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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER Justice

IA PART 16

PART _____

Index Number : 103742/2012
SUKER, DAVID
vs.
NYC BOARD/DEPT. OF EDUCATION
SEQUENCE NUMBER : 001
VACATE OR MODIFY AWARD

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this ~~motion is~~ petition is granted to the extent provided in the accompanying memorandum decision.

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).

JUL 25 2013

Dated: July 25, 2013

Alice Schlesinger
ALICE SCHLESINGER, J.S.C.

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

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

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

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In the Matter of the Application of
DAVID SUKER,

Petitioner,

For a Judgment Pursuant to Article 75 of the C.P.L.R.

-against-

Index No. 103472/12
Motion Seq. No. 001

THE NEW YORK CITY BOARD/DEPARTMENT OF EDUCATION,

Respondent.

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).

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SCHLESINGER, J.:

David Suker has been a teacher for 14 years at GED Plus at Bronx Regional Referral Center and has attained tenure. With the exception of having been fined $1000 in 2011 as a penalty for excessive absenteeism, he has had no other disciplinary claims made against him. That was the case until December 21, 2011, when Robert Zweig, Principal of the school where Mr. Suker has taught his entire 14 years, decided that he wanted to terminate Mr. Suker. A hearing was held pursuant to Education Law § 3020-a and a decision was rendered approving the termination; Mr. Suker challenges that decision here.

In many § 3020-a cases, there is one serious event or several related events that constitute the predicate for the charges brought against the teacher. However, when the process started here, there was no such one event. Rather, the principal joined somewhat disparate events into two Charges, which were later consolidated at the pre-hearing conference held in February 2012. The two Charges together contained nine specifications.

Notice of the first Charge was sent to Mr. Suker on December 21, 2011. (Respondent's Cross-Motion, Exh 2). There the Department of Education (DOE) asserted

that: "During the 2011-2012 school year, Respondent [Mr. Suker] engaged in inappropriate conduct and conduct unbecoming his profession." The Notice then spelled out the following three specifications:

> SPECIFICATION 1: On or about September 16, 2011 Respondent followed teacher Yanira Rodriguez into the guidance office saying, in a manner causing her to feel threatened, words to the effect of may it be the last time you talk about me behind my back.
>
> SPECIFICATION 2: On or about October 3, 2011, Respondent acted in a disruptive manner during a staff meeting by leaving the room twice while a colleague, Guidance Counselor Jackie Rangel, tried to address a comment Respondent made and making comments to the effect of
>
> a. I do not appreciate people talking about me.
>
> b. We have to protect our jobs. There are administrators looking to get people out.
>
> SPECIFICATION 3: Respondent was arrested on November 2, 2011 and failed to report the arrest in a timely manner as required by Chancellor's Regulation C-105.

Notice of the second Charge, sent to Suker on January 25, 2012, accused Mr. Suker of having "engaged in excessive absenteeism, inappropriate conduct and conduct unbecoming his profession."(Exh 3). This Charge contained the following six Specifications focusing on conduct in the 2008-2009 and 2011-2012 school years:

> SPECIFICATION 1: Respondent was excessively absent in that he was absent on the following dates:
>
> a. September 15, 2011 - Thursday
> b. September 21, 2011 - Wednesday
> c. September 22, 2011 - Thursday
> d. September 23, 2011 - Friday

e. October 5, 2011 - Wednesday
f. October 17, 2011 - Monday
g. October 25, 2011 - Tuesday
h. October 27, 2011 - Thursday
I. October 31, 2011 - Monday
j. November 3, 2011 - Thursday
k. November 4, 2011 - Friday

SPECIFICATION 2: On or about October 24, 2011 Respondent, at Town Hall meetings held in the auditorium of the Bronx Regional High School:

a. Acted in an unprofessional and disruptive manner by causing students to make excessive noise and be uncooperative during a presentation provided by the New York City Police Department.
b. Questioned publicly why the police were in the building.
c. Publicly noted his dislike of the police.
d. Said that he had been arrested and beaten by the police.
e. Showed a scar on his head that he claimed came from being beaten by police.
f. Stated words to the effect that the school practices segregation.
g. Exchanged high-fives and raised fist gestures with students.
h. Brought his students to attend two periods of the Town Hall meetings instead of just the one as directed.

