

SCANNED ON 4/9/2014

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

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CARISA GAYLARDO,

Petitioner,

NOTICE OF  
PETITION

-against-

Index No. 14100400

CITY OF NEW YORK; NEW YORK CITY  
DEPARTMENT OF EDUCATION; and CARMEN  
FARINA, CHANCELLOR OF NEW YORK  
CITY DEPARTMENT OF EDUCATION,

Respondents,

**FILED**

For an Order and Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules.

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APR 08 2014

COUNTY CLERK'S OFFICE  
NEW YORK

PLEASE TAKE NOTICE that upon the annexed verified petition, verified by Petitioner Carisa GaylarDO on the 8<sup>th</sup> day of April 2014, and the exhibits annexed thereto, an application will be made pursuant to Article 78 of the Civil Practice Law and Rules to Special Term Part of this Court, Room 130, at the County Courthouse for the New York State Supreme Court, New York County, located at 60 Centre Street, New York, New York 10007, on the 5th day of May 2014, at 9:30 a.m. in the forenoon of that day or as soon thereafter as counsel can be heard, for an order and judgment of this Court pursuant to CPLR Article 78:

- a. Declaring as arbitrary, capricious, unreasonable, an abuse of discretion, lacking a rational basis, in bad faith, and in violation of lawful procedure Respondents' termination of employment as a probationary teacher on or about December 9, 2013,

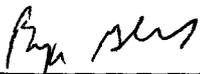
- b. Ordering Respondents to immediately rescind Petitioner's termination and annul and reverse Petitioner's Unsatisfactory annual rating for 2013-14;
- c. Ordering Respondents to reinstate Petitioner to her teaching position *nunc pro tunc* to December 9, 2013, with backpay, interest, and any other benefits or emoluments of employment lost (including health insurance and other benefits) since the date of termination of her employment; and
- d. Awarding such other and further relief that this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, demand is hereby made pursuant to CPLR Section 403(b) and Rule 2214(b) that answering affidavits and other responsive papers, if any, must be served upon the undersigned at least seven (7) days before the return date of the petition.

Dated: New York, New York  
April 8, 2014

Yours, etc.,

GLASS KRAKOWER LLP  
Attorney for Petitioner  
100 Church Street, 8<sup>th</sup> Floor  
New York, NY 10007  
(212) 537-6859

By:   
BRYAN D. GLASS, ESQ.

TO: CITY OF NEW YORK  
c/o Zachary Carter, Corporation Counsel of the City of New York  
100 Church Street  
New York, NY 10007

NEW YORK CITY DEPARTMENT OF EDUCATION  
c/o Zachary Carter, Corporation Counsel of the City of New York  
100 Church Street  
New York, NY 10007

CARMEN FARINA, CHANCELLOR of NEW YORK CITY DEPARTMENT OF  
EDUCATION  
c/o Zachary Carter, Corporation Counsel of the City of New York  
100 Church Street  
New York, NY 10007

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

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CARISA GAYLARDO,

Petitioner,

VERIFIED  
PETITION

-against-

Index No.

CITY OF NEW YORK; NEW YORK CITY  
DEPARTMENT OF EDUCATION; and CARMEN FARINA,  
FORMER CHANCELLOR of NEW YORK CITY DEPARTMENT  
OF EDUCATION,

Respondents,

14100400

For an Order and Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules.

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Petitioner CARISA GAYLARDO, as and for her Verified Petition, respectfully  
alleges as follows:

1. This is a special proceeding commenced to challenge, reverse, and annul the determination of Respondent New York City Department of Education (NYCDOE) to sustain Petitioner's Unsatisfactory end of the year annual rating ("U rating") for the 2012-13 school year, Petitioner's termination of employment as a probationary physical education teacher at Riverdale/Kingsbridge Academy ("RKA") in Bronx, New York, effective December 9, 2013, and her placement on the NYCDOE's Ineligible Inquiry list, all based on allegations contained in a misleading report by the Special Commissioner of Investigation ("SCI") regarding her text communications with a high school student. Petitioner also lost associated jobs as an afterschool fitness instructor for Riverdale Community Center effective December 20, 2013, which she had held since beginning at RKA.

