then continued and expanded upon in the Agreement as referenced above.

5. Having participated directly in those negotiations, I can attest that the UFT intended to replace the system set forth in the *Education Law* with one which would be more just and fair to UFT members as well as speedier. I believe that the negotiated changes to the process achieved those goals.

6. Since that time, the position of the UFT has been that the negotiated process set for in the Agreement amends the process set forth in *Education Law* Section 3020- to the extent that some statutory provisions remain the same and some statutory provisions have been replaced by the improved contractual process. The right to the three-person panel is one aspect of the statutory process which has been replaced by the improved contractual process.

Dated: January 17, 2008
New York, New York


CAROL GERSTL