

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
ADAM B. HELLER,

Petitioner,

Index No. _____

-against-

BEDFORD CENTRAL SCHOOL DISTRICT,

Respondent.
-----X

VERIFIED PETITION

By and through his counsel, SUSSMAN AND WATKINS, petitioner ADAM B. HELLER, for his petition, states as follows:

NATURE OF PROCEEDING

1. This special proceeding follows a N.Y. Education Law § 3020-a proceeding between Petitioner and Respondent in which the hearing officer sustained two charges, comprised of eight specifications, propounded by Respondent against Petitioner and imposed the penalty of termination of employment and loss of tenure.

2. Petitioner commences this special proceeding pursuant to N.Y. Education Law § 3020-a(5) and N.Y. Civil Practice Law and Rules (“CPLR”) § 7511, seeking an order vacating the hearing officer’s decision and award as arbitrary and capricious.

PARTIES

3. Petitioner ADAM B. HELLER is a thirty-five year old male residing at [REDACTED] Town of Pound Ridge, County of Westchester, State of New York.

4. Respondent BEDFORD CENTRAL SCHOOL DISTRICT (the “District” or “BCSD”) is a municipal corporation duly established and existing pursuant to the laws of the state of New York. It is located in the County of Westchester, State of New York and is comprised of five

elementary schools, one middle school and one high school, superintended by Dr. Jere Hochman and governed by a seven-member Board of Education. It may sue and be sued.

JURISDICTION

5. This honorable court has jurisdiction pursuant to N.Y. Education Law § 3020-a(5) and CPLR § 7502(a)(i).

FACTUAL ALLEGATIONS

Background

6. Petitioner is thirty-five years old and grew up in a Goshen, New York with his parents, Gary and Lois Heller, and younger sister, Rachel.

7. Growing up, Petitioners' father was an assistant principal, and then principal for many years at Monroe-Woodbury High School and Suffern High School and has since retired.

8. Petitioner's mother was a high school music teacher at Warwick High School and also worked at an elementary school in Middletown and is also now retired.

9. Petitioner attended the State University of New York at Binghamton, where he majored in English Literature and graduated in 2002 with his Bachelor's Degree.

10. After college, Petitioner entered the New York City Teaching Fellowship, where taught tenth, eleventh and twelfth grade English at Harry S. Truman High School for two years while earning his Master's Degree from Lehman College, which he obtained at the end of his two year assignment.

11. After completing his Fellowship, Petitioner was hired by the District as a high school English teacher at its Fox Lane High School and commenced employment in that capacity.

12. During his employment with the District, and with the District's support, Petitioner pursued and obtained a second Master's Degree in Consciousness Studies from the Graduate Institute of Connecticut.

13. At Fox Lane, Petitioner taught approximately five classes each semester with about twenty-five to thirty students in each class, thus putting him in contact with about 125 to 150 students each semester.

14. During the entirety of his employment with the District, and prior the disciplinary charges involved in this proceeding, Petitioner was never disciplined.

15. During the entirety of his employment with the District, Petitioner never received any formal student, parent, faculty or administrator complaints.

16. During his entirety of his employment with the District, Petitioner received high marks on his annual evaluations and was regarded by his students, colleagues and administrators to be an excellent and effective teacher.

Events leading to the disciplinary charges involved in this proceeding

17. In December 2012, Petitioner, who had participated in marksmanship activities as a child in the Boy Scouts and having recently visited the West and observed the gun culture in that part of the country, decided to purchase a gun.

18. On December 13, 2012, Petitioner visited Precision Armory, a gun store in Puntam County, New York. He did not know what to purchase and learned from an employee of the store that most people purchase a shotgun as a first gun. He found a shotgun he thought looked nice and fit his price range; the employee told him it was a skeet-shooting gun.

19. Petitioner completed all necessary paperwork and legally acquired the firearm – a Winchester Model 1300 12-gauge shotgun.

20. Prior to this purchase, Petitioner had never purchased or owned a firearm and was not intimately familiar with guns, including the model he had just purchased.

