

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

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JOHN LEFRIDGE,

Petitioner,

**VERIFIED  
PETITION**

-against-

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

Index No.

Respondents,

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 LEFRIDGE, by his attorneys GLASS KRAKOWER LLP  
(Bryan D. Glass, Esq.), as and for his Verified Petition, respectfully alleges as follows:

1. This is a special CPLR Article 75 proceeding commenced to challenge the termination of Petitioner’s tenured employment as a teacher with Respondent NEW YORK CITY DEPARTMENT OF EDUCATION (hereinafter “NYCDOE”), which was unjustly terminated following a decision by Hearing Officer Michael Lendino, dated August 6, 2017, and received on August 9, 2017, in a compulsory arbitration proceeding pursuant to Section 3020-a of the New York State Education Law. A copy of the Hearing Officer’s decision is annexed hereto as Exhibit A, and the transcripts and exhibits of the Section 3020-a proceeding are included within a separate appendix accompanying this Verified Petition.

2. As explained below, the decision and penalty of termination is particularly harsh, irrational, and shocking to the conscience given, *inter alia*, Petitioner’s almost 16 years of service with the NYCDOE, the completely subjective nature of the alleged

“incompetency” charges made against Petitioner by a school principal with a completely antagonistic relationship with Petitioner, and the Hearing Officer’s total disregard of the long history of Respondent principal’s hostile and retaliatory treatment towards Petitioner over the past several years prior to his termination, where he once served as a Satisfactory rated UFT chapter leader at her school. Based on these factors, Hearing Officer Lendino’s decision clearly is draconian, excessive, and shocking to the conscience and should be promptly vacated for a penalty less than termination.

3. Petitioner requests a trial of any triable issues of fact as well as oral argument on this petition.

#### **The Parties**

4. Petitioner JOHN LEFTRIDGE is a resident of the County of Kings, City of New York, and State of New York. At all times mentioned in this Verified Petition, and until his involuntary separation from his tenured teaching position with Respondent NYCDOE, Mr. Leftridge had been an employee of Respondent, specifically, a teacher at Public School 93 in Brooklyn, New York, within the school system operated by said Respondent NYCDOE.

5. Respondent NYCDOE (formerly known as the NEW YORK CITY BOARD OF EDUCATION) is a duly authorized and existing agency of the municipality of the City of New York, charged with educating the children of the citizens of New York City, with an address at 52 Chambers Street, New York, NY 10007.

6. Respondent CARMEN FARIÑA is the current Chancellor of Respondent NYCDOE, and, as such, is said Respondent’s chief executive officer.

### **Venue**

7. Venue is placed in New York County pursuant to CPLR Section 7502 because it is where the headquarters of Respondents are located and where the Section 3020-a hearings were conducted before Hearing Officer Lendino.

### **Statement of Facts**

#### **BACKGROUND**

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

9. Mr. Leftridge had almost 16 years of service with the DOE, during which time he received satisfactory ratings for most of his career.

10. Mr. Leftridge was elected the UFT chapter leader of P.S. 93 during the 2012-13 school year.

11. In early 2014, while he was UFT chapter leader, Principal Philip brought Mr. Leftridge up on false Section 3020-a disciplinary charges, for which he was eventually completely exonerated by another panel Section 3020-a Hearing Officer (other than Mr. Lendino) in August 2014.

12. During the course of his first 3020-a disciplinary proceeding, Mr. Leftridge was reassigned away from Principal Philip and performed admirably at P.S.3 from December 2013 until August 2014 under Principal Beecher

13. At the conclusion of his first 3020-a trial, after being exonerated, Mr. Leftridge was involuntarily reassigned back to work at P.S. 93 under Principal Philip in

September 2014, despite every attempt by Mr. Leftridge to escape Principal Philip and the school.

14. Mr. Leftridge filed improper practice charges against his principal through the New York State Public Employment Relations Board, as well a Title VII discrimination lawsuit in federal court, both of which eventually settled with the NYCDOE.

15. Nonetheless, Principal Philip and the NYCDOE refused to release Mr. Leftridge from the school, and instead rated him ineffective and unsatisfactory in all of his teaching classes thereafter upon his return to the school after his first Section 3020-case exoneration in September 2014.

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

17. Principal Philip rated him ineffective the next day after he returned to school from his injury on or about June 22, 2015.

18. On or about November 2015, Mr. Leftridge was injured in his 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 make official safety reports and act to provide assistance to him regarding reports of violence in his classroom, and failed to provide assistance to him for over 40 minutes on the day and time he was injured in the classroom on November 20, 2015.

19. Principal Philip tried to rate him 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 Mr. Leftridge's leave paperwork.

20. As soon as Mr. Leftridge returned from his medical leave and several weeks of jury duty service on or about February 2017, Principal Philip immediately reassigned him from his classroom duties and instead brought the instant set of 3020-a incompetency charges against him.

21. 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. Mr. Leftridge had absolutely no choice in selection of his Hearing Officer to hear the charges and specifications regarding termination of his employment.

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

23. By decision dated August 6, 2017, and received on August 9, 2017, Hearing Officer Lendino issued a decision sustaining all of the specifications against him and terminating Mr. Leftridge's employment.

