

Douglas Wallach

X

AFFIRMATION IN SUPPORT  
OF a STAY OF PROCEEDINGS  
IN ORDER TO HAVE  
A FAIR HEARING

## A FAIR HEARING

File

Respondent

X

1. I am presently the Respondent Pro se ("Respondent") 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.

2. I am a tenured teacher in the employ of the Board of Education of the City School District of the City of New York ("the Board").

4. I was assigned to a reassignment center on January 10, 2006, located at 25 Chapel Street in Brooklyn New York in

retaliation for my whistleblowing the illegal actions of Principal Lisa Caraballo at PS 120/ District 14, 18 Beaver Street, Brooklyn.

5. I was not given advanced notice of having been reassigned until late in the afternoon the day before I was to report to the reassignment office. I was not told what the charges that caused my reassignment. [EX 1]

6. I am not aware of the charges that removed me from my job and placed me on the Ineligible/Inquiry List.

7. My last day of work: 2005

8. On June 28, 2006 I went to Lancaster, Pennsylvania and remained there for approximately three weeks. Prior to leaving, I did not check my P.O. Box. I returned to New York City at the end of July 2006.

9. Upon my return, I discovered three certified mail receipts in my P.O. Box. They were dated June 28, 2006 and July 5, 2006. I went to the Post Office in an attempt to pick up the certified mail and was informed that it was returned. I never saw these documents. (EX 2)

10. I never received any documents by regular mail from the New York City Board of Education that described any charges against me.

11. I never received notice of any charges either by regular or by certified mail.

12. On August 29, 2006, I received a letter dated August 22, 2006 and postmarked August 26 2006, saying that I was served by certified mail on June 23, 2006 with Education Law §3020-a charges and that I failed to timely request a hearing. [Ex 3]

13. I have never received the charges that removed me from my job at PS 120. I have never seen said 3020-a charges and could not have requested a timely hearing.

#### ARGUMENT

14. The Panel for Educational Policy ("PEP") meeting on September 19, 2006, is not an appropriate venue for a discussion of the issues of my case, and the meeting of the PEP cannot replace a due process hearing that I have not been given, as is my right.

15. 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)].

16. As I never received any notice of the charges filed against me, and as the PEP on September 19, 2006 may terminate my contract and dispose of my case, if a vote is taken to terminate my employment with the NYC BOE without a proper hearing, I claim 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).

17. Contract termination resulting from disclosure of violations of state law under New York State's whistleblower act is actionable as retaliation.

#### CONCLUSION

WHEREAS I never received any notice of the charges that may end my employment with the NYC Board of Education; whereas I am a tenured teacher with years of experience and never any suggestion of improprieties; and whereas I was retaliated against for speaking out about illegal activities perpetrated by the principal of PS 120, Lisa Caraballo, I request that no vote to terminate me is taken until I may hear the charges against me and have a hearing at which I may present an appropriate defense, and any other relief that is just and proper under the circumstances.

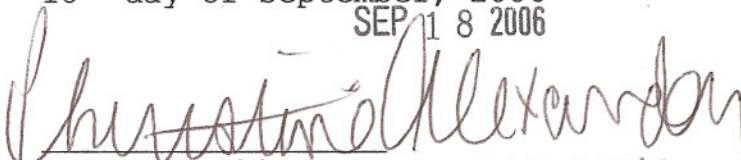


Dated: September 18, 2006

State of New York  
County of New York

  
Hipolito Colon

Sworn To Before Me on the  
18<sup>th</sup> day of September, 2006  
SEP 18 2006

  
Notary Public

Christina Alexander  
Notary Public, State of New York  
Qual. in NY Co. No. 31-3024824  
Commission Expires: 5/14/2010

Mr. Michael Best  
General Counsel  
NYC BOE  
52 Chambers Street  
NY NY 10007

Ex 1

# Affidavit Prepared

Michael Best  
Counsel to the Chancellor  
52 Chambers Street, Room 308  
New York, New York 10007

September 12, 2006

Dear Mr. Best,

I am herewith respectfully requesting the following considerations be afforded to my case:

I have prepared an affidavit that will be delivered to your office no later than 5 P.M. on September 18, 2006, that effectively declares that any vote taken to terminate my employment is most certainly a violation of my right to procedural due process and a deliberate violation of my civil rights.