21. The next day, December 14, 2012, Petitioner returned to Precision Armory to shop for another gun and discovered an interesting Russian military rifle – Mosin Nagant rifle – which he thought was a nice historical piece. He completed all necessary paperwork and legally acquired the gun.

22. A couple weeks after he purchased his first two guns, a friend of Petitioner's gave him a .22 caliber rifle.

23. Heller never brought these guns to school or ever intended to do so.

24. In December 2012 Petitioner began instant messaging with Georgia O'Connor, a friend whom he met through his parents and who is a medium by profession.

25. Their instant messaging occurred in the context of playing Words with Friends, an online Scrabble game that has a private instant messaging feature that allows players to communicate directly to and with each other.

26. Over the course of about a month – from December 2012 to January 2013 – Petitioner and Ms. O'Connor discussed several topics with each other, ranging from the banal occurrences of daily life (*e.g.*, work, family) to controversial political discourse.

27. During these private one-on-one conversations, Petitioner explained to Ms. O'Connor his concerns about governmental power and corruption, including the potential use by the government of technology to effect weather patterns and its involvement in nation-wide conspiracies, including, potentially, with respect to the then-recent Newtown school shooting in Sandy Hook, Connecticut.

28. Petitioner also shared his concerns about the nation's economy and fear of its potential incipient collapse.

29. On or about January 8, 2013, the FBI contacted Bedford Police Chief William Hayes claiming that a friend of Petitioner's called with concerns about Petitioner's well-being.

30. Hayes, whose department has jurisdiction over Petitioner's workplace, immediately contacted Pound Ridge Police Chief David Ryan, whose agency has jurisdiction over Petitioner's residence.

31. The various law enforcement agencies met on or about January 8, 2013 and eventually included District Superintendent Hochman in their briefing.

32. Thereafter, local law enforcement commenced an investigation, monitoring Petitioner's online communications and activities and keeping a vigilance at the high school where he taught.

33. During the course of the investigation, law enforcement learned that Petitioner had committed no crimes, had no history of violence or any criminal activity and had no prior contact with any of the local police agencies involved.

34. On January 18, 2013, though Petitioner had concededly committed no crime, Chief Ryan determined that his agency would make contact with Heller when he was on his way home from work in the afternoon.

35. The police tailed Petitioner as he left work that day, but, instead of immediately returning home from work, Petitioner returned to Precision Armory to look into purchasing a .22 caliber rifle he had been researching – a Ruger 10/22, which has removable barrel, making it an ideal survival gun as Petitioner felt was perfect for hunting small game.

36. When he inquired about the gun, the salesperson at the store told Petitioner the gun would likely soon be illegal because it had a ten round magazine, but that he could legally purchase it

now and, if he did, legally own it even if purchasing it would later be outlawed. Petitioner decided against purchasing a gun under such circumstances. Having made no purchase, Petitioner left to go home.

37. About a mile or so after exiting the highway, Petitioner was pulled over by multiple police vehicles.

38. Chief Ryan approached Petitioner's car and told him, "We know you don't understand what's going on right now, but I need you to cooperate because I'm the only friend you have right now." He asked if Petitioner if he had any weapons, and Petitioner responded he did not and, upon request, allowed the police to search his car.

39. Ryan then asked Heller to exit the car and Petitioner complied. After the police frisked Petitioner and searched his car, Ryan asked if they could go to his house to talk and Petitioner agreed.

40. When they arrived at Petitioner's home, there were approximately eight law enforcement personnel there. They entered the house, sat in the living room and started to talk and, as they did so, Ryan sent officers to "secure" Petitioner's guns.

41. Ryan told Petitioner of the FBI informant and their concern about his recent behaviors – e.g., his internet writings, that he had stopped going to the gym and that he was becoming less social at school.

42. Ryan asked Petitioner about his relationship with his family, whether he was suicidal, whether he had recently changed his habits and whether he was recently sick.