24. As can be gleaned from the Hearing Officer's decision, Hearing Officer Lendino disregarded the history of animosity and retaliation by Principal Philip against Mr. Leftridge, and instead effectively blamed Mr. Leftridge for "retaliating" against administration by filing litigations against them in an effort to protect his livelihood.

### THE APPLICABLE LAW

25. Section 3020-(a)(5) of the New York State Education Law provides that an application to vacate a Hearing Officer's Decision may be made to a court "pursuant to Section 7511 of the Civil Practice Law and Rules."

26. The grounds for vacatur of an arbitration award in Section 7511 includes, in relevant part, that the rights of the party were prejudiced by (i) corruption, fraud, or misconduct; (ii) partiality of the arbitrator; and (iii) the arbitrator exceeded his power.

27. Interpreting these grounds, courts have held that a Section 3020-a decision should be vacated where the hearing officer exceeded his or her jurisdiction, the decision is irrational and shocking to the conscience, or, as a compulsory procedure against a teacher's tenured due property right in his position, the decision lacks sufficient evidentiary basis and is arbitrary and capricious.

28. Justices in this court have *not* been hesitant to vacate such Section 3020-a Hearing Officer panel decisions such as this one that are completely out of proportion to the conduct charged and "shocking to the conscience."

29. No prior application has been made for the relief requested in this Verified Petition.

30. Petitioner has no other adequate remedy at law and the procedural vehicle of Article 75 is the only remedy available to him in order to seek the relief she requests in this special proceeding.

### AS AND FOR A FIRST CAUSE OF ACTION

31. The decision to terminate Petitioner's employment was irrational, arbitrary and capricious, excessive, and shocking to the conscience, and should be vacated and

remanded, in accordance with prior precedent in this Court reviewing NYCDOE teacher 3020-a decisions which have been found to be shocking to the conscience. *See, e.g., Polayes v. NYCDOE*, 2014 N.Y. App. Div. LEXIS 3905 (1<sup>st</sup> Dep't 2014); *Guzman v. NYCDOE*, Index No. 106140/11 (1<sup>st</sup> Dep't 2013); *Gongora v. NYCDOE*, Index No. 110047/09; *Riley v. NYCDOE*, Index No. 100517/10 (Sup. Ct. N.Y. Co. 2010), *aff'd*, 84 A.D.3d 442 (1<sup>st</sup> Dep't 2011); *Principe v. NYCDOE*, Index No. 116031/09 (Sup. Ct. N.Y. Co. 2010), *aff'd*, 2012 NY Slip Op 02560 (April 5, 2012); *Gabriel v. NYCDOE*, Index No. 103209/09 (September 10, 2009); *Solis v. NYCDOE*, 30 A.D.3d 532 (2d Dep't 2006); *Weinstein v. NYCDOE*, 19 A.D.3d 165 (1<sup>st</sup> Dep't), *leave to appeal denied*, 6 N.Y.3d 706 (2006); *Diefenthaler v. Klein*, 27 A.D.3d 347 (1<sup>st</sup> Dep't 2006); *Harris v. NYCDOE*, Index No. 105806/09 (Sup. Ct. N.Y. Co. October 13, 2009) (Feinman, J.) (reducing one month penalty for single corporal punishment to two weeks); *Garcia v. NYCDOE*, Index No. 113595/10 (Sup. Ct. NY. Co. 2011) (reducing excessive fine); *Khouma v. NYCDOE*, Index No. 115740/10 (Sup. Ct. N.Y. Co. 2011); *Rubino v. NYCDOE*, Index No. 107292/11 (Sup. Ct. N.Y. Co. 2012).

32. 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 his pedagogy. Because the Hearing Officer arbitrarily chose not to apply the doctrine of progressive discipline, it is shocking to the conscience that he terminated Mr. Leftridge without providing him an opportunity to remediate his deficiencies, particular in light of his almost 16 year primarily Satisfactory career with Respondent NYCDOE and the blatant hostility of Principal Philip towards Mr. Leftridge.

33. In addition, the Hearing Officer made conclusions about the veracity of Mr. Leftridge's medical condition that were not part of the disciplinary charges and completely prejudiced his view of Mr. Leftridge.

34. At the same time, the Hearing Officer completely discounted the false previous charges brought against Mr. Leftridge by the same principal, with a retaliatory history against him whenever he returned to her school, who consistently and incredibly rated him ineffective across the board in every category.

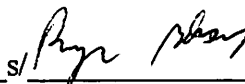
35. In sum, having failed to successfully get Mr. Leftridge out of her school the first time, and after he sued her in multiple forums, Principal Philip did everything in her power to rate him Ineffective and set him up to fail as a teacher with the NYCDOE.

**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: New York, New York  
August 18, 2017

Yours, etc.

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By:   
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Partner



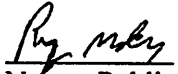
**VERIFICATION**

STATE OF NEW YORK            )  
  )  
COUNTY OF NEW YORK        )        ss:

John Leftridge, being duly sworn, deposes and states that he is the Petitioner herein, that he has read the foregoing verified petition and knows the contents thereof, and states that the verified petition is true to his own knowledge.

  
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JOHN LEFRIDGE

Subscribed and sworn to before  
me this 18<sup>th</sup> day of August 2017

  
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Notary Public

BRYAN GLASS  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02GL6068978  
QUALIFIED IN: NEW YORK COUNTY  
COMMISSION EXPIRES 11/22/18