I request a **public hearing** of my scheduled hearing/meeting with the Panel for Educational Policy to be held on September 19, 2006 at 5:30 P.M. at the Tweed Court House, 52 Chambers Street, New York, New York, 10007.

**I am requesting a copy of the supporting evidence for this procedure as well as a copy of the charges preferred against me in advance of this meeting.**

**I am requesting a copy of the recording and written minutes of the meeting.**

Sincerely,

## Overview of My Case for Harassment

When I returned from a study and health sabbatical, (TB) in which I recovered from my deathbed, the Principal immediately began a campaign of harassment against me. With a brand new curriculum being implemented, which I was unfamiliar with, she insisted that I take a second grade class, where she lumped together all the worst-behaved and problem children (so that she could have another "model" class to showcase to visiting administrators) and refused to give me the preferences of my preference sheet. She assured me that I would be alright with the new class, only to eventually be unsupportive and give me the first "U" rating ever received.

I was told by a witness, who is willing to come forth, that she recently made a speech (12/'05) which causes me to believe that one of her motives for "gunning for me" was that I became a threat to her when I achieved SAS licensure and certification, since it jeopardized her plan to have a former co-worker become her AP at the school.

The following year (2004-2005), the harassment and intimidation continued, as she was determined to carry on illegal activity, by continuing to get staff members to go along with her (using the same pressure tactics she tried to employ with me) and did achieve her ends in gaining the "cooperation" of a cohort group of sycophants who willingly did her bidding, I believe by coercion.

I believe she felt that I stood in the way of her achieving and maintaining dictatorial rule by virtue of the fact that I wasn't an established yes-person for her purposes, so she needed to get me to acquiesce by intimidation or by elimination.

Last term (2004-2005), among the illegal actions taken by the Principal and her conspiring cohorts were the registration and admission of several under-age three year olds in my pre-kindergarten class, as well as the others, and the employment of a paraprofessional as head teacher for an entire year, which I reluctantly felt compelled to make a report of, which resulted in an investigation of the violation of the NCLB federal law, as well as other governances.

This year (2005-2006), the Principal and Assistant Principal were involved in being present in my room daily, supposedly, to cover "lunch-duty", when I left for lunch and regularly reminded me to leave for lunch, as I worked with the children until someone arrived to cover the class. I would not leave and made it known that I was opposed to the pre-kindergarten classes being left supervised by unlicensed paraprofessionals. Once again, the continuation of registering and admitting three year olds into the pre-kindergarten program was done, but this time in higher numbers.



In my last formal observation, both the Principal and the Assistant Principal conducted the pre-observation, observation, and post-observation conference together. This "tag-teaming" in observing a teacher is extremely unusual and smacks of intimidation, harassment and persecution.

Additionally, I believe that as a result of the inception of this Qui Tam situation, the administration conducted a deliberate program against me of intensified efforts to harass and intimidate me, through actions such as, daily being present in my class, constantly visiting, making a myriad of informal observations, removing my bulletin boards, reviling my judgments in front of parents and teachers and more. Furthermore, the retaliation is in violation of whistle blower protections.

I was not given advanced notice of having been reassigned until late in the afternoon to the day before I was to report to the reassignment office; neither was I told why I was being sent there. To this day, more than two months later, I still do not know why I am reassigned.

It would seem that a prisoner of war in a foreign land could be treated better than a professional licensed, certified, senior and tenured teacher with a clean police record and no previous ratings of unsatisfactory performance.

Sincerely,

Hipólito Colón

03/10/2006

A large, blue, handwritten capital letter 'E' on a white background. The letter is formed with a single stroke, starting from the top left, curving down to the bottom left, then horizontally across to the right, and finally curving back down to the bottom right.

United States Postal Service

Sorry We Missed You! We'll Deliver for You

Today's Date

7-5-06

Sender's Name

11201

Item is at:

Post Office (See back)

Available for Pick-up After

Date:

Time:

We will redeliver or  
you or your agent can  
pick up. See reverse.