SPECIFICATION 3: Respondent was arrested on November 6, 2011 and failed to report the arrest in a timely manner as required by Chancellor's Regulation C-105.

SPECIFICATION 4: On or about February 13, 2009, Respondent threw Student LG's* GED test application into the garbage can and directed her to leave the room when she refused to participate in a game of Jeopardy. (*Students' names to be provided prior to trial.)

SPECIFICATION 5: On or about February 15, 2009, Respondent refused to allow student LG to enter his classroom requiring her to work alone.

SPECIFICATION 6: On or about the dates below, Respondent directed Student EB* to work independently and did not permit her to remain in his class:

a. February 27, 2009
b. March 3, 2009

As indicated, these Specifications ranged from recent allegations of discourtesy or rudeness to co-workers, to two claims of inappropriate behavior with students. Also included was the claimed disruption of a "Town Hall"-type meeting in the school's auditorium, and again excessive absenteeism based on eleven absences in the Fall. In both Charges, separate Specifications alleged that petitioner had failed to timely report arrests, the first having been on November 2, 2011 and the second on November 6, 2011.[1]

However, in the two-month period between the dates that Mr. Suker was informed of these two Charges, a related but somewhat unusual communication occurred. Nancy Ryan, the attorney prosecuting the matter for the Administrative Trials Unit of the Office of Legal Services (ATU) contacted Theresa Europe, Deputy Counsel to the Chancellor for the NYC Department of Education, and gave her "interesting" information relating to Mr. Suker's daughter which Ms. Ryan had noted while preparing the case.[2]

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[1]Mr. Suker is a kind of "60's" figure who, on occasion, displays a dislike of authority, as reflected by his participation in Occupy Wall Street demonstrations, which led to five arrests. Also, in the course of one demonstration, Mr. Suker seems to have received a serious blow to his head from a police officer, which he alluded to publicly at the Town Hall gathering.

[2]At oral argument, this Court inquired as to how an investigation regarding Mr. Suker's daughter's attendance at several New York City schools had arisen, as a connection between these events was not really apparent and the papers submitted to the Court before argument did not offer an explanation. It nevertheless seemed

Ms. Europe first informed Ms. Loughran that Mr. Suker was the subject of a 3020-a hearing, and she attached the Specifications under Charge I. But she added that he had also been arrested five times during Occupy Wall Street protests and had disrupted a Town Hall-type school meeting. She believed that these other claims were going to be the subject of other charges, and they ultimately were included in Charge 2.

But the heart of the communication was Ryan's noticing that "Suker lives in Sayville, Long Island [and] also apparently maintains an address in the Bronx." However, his daughter attended Columbia Secondary School, which provided for admission of children who live north of 96th Street in Manhattan.[3] Ms. Europe further wrote that pursuant to the school records, the student's address was listed as 245 West 145th Street in Manhattan; and despite the fact that the record showed that the "address status" had been "validated", presumably pursuant to some investigation, in fact that address did not appear to be a residential one. Further, Ms. Europe had also "reached out" to a Brenda Antoine from the Bureau of "Non-Public School Payable" to ascertain that Mr. Suker had not paid any tuition to Columbia (the school appears to be a Middle School and High School owned and operated by Columbia University together with the City that is free only for eligible City residents). Ms. Europe ended her letter: "Can you open an investigation? We are scheduled to start trial but I can try to put it off if your office will investigate. Let me know and thanks."

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apparent that the investigation had led to the third and most damaging charge against Mr. Suker, that of submitting false documents. In response to the Court's inquiry, counsel for the DOE submitted a copy of a January 5, 2012 e-mail from Ms. Europe to a Regina Loughran, probably at a City investigation department. I say "probably" because the details relating to Ms. Loughran position had been redacted.

[3]Ms. Europe, as Deputy Counsel to the Chancellor, obviously had access to the daughter's school records, as she attached some of them to the e-mail.