2. The only documentation used to support Petitioner's Unsatisfactory rating and discontinuance from employment with the NYCDOE was a single letter to her file regarding inappropriately contacting a student. This letter was based on an SCI report that was only "substantiated" by one investigator based on two teacher statements against Petitioner, and did not even recommend termination of Petitioner's employment. In fact, no student reported any inappropriate relationship between Petitioner and the student, other than the two teachers with a substantial motive to lie against Petitioner. Importantly, the conduct described in the SCI report is not misconduct on its face, and certainly not worthy of termination, especially where none of the content of any communications between Petitioner and the student was found to be inappropriate.

3. Petitioner requests a trial of any triable issues of fact pursuant to CPLR Section 7804(h), as well as oral argument on this petition.

#### **The Parties**

4. Petitioner CARISA GAYLARDO is a resident of the State of New York and a physical education teacher formerly employed at Riverdale/Kingsbridge Academy MS/HS 141 (RKA) in the Bronx, New York, a middle school and high school within the NYCDOE. Petitioner worked for the NYCDOE since September 2008.

5. Respondent CITY OF NEW YORK is a municipality of the State of New York, charged with educating the children of the citizens of New York City.

6. Respondent NEW YORK CITY DEPARTMENT OF EDUCATION (formerly known as the NEW YORK CITY BOARD OF EDUCATION) is a duly authorized and existing agency or corporation of the municipality of the City of New York, charged with educating the children of the citizens of New York City.

7. Respondent CARMEN FARINA is the Chancellor of Respondent NYCDOE, and, as such, is said Respondent's chief executive officer.

#### **Venue**

8. Venue is placed in New York County, New York pursuant to CPLR Section 506(b) since it is where the headquarters of the NYCDOE is located.

#### **Statement of Facts**

9. Petitioner started working as a physical education teacher for the New York City Department of Education in September 2008. She began her career at the Bronx Community High School, where she worked for the 2008-09 and 2009-10 school years. She then did a third year for Antonio Pantoja Preparatory Academy in the Bronx for the 2010-11 school year as a physical education teacher and basketball coach. Prior to working for the DOE, Petitioner worked at New Paltz High School for the 2006-07 and 2007-08 school years.

10. In September 2011, she transferred via the DOE's Open Market transfer system to RKA as a physical education teacher. Additionally, Petitioner began work with a paid afterschool program at Riverdale Community Center that paid \$38/hour for five hours per week.

11. Petitioner was offered a position in the DOE's Office of School Wellness as an MTI trainer through a mayoral grant program at \$65,000 a year, that was to commence in November 2013. Due to the events that transpired, Petitioner was prevented from starting this job. A copy of Petitioner's Offer Letter for the MTI trainer position is annexed hereto as Exhibit A.

12. In June 2013, investigators from SCI contacted Petitioner about her relationship with high school student A.R., who was a three-sport athlete at RKA. They did not tell Petitioner about any specific allegations made against her.

13. Unbeknownst to the student and Petitioner, SCI investigators had obtained the student's phone number without the parental permission of the student, and Petitioner's cell phone number as well.

14. In a meeting on August 9, 2013, SCI investigators told Petitioner that they had found over a 1,000 text messages between her cell phone number and the student's phone number between February and March 2013. During this meeting, Petitioner explained to the investigators that she was the student's volleyball and softball coach, as well as her mentor. Because Petitioner had excelled at three sports during high school and college, the student A.R. sought her advice and counseling in dealing with the pressure of juggling the sports and her school schedule. From March 2012 through March 2013, the two communicated via text messages and phone calls, the purpose of which was for Petitioner to provide guidance for her student mentee. Petitioner denied that any of these communications were inappropriate, and explained to the investigators that A.R.'s parent was well aware of the contact.

15. A.R., in her statements to SCI investigators, corroborated Petitioner's statements. She informed SCI investigators that she and Petitioner communicated about school and sports, never in an inappropriate manner, and that her parents were aware of said contact. A.R. and her mother, Esfer Rugova, confirm this in their Affidavits in Support of Petitioner, attached hereto as Exhibits B and C, respectively.

