

STATE OF NEW YORK  
STATE EDUCATION DEPARTMENT

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In the Matter of Disciplinary Charges Brought  
Pursuant to *Education Law*, §3020-a by the

SYRACUSE CITY SCHOOL DISTRICT,

Complainant

- against -

LAURA M. VIEIRA-SUAREZ,

Respondent

DETERMINATION AND  
ORDER

ON A

PROBABLE CAUSE  
HEARING & MATTER  
OF SUSPENSION  
WITHOUT PAY

SED File No. 27,544

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**PROCEDURAL BACKGROUND**

On July 29, 2015, the undersigned was notified that he had been selected to conduct a Probable Cause Hearing in the above referenced matter pursuant to the revised *Education Law* §3020-a procedures, specifically §3020-a(2)(c), and Part 82-3.10 of the Commissioner's Regulations. The undersigned accepted the appointment later on the same day. Pursuant to the regulations, a Probable Cause Hearing ("PCH") was held on August 5, 2015 by telephonic conference call. Both Parties participated in the call which lasted from approximately 11:06 AM to 12:30 PM. During the PCH, both Parties had full opportunity to present argument in support of and opposition to the matter of Probable Cause and suspension without pay.

Present during the PCH were:

Probable Cause Hearing Officer:	Stephen P. LaLonde
Claimant's Representatives:	Miles G. Lawlor, Esq., Advocate Colleen Heinrich, Esq.

Respondent's Representatives: Heather Cole, Esq.  
Joshua Beardall, Dir. Staff Relations  
Dennis G. O'Hara, Esq., Advocate  
Steve Ciotoli, Esq.  
Ryan Pezzulo, Esq.

Court Reporter: Associated Reporters International

## PROBABLE CAUSE HEARING PROCEDURES

Revisions to Education Law 3020-a (effective July 1, 2015) permit a school district to seek to suspend a teacher/administrator without pay in certain situations where misconduct involving physical or sexual abuse of a student is alleged. A PCH must be held in these situations<sup>1</sup>. The revised §3020-a(2)(c) provision of the law states:

c. Where charges of misconduct constituting physical or sexual abuse of a student are brought on or after July first, two thousand fifteen, the board of education may suspend the employee without pay pending an expedited hearing pursuant to subparagraph (i-a) of paragraph c of subdivision three of this section. Notwithstanding any other law, rule, or regulation to the contrary, the commissioner shall establish a process in regulations for a probable cause hearing before an impartial hearing officer within ten days to determine whether the decision to suspend an employee without pay pursuant to this paragraph should be continued or reversed. The process for selection of an impartial hearing officer shall be as similar as possible to the regulatory framework for the appointment of an impartial hearing officer for due process complaints pursuant to section forty-four hundred four of this chapter. The hearing officer shall determine whether probable cause supports the charges and shall reverse the decision of the board of education to suspend the employee without pay and reinstate such pay upon a finding that probable cause does not support the charges. The hearing officer may also reinstate pay upon a written determination that a suspension without pay is grossly disproportionate in light of all surrounding circumstances. Provided, further, that such an employee shall be eligible to receive reimbursement

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<sup>1</sup> In a Probable Cause Hearing under the Revised *Educational Law*, Section 3020-a(2)(c) and the Commissioner's Regulations, Part 82-3.10, the Probable Cause Hearing Officer has no authority to address the merits of the Charges and Specifications brought against a Respondent. The undersigned has not given consideration to or evaluation of the merits of the Charges and Specifications alleged in this matter but has restricted deliberation to the issue of sufficiency of probable cause and to assessment of the "surrounding circumstances" vis-à-vis the matter of suspension without pay.

for withheld pay and accrued interest at a rate of six percent compounded annually if the hearing officer finds in his or her favor, either at the probable cause hearing or in a final determination pursuant to the expedited hearing held pursuant to subparagraph (i-a) of paragraph c of subdivision three of this section. Any suspension without pay shall last no longer than one hundred and twenty days from the decision of the board of education to suspend the employee without pay and such suspension shall only relate to employee compensation, exclusive of other benefits and guarantees. Notwithstanding any other provision of law or regulation to the contrary, any provision of a collective bargaining agreement entered into by the city of New York as of April first, two thousand fifteen, that provides for suspension without pay for offenses as specified in this paragraph shall supersede the provisions hereof and shall continue in effect without modification and may be extended.