Ms. Loughran obviously agreed because, as we know from later events, an extensive investigation was conducted. The investigation included surveillance of the daughter's and mother's residence in the Bronx, as well as visits and interviews with administrators from the child's schools. The findings from this investigation then formed the predicate for the final Charge, notice of which was sent to Mr. Suker on April 20, 2012, after the 3020-a hearing had begun (Exh 4). This notice stated that Suker's conduct was "unbecoming" to his profession or "prejudicial to the good order, efficiency or discipline of the service". The notice also included the words "criminal conduct." The three Specifications were as follows:

> SPECIFICATION 1: On or about 2001 to present, Respondent submitted false documents to the Department of Education which listed addresses where neither he nor his daughter, a student attending Columbia Secondary School for Math, Science & Engineering, lived.
>
> SPECIFICATION 2: On or about December 1, 2006, Respondent submitted false documents to the Department of Education with the intent to defraud the Department by improperly obtaining admission of his daughter into the Columbia Secondary School for Math, Science & Engineering.
>
> SPECIFICATION 3: On or about October 4, 2001, Respondent submitted false documents to the Department of Education with the intent to defraud the Department by improperly obtaining admission of his daughter to a school she was not zoned for.

At the hearing, testimony was heard by the Administrative Law Judge Eleanor Glanstein, Esq. on April 3, 5 and 20, 2012 on the first two Charges and then on May 2, 8, 11, and 15, 2012 on the now consolidated Charges, which contained the three additional

Specifications from the April 20 Notice (Exh 1).[4] On May 23, 2012, the ALJ heard closing arguments.

On August 14, 2012, ALJ Glanstein made findings and recommended a penalty (Exh 9). With regard to Specification 1 in the first set of charges, after reviewing and accepting the testimony of the teacher Yanira Rodriguez and other witnesses, the ALJ found that the credible evidence supported this specification, particularly in light of the fact that Suker, in his own account, did not dispute that on the day in question, September 16, 2011, he did follow Ms. Rodriguez into the guidance office and raise his voice because he was upset.

With regard to Specification 2, the October 3, 2011 staff meeting where Mr. Suker had acted in an allegedly disruptive manner, while acknowledging that Mr. Suker may have been rude and may have made uncalled for comments, nothing supported the claim that his actions were disruptive. So he was found not guilty of this specification.

Specification 3 charged that Mr. Suker, who had been arrested on November 2, 2011, had violated Chancellor's Regulation C-105 by having failed to timely report that arrest. Since the ALJ found that Mr. Suker had not reported the arrest until November 8, which she decided was untimely, Mr. Suker was found guilty of that specification.

With regard to Charge 2, the first Specification claimed eleven days of absences, allegedly an excessive amount. On two of those days, November 3 and 4, Mr. Suker was in jail following an arrest. The ALJ noted that Mr. Suker had testified to eye surgery and his father's illness but could not recall what precise dates he was absent for those reasons.

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[4] The Union lawyer representing Suker at the hearing did not object to the consolidation or ask for more time to prepare a response to the new Charge.

Suker also testified that these absences were covered by the Family Leave Act, but the principal denied that leave under this Act had been granted. The ALJ also noted Suker's fine for a similar offense in the preceding year and remarked (at p. 16): "Yet he was again excessively absent at the start of the next school year. The evidence supports this charge."

Specification 2 related to the October 24, 2011 Town Hall-type meeting held at the Bronx Regional High School. The Hearing Officer devoted four pages of her decision to this incident. She then found as follows: guilty of Specification 2(a), that Suker had acted in an unprofessional and disruptive manner by causing the students to make excessive noise and be uncooperative; and not guilty of 2(b), that Suker had questioned why the police were in the school.

The ALJ then found that the evidence sustained Specifications 2(c),2(d),2(e) and 2(g). 2(c)concerned Suker's publicly noting his dislike of the police. The basis for the dislike probably was the fact that Suker believed and said that he had been arrested and beaten by the police; this statement constituted Specification 2(d). Also, Suker had displayed a scar on his head, allegedly as a result of that beating, which constituted Specification 2(e). Finally, Specification 2(g) was based on Suker's exchange of high fives and raised fist gestures with students; Suker had admitted to these gestures.