16. Nonetheless, SCI issued a report on September 19, 2013, merely restating its findings about the number of text messages. Though SCI recommended that “appropriate disciplinary action be taken” against Petitioner, it did not substantiate a finding that the communications were inappropriate, nor did it recommend that Petitioner’s employment be terminated. A copy of this report is annexed as Exhibit D.

17. On or about October 8, 2013, Principal O’Mara asked Petitioner to resign in order to prevent herself from being discontinued. Based on advice by her union, Petitioner submitted her resignation on October 20, 2013.

18. Nevertheless, after submitting her resignation, Principal O’Mara recommended that Petitioner be discontinued from her position. Petitioner ultimately rescinded her resignation on November 19, 2013.

19. Despite a statement from A.R. explaining that there was nothing inappropriate in the content of the messages, nor the nature of the relationship, the NYCDOE relied on the September 2013 SCI report to discontinue Petitioner’s teaching service, effective December 9, 2013. *See* Superintendent Melodie Mashel’s affirmation of Petitioner’s Discontinuance of Probationary Service, annexed, hereto, as Exhibit E.

20. Petitioner had a probationary discontinuance/U rating appeal with the Office of Appeals and Reviews scheduled for March 19, 2014, which she attended with UFT advocate Dave Moskowitz. Petitioner is still waiting a decision from the DOE’s Chancellor or his representative regarding that March 19<sup>th</sup> hearing.

21. For the first time at the hearing, Petitioner learned about and was provided a copy of two witness statements, from two other gym teachers at the school, Sofia Memos and Kathy McKiver, at which she was told by the assigned SCI investigator

Ravelos and her school principal that it was the two teacher witness statements which triggered the entire investigation against her. A copy of these witness statements are annexed hereto as Exhibit F. SCI investigator Ravelos testified that he spoke to five different students of Petitioner, and none of them indicated an inappropriate relationship between Petitioner and A.R.; only the two teachers had reported feeling “discomfort” in observing the interactions between Petitioner and A.R.

22. Petitioner was never told that these two teachers triggered the investigation, nor was she provided the teachers’ witness statements, until the March 19, 2014 hearing, almost three months after her termination. Petitioner finds these allegations false, and *particularly curious and disconcerting* because teacher Memos herself had actually propositioned Petitioner, by text message and in person, to engage in an inappropriate romantic and salacious relationship with her and her boyfriend in approximately late February 2013, a month before Ms. Memos provided the witness statement against Petitioner, and only after Petitioner had rejected her advances. Ms. McIver was particularly close to Ms. Memos and had worked as a close colleague of hers for several years. Neither the SCI investigator nor the school principal considered the possible illicit motives of Ms. Memos and her friend Ms. McIver in making such a salacious report against their fellow teacher Petitioner.

23. Because of her discontinuance, Petitioner has been unable to begin her position in the DOE’s Office of School Wellness, as that office started she was on the DOE Ineligible Inquiry List. Furthermore, she was even offered employment at Antonio Pantajoa Preparatory Academy in November 2013, but was unable to seek a transfer to that school because of her placement on the Ineligible List.

## AS AND FOR A FIRST CAUSE OF ACTION

24. Respondents' discontinuance of Petitioner's employment as a probationary teacher at RKA, her Unsatisfactory annual rating for the 2013-14 school year, and her placement on the Ineligible Inquiry list, were irrational, in violation of lawful procedure, and in bad faith.

25. All three actions by Respondents were based on an investigative report and subsequent letter to file that did not substantiate any misconduct on its face. Nowhere in the SCI report is there a statement substantiating any misconduct by Petitioner. Principal O'Mara, in her disciplinary letter to Petitioner, calls into question Petitioner's ethics and professional judgment, yet does not substantiate that Petitioner's communications with the student were inappropriate. Principal O'Mara makes no indication of whether she believed Petitioner's contention that she served as the student's mentor and was giving her counsel in these communications. Nor does she indicate what effect, if any, Petitioner's remorse had in her decision. Thus, it is clear that Respondents terminated Petitioner, issued her a U rating, and placed her on the Ineligible Inquiry List, simply on the frequency of communications she engaged in with A.R., without any finding of inappropriate contact or intent by SCI. It also failed to consider the motives of the teachers who made the report against Petitioner. Such a decision is clearly in bad faith and without any rational basis. It is tragic that Petitioner lost her career and livelihood with the NYCDOE because she was overzealous in helping a student

struggling with the pressure of high school, and was subject to retaliation by teachers at her school.

