

**Jones-Hardwick v Board of Educ. of the City School
Dist. of the City of New York**

2007 NY Slip Op 33768(U)

November 13, 2007

Supreme Court, New York County

Docket Number: 0105475/2007

Judge: Rolando T. Acosta

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. ROLANDO T. ACOSTA

PART 61

Index Number : 105475/2007
JONES-HARDWICK, DARLENE
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 _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

all attached

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion **UNFILED JUDGMENT**
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

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

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION

Dated: 11/13/07

SO ORDERED
SO ORDERED

[Signature]
ROLANDO T. ACOSTA
ROLANDO T. ACOSTA
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

Darlene Jones-Hardwick,

Petitioner,

– against –

The Board of Education of the City School
District of the City of New York

DECISION/JUDGMENT

Index No. 105457/07

Seq. No. 1

Present:

Rolando T. Acosta
Supreme Court Justice

The following documents were considered in the instant petition for a judgment pursuant to Article 78 directing respondent to expunge letters of reprimand from petitioner's personnel file:

Papers	Numbered
Notice of Petition, Petition & Memorandum of Law	1-2 (Exhibits A-C)
Verified Answer & Memorandum of Law	3-4 (Exhibits 1-4)
Reply Affirmation & Memorandum of Law	5-6

In 2006, the Special Commissioner of Investigation ("SCI") investigated Gregory Michaelides, a teacher in PS 345, for inappropriately touching several female students ranging in age from six to twelve. During the investigation, four teachers contacted SCI to provide information. Petitioner (a tenured teacher) was one of the four teachers to contact the SCI, and reported to the SCI that she had been in the classroom with Michaelides and described Michaelides' interaction with students as "touchy-feely." Petitioner also stated that she "believed Michaelides's touches were 'harmless,' however she added that she had instructed him to be less physical with the students." See Petitioner's Exhibit B at p. 5. The SCI recommended that Michaelides be terminated.

The SCI also found that petitioner, along with the other three teachers who provided information, "indicated a disregard for the welfare of the children" because they "completely ignored, overlooked, or minimized behavior on the part of Michaelides, which should have

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been reported." The SCI, therefore, recommended that "appropriate disciplinary action be taken against" petitioner and the other three teachers. See Petitioner's Exhibit B at p. 6.

Petitioner met with the Wanda Holt, the principle, and Lisa Vecchione, the assistant principal, of the school to discuss the SCI's report on December 5, 2006. Also present at the meeting were two union representatives. On December 22, 2006, the principal drafted a letter summarizing the December 5th meeting. The letter summarized petitioner's position regarding the SCI's report. After stating petitioner's position, Holt stated:

However, in your own words you stated that you were prompted to report this incident which made you uncomfortable by your former UFT Representative, Ms. Driselda Stubbs. If you both felt uncomfortable with what happened, the look or the verbal exchange, as mandated reporters you are required to make a report, this was not done by either of you. However, when you decided to follow her advice you did not deem it necessary to bring the child with you or place the child in another room until you returned. Furthermore you went on to state that even-though you had your suspicions you took the long way back to your classroom.

After having read the report, (please see attached) I agree with the findings and concluded that you did in fact show a willful disregard for the welfare of children when you failed to report any instances of inappropriate conduct between Mr. Michaelides and your students. Please be advised that a copy of this letter will be placed in you file.

Petitioner's Exhibit C. On or about January 16, 2007, the letter was placed in petitioner's personnel file.

New York Education Law §3020 states that "[n]o person enjoying the benefits of tenure shall be disciplined . . . during a term of employment except for just cause and in accordance with the procedure specified [§ 3020-a] of this article." The mandatory procedure outlined in §3020-a, Syua v. Bd. of Educ. Of the Harpursville Cent. School Dist., 80 N.Y.2d 531, 536 (1992), is not in dispute in this matter. Respondent does not, nor could it, contend that the procedure was followed. The issue is whether the December 22, 2006 letter constituted a disciplinary reprimand and, thus, implicating the protections afforded petitioner pursuant to §3020-a of the Education Law.¹

1. Contrary to Respondent's assertions, Article 21(A) of the Collective Bargaining Agreement does not create an independent right for Respondent to place a disciplinary letter in a teacher's personnel file. Rather, it provides rights to teachers who have had such

A disciplinary reprimand may not be issued to a teacher without a finding of misconduct pursuant to § 3020-a. Holt v. Bd. of Educ. Of the Webutuck Central School Dits., 52 N.Y.2d 625 (1981). When determining whether a letter placed in a teacher's file rises to the level of a reprimand requiring § 3020-a protection, the Commissioner of Education has considered a number of factors, including "whether the letter is from a teacher's immediate supervisor or from the board of education; whether the letter is directed [to] an improvement in performance or is a formal reprimand for prior misconduct; whether the letter is in the nature of a performance evaluation or a castigation for misconduct; and the severity of the misconduct." Appeal of Richards, 24 Ed. Dept. Rep. 104, 106, Decision No. 11,333. In contrast, a written communication from a school official that may be critical of a teacher's job performance, but is intended "to call the teacher's attention to a relatively minor breach of school policy and to encourage compliance with that policy in the future," has been found to fall within the permissible range of administrative evaluation. Holt, supra, 52 N.Y.2d at 633. See also, Krohn v. City of New York Department of Education, Index No. 111902/06, (Sup Ct., N.Y. Co 2007), DeGrasse, J. (Letter from the Department of Education's Office of Equal Opportunity ("OEO"), where OEO found probable cause to believe that petitioner had violated sexual harassment regulation and that OEO would consult with principal regarding corrective action; and letter from principal to teacher to limit contact with the complainant and to make an appointment for sexual harassment training, constituted disciplinary action inasmuch as OEO was the bureau charged with the investigations of claims, and both letters referred to an investigation, interview of witnesses and factual determinations as opposed to an informal review); Appeal of Esther Fusco, 39 Ed. Dept. Rep. 836, 843, Decision No. 14, 396 (June 27, 2000)(Section 3020-a implicated where letter chastised petitioner for serious misconduct, even though letter stated that its purpose was to encourage a positive change in petitioner's behavior).

Here, as in Krohn, the December 22nd letter with the attached SCI report was disciplinary in nature. The letter was written in response to a report of the SCI, an officer charged with the investigation of claims; and the report referred to the investigation, interviews of witnesses and factual determinations. It was also not in the nature of a performance evaluation, but rather a castigation for misconduct in failing to report Michaelides' conduct and leaving the children alone with him notwithstanding petitioner's suspicions. Last, the severity of the misconduct addresses in the letter – disregarding the welfare of the children in her care by ignoring Michaelides misconduct – clearly bespeaks reprimand regardless of whether petitioner incurred no other discipline. Accordingly, petitioner's rights pursuant to § 3020-a have been denied. Thus, based on the foregoing, it

material placed in their files, such as requiring that the letter be removed in three years if the letter does not become the subject of disciplinary charges within three years.

is

ADJUDGED that the December 22, 2006 letter (Petitioner's Exhibit C) constitutes a disciplinary action taken without due process in violation of Education Law § 3020-a and Respondent is ORDERED to expunge said letter from Petitioner's personnel file.

This constitutes the Decision and Judgment of the Court.

Dated: November 13, 2007

SO ORDERED
[Signature]
ROLANDO TRACOSTA
J.S.C.

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