In Suker's favor, the ALJ found that Specifications 2(f) and 2(h) had not been made out. Specification 2(f) concerned petitioner's opinion, expressed at the Town Hall meeting, that their school practiced segregation between ESL and ELL students. Specification 2(h) involved Suker staying at the meeting for two periods instead of one. Here, the ALJ found he had permission to do so.

Similar to Specification 3 in the first Charge regarding a November 2, 2011 arrest, Specification 3 in the second Charge alleged that Mr. Suker had failed to timely report his arrest on November 6, 2011. In the earlier instance, the ALJ had found Suker guilty of having failed to timely report, but in this Specification, the ALJ found Mr. Suker not guilty.

The last three Specifications in Charge 2 (Specifications 4-6) involved students and episodes that had occurred nearly three years earlier in 2009. No disciplinary action had ever been taken by the DOE against Suker for either of these episodes before, although Principal Zweig had questioned Suker about them.

Specification 4 had allegedly occurred on February 13, 2009, when Mr. Suker was charged with having thrown L.G.'s GED test application into the garbage after he had told her to leave the room. Both L.G. and Suker had testified that there had been an argument between the two, but Suker said the discarding of the application was an accident and that the student had been asked to leave the room because she had cursed him several times. But she did not leave.

Specification 5 involved the same student L.G. who, two days later on February 15, 2007, complained of Suker's refusal to allow her to enter the classroom, meaning she had to work alone. Petitioner did not deny this claim but explained that continuing problems with this student went unresolved. Principal Zweig testified that Mr. Suker had not followed proper procedures in both instances, and the ALJ upheld both charges.

Specification 6 involved another student E.B. and had occurred on February 27, 2009 and March 3, 2009. The alleged incident was similar to the one involving the other student in that it was claimed that Suker had directed this student to leave the class and work with a paraprofessional. The incident was not denied by Suker, who explained that

he had given the direction because the student had made profane remarks about homosexuals. Again, Principal Zweig testified that after he had spoken to Mr. Suker about the event, he again concluded that Suker had failed to follow proper procedures. The ALJ upheld this specification based on Zweig's testimony.

Specifications 1, 2 and 3 in the third Charge were discussed in depth by the ALJ (frankly, as all the Specifications were) on pages 27-32. The three were very similar to each other and all involved Suker's having given false addresses for him and his daughter, Serenity, from the time she started attending public schools in New York City until the present. Specification 1 was an all-inclusive charge that covered the entire period, from 2001 to the present. Serenity had attended P.S. 87 for kindergarten. She then transferred to a gifted program at P.S. 9 on 84th Street, which she attended through fifth grade. After that, in 2006 she was accepted to the Middle School at the Columbia Secondary School on West 123rd Street. Upon completion of that program, she was admitted via an entrance examination to Columbia's High School, where she is presently a student.

Specification 2 focused on Serenity's allegedly improper admission to the Columbia Middle School in 2006. Specification 3 related all the way back to 2001 and kindergarten at P.S. 87. But the same basic conduct was the subject of all three Specifications; the first was for the entire period, the second for conduct in 2006, and the third for conduct in 2001 when Serenity's schooling began.

In each, the allegation was, and the proof showed — proof which included Suker's own testimony — that despite the fact that Serenity appeared to actually live with her mother at two addresses in the Bronx throughout these years, Suker had submitted various false applications and other documents providing addresses that placed his daughter into

the zones of these very good schools.[5]

As to Specification 2 regarding Middle School, the ALJ found that: "The credible evidence establishes that he [Suker] knew the district requirements and did not meet them so he knowingly submitted false documents so his daughter could attend school in the district" (pp. 30-31). With regard to Specification 1, the ALJ said simply: "The evidence supports this charge." With regard to Specification 3, she used precisely the same language that she had used in her findings for Specification 2.

The ALJ recommended the penalty of termination. In doing so, she first summarized the number of charges for which she had found Suker guilty. She noted that they involved excessive absenteeism, unprofessional conduct toward a colleague, inappropriate and disruptive behavior at a school assembly, failing to follow correct procedures in dealing with two students in 2009, and failing to report one arrest in a timely manner.