22 Courts have not been hesitant to overturn Unsatisfactory ratings of NYCDOE pedagogues when the decisions were irrational, arbitrary and capricious, or in violation of the DOE's own lawful procedure. *See, e.g., Blaize v. Klein*, 68 A.D.3d 759 (2d Dep't 2009); *Lehman v. New York City Board of Education*, 82 A.D.2d 832 (2d Dep't 1981); *Loughlin v. New York City Board of Education*, Index No. 104708/09 (Sup. Ct. N.Y. Co. 3/31/10); *Smith v. New York City Board of Education*, 18 Misc.3d 192 (Sup. Ct. N.Y. Co. 2007); *Brown v. New York City Board of Education*, Index No. 113658/08 (Sup. Ct. N.Y. Co. March 24, 2010); *Spivak v. Cortines*, Index No. 5281/96 (Sup. Ct. Kings Co. 1996); *Francois v. NYCDOE*, Index No. 103078/11 (Sup. Ct. N.Y. Co. Aug. 22, 2011); *Rothstein v. NYCDOE*, Index No. 107474/11 (Sup. Ct. N.Y. Co. Nov. 28, 2011).

23 Courts further have been annulling or reversing these Unsatisfactory annual ratings with increasing frequency, even against non-tenured probationary teachers who have been discontinued. *See Kolmel v. NYCDOE*, 2011 NY Slip Op 07265 (1<sup>st</sup> Dep't Oct. 18, 2011); *Hazeltine v. NYCDOE*, Index No. 115412/09 (1<sup>st</sup> Dep't Nov. 29, 2011).

31. No prior application has been made herein.

32. Petitioner has no other adequate remedy at law and the procedural vehicle of Article 78 is the only remedy available to her in order to seek the relief she requests in this special proceeding.

**WHEREFORE**, it is respectfully requested that this Court order Respondents to reverse, annul, and/or expunge Petitioner's annual Unsatisfactory APPR rating for the

2013-14 school year and annul the determination discontinuing her employment at RKA and her placement on the Ineligible Inquiry List, and restore any backpay, benefits and emoluments lost since the date of termination and/or discontinuance of her employment, as well as grant attorneys' fees, costs, and any other relief which is just and proper.

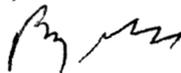
Dated: New York, New York  
March 31, 2014

Yours, etc.

GLASS KRAKOWER LLP

100 Church Street, 8<sup>th</sup> Floor  
New York, NY 10007  
(212) 537-6859

By:



\_\_\_\_\_  
BRYAN D. GLASS, ESQ.

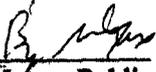
**VERIFICATION**

STATE OF NEW YORK        )  
  )  
COUNTY OF NEW YORK    )        ss:

Carisa Gaylaro, being duly sworn, deposes and states that she is the Petitioner herein, that she has read the foregoing Verified Petition and knows the contents thereof, and states that the Verified Petition is true to her own knowledge.

  
\_\_\_\_\_  
CARISA GAYLARDO

Subscribed and sworn to before  
me this 8<sup>th</sup> day of April, 2014

  
\_\_\_\_\_  
Notary Public

**BRYAN GLASS**  
Notary Public, State of New York  
No. 02GL6068978  
Qualified in Rockland County  
Commission Expires 1/22/2018

**FILED**

**APR 08 2014**

**COUNTY CLERKS OFFICE  
NEW YORK**

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**NOTICE OF PETITION AND VERIFIED PETITION**

GLASS KRAKOWER LLP  
Attorney for Petitioner  
100 Church Street, 8<sup>th</sup> Floor  
New York, NY 10007  
(212) 537-6859

*Due and timely service is hereby admitted*

New York, N.Y. ...., 200...

..... Esq.

Attorney for .....