Part 82-3.10 of the Commissioner's Regulations, as currently promulgated, governs the requirements and procedures involved in such situations and states:

82-3.10 Probable Cause Hearing for Certain Suspensions Without Pay.

(a) In accordance with Education Law section 3020-a(2)(c), where a board suspends an employee without pay pending a determination in an expedited hearing based on charges of misconduct constituting physical or sexual abuse of a student, a probable cause hearing shall be conducted pursuant to this section within 10 days of the decision to suspend without pay. Such unpaid suspension shall not exceed 120 days from the decision of the board of education to suspend the employee without pay.

(b) Probable cause hearing procedures.

(1) A school district shall notify the commissioner of a request for a probable cause hearing within one business day of suspending an employee without pay based on charges of misconduct constituting physical or sexual abuse of a student.

(2) The commissioner shall maintain a rotational list or lists of individuals who have agreed to serve as impartial hearing officers in accordance with the timeframes and conditions set forth in Education Law section 3020-a(2)(c). The commissioner, in his discretion, may remove a hearing officer from the rotational list, if he or she engages in a pattern of declinations or is unable to perform his/her duties in the timelines prescribed in Education Law section 3020-a(2)(c) or this Subpart. A pattern of declinations is defined as two or more declinations within one year. If a hearing

officer is removed, he or she may make an application to be reinstated after one year, which may be granted in the commissioner's discretion.

(3) Upon receipt of request for a need for a probable cause hearing, the commissioner shall appoint the next available hearing officer from the rotational list. The failure of the hearing officer to accept the case within 24 hours of being notified that he or she has been selected shall be deemed a declination.

(4) At the conclusion of the probable cause hearing, the impartial hearing officer may make an oral ruling or issue a written decision on the record as to whether the decision to suspend an employee without pay should be continued or reversed.

(5) The impartial hearing officer shall reverse the decision of the board to suspend without pay and reinstate the pay:

(i) upon a finding that probable cause does not support the charges; or

(ii) upon a written determination that suspension without pay is grossly disproportionate in light of all surrounding circumstances.

(6) The employee shall be eligible for reimbursement of the withheld pay and accrued interest at the rate of six percent compounded annually if the hearing officer finds in the employee's favor, at either in the probable cause hearing or in a final determination at the conclusion of the expedited hearing. (Commissioner's Regulations, Part 82-3.10)

*Education Law* §3020-a(2)(c) does not define Probable Cause as it is to apply to PCH matters under the statute. One must look to general definitions of Probable Cause and apply the concept to the statute. Generally, Probable Cause is recognized as:

Reasonable cause; having more evidence for than against. A reasonable ground for belief in certain alleged facts. A set of probabilities grounded in the factual and practical considerations which govern the decisions of reasonable and prudent persons and is more than mere suspicion but less than the quantum of evidence required for conviction. (citation omitted). An apparent state of facts found to exist upon reasonable inquiry (that is, such inquiry as the given case renders convenient and proper), which

would induce a reasonably intelligent and prudent man to believe, . . . , in a civil case, that a cause of action existed (citation omitted). (*Black's Law Dictionary*, 6<sup>th</sup> ed., 1201)

This understanding of Probable Cause is applied as the standard for analysis and determination in the instant matter.

## DISCUSSION & FINDINGS

The PCH process requires a very narrow evaluation and determination on whether the action of a school board in suspending an employee without pay, pending a determination rendered in a 3020-a hearing on the merits of the Charges and Specifications alleged, is justified under the principles of Probable Cause and/or if the suspension without pay is “grossly disproportionate in light of all surrounding circumstances”.<sup>2</sup>

§3020-a(2)(c) lacks definitions or explanations of what constitutes physical or sexual abuse nor does it reference any such definitions found elsewhere. Both Parties have referenced provisions of the Commissioner's Regulation 8 NYCRR §200.15 (b) as part of their respective arguments. That provision of the Commissioner's Regulations states, in pertinent part:

(i) *Abuse* means physical abuse, sexual abuse, psychological abuse, deliberate inappropriate use of restraints, unauthorized use of aversive interventions, obstruction of reports or reportable incidents, and unlawful use or administration of controlled substances.