A necessary query here is whether the ALJ would have recommended termination if these were all the findings, in other words, findings related only to an assortment of unrelated conduct involving a politically charged assembly, an incident of rudeness to another teacher, taking too many days off without obtaining formal permission, failing by a few days in not reporting his arrest at a demonstration, and failing to follow correct procedures regarding two disruptive students almost three years before the Charges had

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[5]Serenity's parents never married. It appears that she lived with her mother during the week and her father David Suker on the weekends when the place where he was living could accommodate her, though Serenity had no separate room when staying with Suker, nor did she keep her clothes there.

As to applying and being admitted to "good schools", there was testimony from a DOE employee Susan Cofield that the three schools in question were highly desirable with many applicants.

been brought and which had earlier been investigated. I suggest the answer would have been no and that a lesser penalty would have been imposed, particularly since none of the above findings had anything to do with the quality of Suker's teaching. If the penalty had been termination simply on these findings, it truly would have shocked the judicial conscience as being harsh. Even the very zealous attorney representing the DOE in her closing statement acknowledged this fact, stating (at p 756 of transcript) that:

> I will briefly address the other Specifications in this case, only because the determination of guilt must be made regarding each one, but I submit the substantiation of these charges is not necessary to reach the only just penalty of termination in this case.

This statement followed a passionate plea for termination based on one document, which she claimed was all that was necessary to determine Suker's guilt. That document was Department 54 wherein Suker admitted that he had put down a false address for his daughter. Ryan argued (p. 750):

> Based on this one document alone, Respondent must be terminated for committing an intentional fraud, a criminal act, upon the Department of Education.

Ryan then pointed out the years when this had occurred. She noted that the evidence showed that the conduct was clearly knowing and that therefore ignorance was no defense to "the criminal conduct". Almost seven pages of the transcript were taken up with her closing argument regarding this Charge.

Discussion

Tenured teachers, such as David Suker, have very definite rights. First, since the law mandates arbitration for disciplinary charges, the teacher's due process rights must be

scrupulously respected. *Lackow v. Department of Educ. of City of N.Y.*, 51 AD3d 563 (1st Dep't 2008). Here, there is a very serious question as to whether the inclusion of Charge 3 after the hearing had begun, with the Specifications relating to the false address documents, met this standard. I say this because, as Suker representing himself inartfully argued here, those Specifications were barred by "laches".

As stated earlier, the first of these Specifications — asserted in 2012 — was the all-inclusive one, covering the period from 2001 through the present, and Specifications 2 and 3 related to 2006 and 2001, respectively. Education Law § 3020-a sets time limits for the DOE's filing of disciplinary charges, stating in subdivision 1 that:

> no charges under this section shall be brought more than three years after the occurrence of the alleged incompetency or misconduct, except when the charge is of misconduct constituting a crime when committed.

In *Matter of Aronsky v. Board of Education, et al.,* 75 NY2d 997, 1000 (1990), the Court of Appeals stated that the term "crime" had a "precise and well-settled meaning" when used in a statute setting time limits for the filing of disciplinary charges against a teacher. Expressly agreeing with petitioner's claims in the case, the Court held (at p 999) that when seeking to invoke the exception to the statute of limitations in the statute, the school district "has the burden of proving each element of the 'crime' which [the teacher's] act allegedly constituted, as those elements are defined by the Penal Law." In other words, the criminal act and all of its elements must be specifically established by the evidence and explicitly found by the arbitrator for the conduct to serve as a predicate for a finding of a "crime" not subject to the limitations period. Citing to Education Law § 3020-a, the Court explained (at p 1000) that "requiring proof of the basic elements of a particular crime ... is

necessary to provide certainty to Education Law proceedings and to protect the due process rights of tenured teachers."

The *Aronsky* standard has not been met here. Even though counsel for the DOE frequently and freely used the term "criminal" to describe Mr. Suker's conduct, the ALJ was never specifically asked to, nor did she, make any such specific findings that the acts constituted a crime when committed. What is more, we know that Suker was never arrested for this conduct and of course was therefore never convicted of any such crime.