☒ Letter  
☒ Large  
envelope,  
magazine,  
catalog, etc.  
☐ Parcel

For Delivery: (Enter total number of items  
delivered by service type)

For Notice Left: (Check applicable item)

☐ Express Mail (We will  
attempt to deliver on the  
next delivery day unless  
you instruct the post  
office to hold it.)  
☒ Certified  
☐ Recorded  
Delivery  
☐ Firm Bill

☐ Registered  
☐ Insured  
☐ Return Receipt  
for Merchandise  
☐ Delivery  
Confirmation  
☐ Signature  
Confirmation

☐ If checked, you or your agent must be present  
at time of delivery to sign for item

Article Number(s)

FINAL NOTICE  
7099 3400 0018 3770 7025

Notice Left Section

Customer Name and Address

Hippolito Colon Jr  
Box 863172

Delivered By and Date

Article Requiring Payment

Amount Due

☐ Postage Due ☐ COD ☐ Customs

\$

☒ Final Notice: Article will  
be returned to sender on

7-5

PS Form 3849, November 1999

Delivery Notice/Reminder/Receipt

United States Postal Service

Sorry We Missed You! We'll Deliver for You

Today's Date

6-30-06

Sender's Name

11201

Item is at:

Post Office (See back)

Available for Pick-up After

Date:

Time:

We will redeliver or  
you or your agent can  
pick up. See reverse.

☐ Letter  
☒ Large  
envelope,  
magazine,  
catalog, etc.  
☐ Parcel

For Delivery: (Enter total number of items  
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☐ Insured  
☐ Return Receipt  
for Merchandise  
☐ Delivery  
Confirmation  
☐ Signature  
Confirmation

☐ If checked, you or your agent must be present  
at time of delivery to sign for item

Article Number(s)

7099 3400 0018 3770 7025

Notice Left Section

Customer Name and Address

Hippolito Colon Jr  
Box 863172

Delivered By and Date

Article Requiring Payment

Amount Due

☐ Postage Due ☐ COD ☐ Customs

\$

☐ Final Notice: Article will  
be returned to sender on

PS Form 3849, November 1999

Delivery Notice/Reminder/Receipt

United States Postal Service

Sorry We Missed You! We'll Deliver for You

Today's Date

6-28-06

Sender's Name

11201

Item is at:

Post Office (See back)

Available for Pick-up After

Date:

Time:

We will redeliver or  
you or your agent can  
pick up. See reverse.

☒ Letter  
☐ Large  
envelope,  
magazine,  
catalog, etc.  
☐ Parcel

For Delivery: (Enter total number of items  
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☐ Firm Bill

☐ Registered  
☐ Insured  
☐ Return Receipt  
for Merchandise  
☐ Delivery  
Confirmation  
☐ Signature  
Confirmation

☐ If checked, you or your agent must be present  
at time of delivery to sign for item

Article Number(s)

FINAL NOTICE  
7099 3400 0018 3770 6881

Notice Left Section

Customer Name and Address

Hippolito Colon Jr  
[Redacted Address]

Delivered By and Date

Article Requiring Payment

Amount Due

☐ Postage Due ☐ COD ☐ Customs

\$

☒ Final Notice: Article will  
be returned to sender on

7-8

PS Form 3849, November 1999

Delivery Notice/Reminder/Receipt

Ex

2



New York City Department of Education  
Office of Legal Services  
52 Chambers Street, Room 308  
New York, NY 10007

*Dated August 22, 2006*



HASLER \$0.30<sup>8</sup>  
AUG 26 2006  
US POSTAGE  
FIRST CLASS AUTO 3D  
MAILED FROM 11201  
011A0413002134

*Letter received ~~September 19, 2006~~ (Hearing Date)  
→ August 31, 2006*

Hipolito Colon

[REDACTED]  
Flushing, New York 11386

44 HXDTN15 11386





THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

OFFICE OF THE CHANCELLOR

52 Chambers Street, Room 308 New York, NY 10007

Hipolito Colon

[REDACTED]  
Flushing, New York 11386

August 22, 2006

Dear Mr. Colon:

On June 23, 2006, you were served by certified and regular mail with Education Law Section 3020-a charges. Under the law, you have ten (10) days to request a hearing on the charges or waive your right to a hearing. As of August 22, 2006, you have failed to request a hearing. Your right to a hearing is deemed waived since you have failed to request a hearing in a timely manner.

For informational purposes only, you are hereby advised that the charges preferred against you are now subject to disposition at the next regularly scheduled meeting of the Panel for Educational Policy, to be held on September 19, 2006, at 5:30 P.M. at the Tweed Court House, 52 Chambers Street, New York, N.Y. 10007.

Very truly yours

Michael Best  
Counsel to the Chancellor  
52 Chambers Street, Room 308  
New York, N.Y. 10007