

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

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JOHN LEFTRIDGE,

Petitioner,

-against-

THE CITY OF NEW YORK; NEW YORK CITY  
DEPARTMENT OF EDUCATION; CARMEN  
FARIÑA, CHANCELLOR of NEW YORK CITY  
DEPARTMENT OF EDUCATION,

Respondents, ,

**PETITIONER’S RESPONSE  
AFFIDAVIT IN OPPOSITION TO  
RESPONDENTS’ CROSS  
MOTION TO DISMISS**

Index No. 655458/17

To Vacate a Decision of a Hearing Officer Pursuant to  
Education Law Section 3020-a and CPLR Section  
7511  
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Petitioner JOHN LEFTRIDGE, as and for Petitioner’s Reply Affidavit in  
opposition to the Respondents’ cross motion to dismiss, respectfully alleges as follows:

1. I was duly appointed as a common branches teacher since 2001, and was  
last assigned to P.S. 93 in Brooklyn, New York. I worked at the school for the past 10  
years under Principal Sandra Philip.

2. I had almost 16 years of service with the DOE, during which time I received  
satisfactory ratings for most of my career. I was also a coach, assisting other teachers, for  
17 years.

3. I volunteered for many school related organizations, such as 500 Men  
Making a Difference, Boys and Girls High School, and AAA Conference Basketball.

4. After I was elected the United Federation of Teachers Chapter Leader of  
P.S. 93 during the 2012-13 school year, everything changed in my school work  
environment, and my years of positive work with students was forever tarnished.

5. In early 2014, while I was UFT chapter leader, Principal Sandra Philip brought me up on false Section 3020-a disciplinary charges, for which I was eventually completely exonerated by a hearing officer in August 2014.

6. During the course of my first 3020-a disciplinary proceeding, I was reassigned away from Principal Philip and the school, and performed admirably at P.S. 3 from December 2013 until August 2014, under Principal Beecher, where I encountered no disciplinary or incompetency problems.

7. At the conclusion of my first 3020-a trial, after being exonerated, I was involuntarily reassigned back to work at P.S. 93 under Principal Philip in September 2014, despite every attempt by me to escape Principal Philip's attacks and the toxic school environment Principal Philip had created.

8. I filed improper practice charges against my principal through the New York State Public Employment Relations Board (PERB), as well a Title VII discrimination lawsuit in federal court, both of which eventually were settled with the NYCDOE.

9. Nonetheless, Principal Philip and the NYCDOE refused to release me from the school, and instead rated me ineffective and unsatisfactory in all of my teaching classes after my involuntary return to P.S. 93 post my 3020-a exoneration.

10. On or about April 2015, I was injured in a 5<sup>th</sup> grade class at the school containing students with multiple behavioral issues.

11. Principal Philip rated my teaching ineffective on an observation conducted the next day after I returned to school from my injury, on or about June 22, 2015.

12. On or about November 2015, I was injured in my 3<sup>rd</sup> grade assigned class at the school and was absent the rest of the school year. This injury came after Principal Philip consistently refused to file official safety reports and failed to act to provide assistance to me regarding reports of violence in my classroom. Principal Philip failed to provide assistance to me for over 40 minutes on the day I was injured in the classroom.

13. Principal Philip tried to rate me ineffective overall under the new Danielson system, but was forced to convert the rating to an Unsatisfactory after a grievance. She also refused to timely sign off on my medical leave paperwork. Principal Philip had a history of not properly filing paperwork about my injuries, whether it was safety incidents or medical reports. In this case, she held onto, and did not file, my disability paperwork.

14. As soon as I returned from my medical leave, and several weeks of jury duty service on or about February 2017, Principal Philip immediately reassigned me from my classroom duties and brought another set of 3020-a incompetency charges against me, while still not filing the medical paperwork for me. During my PERB hearing, Principal Philip admitted that I was granted medical hardship; however, the principal never implemented it. Had the paperwork been filed and implemented, I would have been out of that toxic environment and continued my satisfactory service elsewhere.