I thus find that all of the acts in this Charge, in all three Specifications, are time-barred; because the conduct has not been proven to specifically constitute a "crime when committed," the acts fall outside the three-year limitations period for disciplinary charges under § 3020-a. I reach this conclusion because Suker's misrepresentations as to his daughter's address only have force with respect to Serenity's Lower School and Middle School admissions. Petitioner points out, it appears correctly based on the Chancellor's Regulations, that zoning, as a requirement for attendance, only applies to the lower grades. Here, that would be Specification 2 relating to Serenity's 2006 admission to Columbia's Middle School, Specification 3 relating to her admission to P.S.87 elementary school in 2001, and the all-inconclusive Specification 1, but only through middle school.

Why is this? Because New York City High School admissions have nothing to do with residence or zoning, with the exception that the student must live in New York City. Here, that has never been an issue, as Serenity has lived in the Bronx with her mother all through the years of her schooling. High Schools in this City are open to all City residents if the student can pass the particular school's requirements. And in Columbia's case, that requirement is a test that Serenity passed.

As previously noted, the ALJ made no actual finding here that Suker's actions as set forth in Charge 3 were "criminal" acts, despite the characterization by the DOE's trial attorney. Further, the ALJ never termed them as such and never explicitly found that the elements of any crime had been established. (*See, Aronsky, supra*). Therefore, I find that the entirety of Charge 3 is barred by § 3020-a of the Education Law, and the ALJ's decision must be annulled to the extent it sustained that Charge.

Since Charge 3 should not have been considered, all that is left are the ALJ's findings with respect to the Specifications in Charges 1 and 2 involving Suker's insubordinate behavior and absenteeism. However, as already discussed, these acts, even in the aggregate, do not constitute conduct warranting termination.

Counsel for the DOE points to a case which he argues is very much like this one, *Matter of Patterson v. City of New York*, 96 AD3d 565 (1st Dep't 2012). There, a teacher was terminated as she was found guilty of having provided a fraudulent address in an effort to evade paying New York City taxes. Here, no one is claiming that Suker owed any tuition, as his daughter has always lived in New York City and was always entitled to receive a free public education. Thus, *Patterson* is readily distinguishable.

More relevant is the recent case of *Matter of Guzman v City of New York, et al.,* 105 AD3d 460 (1st Dep't 2013), where the First Department modified the trial court and found — on facts closer to ours than *Patterson* — that termination was too harsh a penalty. The arbitration award in *Guzman* was based on a finding that the teacher had engaged in a fraudulent scheme to enroll her granddaughter in public school using a false address in an alleged attempt to avoid the payment of non-resident tuition. But at the hearing, the DOE conceded that in fact the child was entitled to a tuition-free education, as no finding had

been made that she was not a City resident. Thus, there was no rational basis to conclude that the teacher had engaged in a scheme to defraud the City of money. However, since she had filed a false instrument (as was done here), and had used someone else's address (as was done here) to have the child attend the school where she taught outside the zone of the child's actual residence, some penalty was required. But the appropriate penalty was ***not*** the penalty of termination that had been urged by the DOE, found by the ALJ, and affirmed by the trial court. Instead, the Appellate Division vacated the penalty of termination and remanded the matter "for the imposition of an appropriate lesser penalty." *Id.* at 461.

Such should be the disposition here. As this Court stated earlier, the school's leadership did not want petitioner Suker to remain there as a teacher. They did not like him or approve of his actions. They believed he was insubordinate, that he did not conduct himself properly, that he was getting arrested too often, and probably that he was not a team player. It is possible that much of that is true. But with the exception of the two episodes involving disruptive students, which had occurred almost three years earlier in 2009 and had not resulted in discipline, no one has claimed that David Suker is not a good and/or effective teacher.

Finally, it should be noted that the conduct spelled out in Charge 3, regarding a false address for his daughter, never involved Suker's own school and never would have been discovered but for the DOE's decision to target Suker to see if an investigation could find something to be used against him, which it did. But that "something" should not be a basis for terminating this tenured teacher, for the reasons already discussed.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the petition is granted to the extent of annulling those portions of ALJ Glanstein's decision which sustained Charge 3 and imposed the penalty of termination, and the matter is remanded to respondent for the imposition of an appropriate lesser penalty in accordance with the terms of this decision.

Dated: July 25, 2013

JUL 25 2013

J.S.C.
ALICE SCHLESINGER

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).