

<b>Matter of Siegel v Board of Educ. of the City School Dist. of the City of N.Y.</b>
2007 NY Slip Op 32779(U)
August 29, 2007
Supreme Court, New York County
Docket Number: 0105307/2007
Judge: William A. Wetzel
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HON. WILLIAM A. WETZEL

PRESENT:

PART 50 E

Index Number : 105307/2007

SIEGEL, BRIAN

vs

BOARD OF EDUCATION

Sequence Number : 001

ARTICLE 78

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

*is denied*

*See dec/order of 8/29/07*

*So ordered*

**FILED**

SEP 05 2007

NEW YORK  
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 8/29/07

*8/29/07*

*William A. Wetzels*

J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE



[\* 3 ]

employment. The petitioner had been made aware of the investigation and had been given an opportunity to participate and be interviewed. Through his attorney, the petitioner declined the opportunity to participate in the investigation. The report dated March 7, 2006 provided excruciating detail as to the results of the investigation. The report concluded that the petitioner had "no place in the New York City public schools" and recommended his termination (Based upon the allegations, petitioner had already been reassigned from the classroom and removed on November 10, 2005).

On March 22, 2006, petitioner together with the union representative met with the High School Principal to discuss the report and although, given an opportunity, the petitioner again declined to comment.

Notice of charges was served by personal delivery upon petitioner on June 28, 2006 and additional copies were mailed by regular and certified mail. On June 30, 2006, petitioner was notified that he was suspended with pay and once again reassigned to a non-classroom position.

On November 20, 2006, more than four months after the statutory deadline for requesting a 3020-a hearing, counsel for the petitioner requested that the scheduled inquest be withdrawn and that the petitioner be given a hearing. In support of this request, the petitioner submitted a three paragraph letter dated November 20, 2006 from a psychiatrist who states that, "In the spring of 2006, Mr. Siegel experienced a progressive intensification of hypo-manic symptomatology....", he went on to say, "I believe that the lapse in judgment regarding Mr. Siegel's failure to request a hearing in a timely manner was directly due to the worsening of his bipolar BO."

In an affidavit sworn to April 19, 2005, the psychiatrist refers to the stress Mr. Siegel was experiencing in May, June, and July, in 2006, which he opines was the "decisive cause of his not

complying with the necessary procedural requirements.” Petitioner relies on this medical opinion as providing a sufficient legal basis to excuse the failure to timely demand a hearing.

The court notes the following factors which are not in dispute:

1. Petitioner, during May and June of 2006, was fully compliant with the submission of paperwork, including timesheets in order to receive his pay, and was attending his assigned duties. He also was able to meet and interact with his doctors.
2. Petitioner was at all times throughout represented by counsel.
3. Petitioner was given numerous opportunities to be interviewed, submit a statement or otherwise participate in the investigation and at all times declined.
4. Petitioner’s own psychiatrist speaks of his condition during “Spring of 2006” and notes that his condition improved by August 2006, and yet petitioner did nothing with regard to the charges until November of 2006, after receiving the notice of inquest. Not until three weeks after receiving the notice did petitioner through his counsel requested a hearing.
5. Nowhere in the moving papers does petitioner deny the specific charges or demonstrate a valid defense.

The only issue before this court is whether the decision by the respondent to reject the petitioner’s “excuse” for failure to notify respondent of his desire for a hearing was arbitrary, capricious, or without a rational basis as a matter of law. See Pell v. Board of Education, 34 NY2d 222 (1974). Indeed, judicial review does not permit the court to substitute its own judgment for that of the respondent.

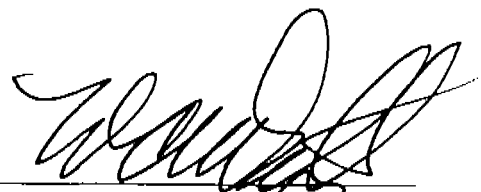
The record in this case is compelling that there is no valid excuse for the petitioner’s failure to give notice. All evidence is to the contrary and leads to the inescapable conclusion that

during the period when notice was required, the petitioner was managing his personal affairs and not under any mental condition that would prevent him from protecting his rights.

For the reasons stated herein, the petition is in all respects denied.

This constitutes the Decision and Order of this Court.

Dated: August 29, 2007  
New York, NY



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William A. Wetzel  
**HON. WILLIAM A. WETZEL**

**FILED**  
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