15. The charges and specifications were heard over five hearing days commencing on June 1, 2016 and concluding on June 28, 2016, as part of a Section 3020-a formal disciplinary proceeding before Hearing Officer Michael Lendino, who is an hearing officer recently appointed by the New York City Department of Education and United Federation of Teachers to their standing disciplinary arbitration panel, and

specifically to the DOE's Teacher Performance Unit ("TPU") arbitration panel. I had absolutely no choice in selection of my Hearing Officer to hear the charges and specifications regarding termination of my employment.

16. At the hearings, evidence was presented regarding two specifications (with multiple subparts) against me arising from my allegedly deficient teaching performance and misconduct. The specifications can be found on page 2 of the Hearing Officer's decision, annexed as Exhibit A of the Verified Petition.

17. By decision dated August 6, 2017, and received on August 9, 2017, Hearing Officer Lendino issued a decision sustaining all of the specifications against me and terminating my employment.

18. As can be drawn from his decision, Hearing Officer Lendino disregarded the history of animosity and retaliation by Principal Philip against me, and instead effectively blamed me for "retaliating" against administration by filing litigations against them in an effort to protect my livelihood. The hearing officer also dismissed all attempts to use the medical issues in a rebuttal.

19. In their Cross Motion to Dismiss, the Respondents state that my Verified Petition "fails to show that this award is the result of corruption, fraud or misconduct, partiality of an arbitrator or that the arbitrator exceeded his power, the petition should be dismissed." However, the arbitrator showed partiality as he ignored factual information presented at the hearing that set me up to purposefully fail *after* I was elected union chapter leader and they failed to terminate me the first time. Respondents admit that I contacted the administration several times to request the necessary materials to execute my lessons.

Their failure to provide me with such material was in violation of my contract. Respondents do not give any evidence that I did in fact receive such materials.

20. Respondents, and the hearing officer, rely on subjective observation reports that do not reflect my many years of satisfactory service and ratings. In *Beriguete v. NYCDOE*, 2016 NY Slip Op 26229 (Sup. Ct. N.Y. Co. 2016) (Jaffe, J.), Justice Jaffe noted that the refusal by the arbitrator to take the rating officer's attitude and conduct as relevant to the proceeding was arbitrary and capricious, and remanded a termination incompetency award back to a hearing officer for a lesser penalty.

21. The Hearing Officer issued a penalty of termination—the most severe penalty applicable in these hearings and one that a Hearing Officer should award only if progressive discipline cannot serve to provide a means for the teacher to remediate my pedagogy. Because the Hearing Officer arbitrarily chose not to apply the doctrine of progressive discipline, it is shocking to the conscience that I was terminated without providing me an opportunity to remediate my deficiencies, particular in light of my almost 16 year primarily Satisfactory career with Respondent NYCDOE and the blatant hostility of Principal Philip towards me.

22. In addition, the Hearing Officer made conclusions about the veracity of my medical condition that were not part of the disciplinary charges and completely prejudiced his view of me.

23. At the same time, the Hearing Officer completely discounted the false previous charges brought against me by the same principal, with a retaliatory history

against me whenever I returned to her school, who consistently and incredibly rated me ineffective across the board in every category.

24. In sum, having failed to successfully terminate me the first time, and after I sued her in multiple forums, Principal Philip did everything in her power to rate me Ineffective and set me up to fail as a teacher within the NYCDOE.

**WHEREFORE**, it is respectfully requested that this Court vacate the Section 3020-a decision of Hearing Officer Lendino and annul any action taken in reliance thereon, and remand for no penalty or a lesser penalty and/or remediation, and for such other and further relief as this Court may deem just and proper.

Dated: Brooklyn, New York  
November 2, 2017

By:   
JOHN LEFRIDGE

Subscribed and sworn to

  
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NOTARY PUBLIC

**BRYAN GLASS**  
Notary Public, State of New York  
No. 02GL6068978  
Qualified in Rockland County  
Commission Expires 1/22/2018