(a) *Physical abuse* means conduct by a custodian intentionally or recklessly causing by physical contact, physical injury or serious or protracted impairment of the physical, mental or emotional condition of a student or causing the likelihood of such injury or impairment. Such

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<sup>2</sup> It must also be noted that there are strict and severe timeframes imposed for the PCH process including the expectation for either an oral ruling at the end of the PCH or a written decision. Any such written decision must be rendered as close to the Hearing date as possible so as not to impede the timeframes required in the overall process. Therefore, PCH decisions must be reduced in scope and will not contain the level of exposition of respective Party positions, evidence and argument which Parties may expect in determinations on the merits.

conduct may include but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any person. [Commissioner's Regulation 8 NYCRR §200.15 (b)(3)(i)(a)].

In the instant matter, it is this definition more than other elements of argument by the Parties that carries the weight to sustain a finding that Respondent's suspension without pay lacked sufficient Probable Cause and should be reversed. §3020-a(2)(c) clearly and specifically states that it is matters of allegations of "physical or sexual abuse of a student" (*op.cit.*) where suspension without pay can be imposed. The definition of physical abuse referenced is clear in that a fundamental requirement for physical abuse is an action effectuated "by physical contact". Further, the provision goes on in detail to identify an extensive list of actions constituting physical abuse all of them, without exception, identifying actions accomplished through physical contact with the victim of such abuse. Thus, under the principle of *noscitur a sociis*, defining "physical abuse" by the list of exemplars provided in statute compels a finding that physical contact between the perpetrator and the victim is required. The Respondent in this matter is not charged with physically harming the student through personal physical contact (as defined above). It is also telling that in the definition of "abuse" (*op.cit.*), there is a separate and distinct category of psychological abuse. It should be noted that the finding herein is restricted solely to the matter of suspension without pay in matters of physical or sexual abuse and does not address in any way the Charges and Specifications on the merits or the validity of those Charges in a hearing on the merits. However, in the instant matter of the PCH, the suspension without pay of the Respondent must be reversed.

During the course of the PCH, both Parties referenced aspects of the PCH statute which were unexplained, imprecise or altogether absent and which would have provided better insight, understanding and direction for the Parties and PCH Hearing Officer. However accurate these observations may be, the PCH Hearing Officer is required to address and apply the statute as it exists and it is neither the function of, nor within the

purview of, the Hearing Officer to address these concerns. The Parties and Hearing Officer must deal with the parameters and constraints as they are presented.

**D E T E R M I N A T I O N   &   O R D E R**  
**R E G A R D I N G   P R O B A B L E   C A U S E**  
**A N D**  
**S U S P E N S I O N   W I T H O U T   P A Y**

Based on a review of the Charges relative to allegations of physical abuse of a student, review of the relevant statutes, submissions of the Parties and the IPHC discussion relative thereto, **THEREFORE, IT IS DETERMINED AND**

**IT IS ORDERED** that the District has failed to meet the burden to establish Probable Cause relative to allegations of physical abuse of a student [as defined by the Commissioner's Regulation 8 NYCRR §200.15 (b) pursuant to *Education Law* §3020-a(2)(c)] and as it pertains solely to the matter of the Probable Cause Hearing on a suspension without pay.

**IT IS FURTHER ORDERED** that the decision of the Board of Education is hereby reversed, that the suspension without pay of Respondent shall immediately cease and that Respondent shall henceforth be suspended with pay.

**IT IS FURTHER ORDERED** that Respondent shall be reimbursed for any and all monies withheld during the period of suspension without pay with interest paid at the statutory rate of six percent (6%) compounded annually.

**IT IS FURTHER ORDERED** that the determination regarding Probable Cause is restricted solely to §3020-a(2)(c) matters of suspension without pay and does not address or seek to address the merits of the Charges and Specifications brought against Respondent which will be resolved in another forum.

FOR ALL OF THE ABOVE, IT IS SO ORDERED.

Dated: August 6, 2015

A handwritten signature in black ink, appearing to read "Stephen P. LaLonde". The signature is fluid and cursive, with the first name "Stephen" being the most prominent.

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Stephen P. LaLonde

Probable Cause Hearing Officer