43. Petitioner was calm, friendly and receptive, answered all of Ryan's questions fully and cooperated with the interrogation. He told Ryan that his family was not particularly close and that he was not suicidal.

44. Ryan told Petitioner that he wanted Petitioner to go with him to the hospital for an evaluation.

45. Petitioner agreed to go with the police after Ryan told him, "I think that it's best for your job and its best for your standing in the community" if he did so.

46. Petitioner travelled with Ryan in an unmarked car to Westchester Medical Center ("WMC") in Valhalla, New York and, upon arrival, was brought to the Behavior Health Unit.

47. As Petitioner waited to be seen, Chief Ryan spoke with the doctors and hospital staff for about an hour.

48. Next, Petitioner was interviewed for about 40 minutes by a case manager, Sorin Saladie, who did not illuminate for Petitioner why he was there.

49. Before the doctors could continue with the psychiatric evaluation processes, they took Petitioner for a medical evaluation and determined that his pulse was high and that he needed to be admitted to the medical emergency room.

50. Initially, Petitioner resisted because he felt fine, but after the police and Saladie persuaded him it would be in his best interest to follow their directives, he agreed and was placed in ambulance and brought to the ER.

51. Upon arriving at the ER, the doctors diagnosed Petitioner with tachycardia, which is a fast pulse. They started an IV and gave him medication to treat the condition.

52. Chief Ryan then came to Petitioner's room and the two talked. Ryan told Petitioner that he was not permitted to leave

53. Petitioner remained in the medical ER from January 18, 2013 through January 23, 2013.

54. On January 23, 2013, Petitioner was transferred to the Behavioral Health Unit, where he was involuntarily committed and, over the course of a week, was seen by many doctors.

55. Finally, on January 30, 2013, Petitioner was evaluated by a number of doctors, including Dr. Mitchell Nobler, who met with for about an hour and, ultimately, signed off on Petitioner's discharge that day, providing Petitioner with a letter clearing him to return to work.

56. After his discharge, Petitioner emailed Superintendent Hochman on January 30, 2013, attaching Dr. Nobler's clearance letter advising that he could return to work on February 11, 2013.

The Section 913 Evaluation

57. By letter dated February 7, 2013, Dr. Hochman directed Petitioner to undergo a psychiatric evaluation pursuant to Section 913 of the New York State Education Law.

58. Petitioner complied and, on April 5, 2013, met with Dr. Alexander Lerman for the first of two interviews. The second interview occurred on May 9, 2013. As permitted by statute, Petitioner's then-attorney Michael Carr accompanied him to both interviews.

59. On Saturday morning April 6, 2013, at Lerman's direction, Heller took a computerized MMPI personality test. Petitioner's friend, Stefan Feldman, accompanied him to this test, where it took Petitioner about 35-40 minutes to complete the MMPI.

60. During both interviews, Petitioner was calm and alert and answered each of Dr. Lerman's questions directly. He cooperated fully with the process.

The Disciplinary Charges and Hearing

61. By letter dated June 21, 2013 to the District Clerk of the Board, pursuant to New York Education Law § 3020-a, Superintendent Hochman proffered two disciplinary Charges against Mr. Heller, each with five Specifications.

62. The first Charge is labeled “Misconduct/Conduct Unbecoming a Teacher” and alleges: “You have failed to cooperate with an investigation of your mental fitness pursuant to Local [sic] 913 of the New York Education Law.”

63. This charge initially contained five specifications – the first two related to Mr. Heller’s alleged failure to timely execute medical release forms (Specification 1) and schedule an examination with Dr. Lerman (Specification 2) as directed; the last three allege, generally, that Mr. Heller made intentionally false statements during Dr. Lerman’s evaluation about various subjects (Specification 3), gave intentionally false answers on the MMPI test (Specification 4) and, by his non-cooperation, frustrated the purpose of the Section 913 evaluation (Specification 5). On the first day of the hearing, the District voluntarily dismissed the first two Specifications of this Charge.

64. The second Charges is labeled “Incompetence to Work as a Teacher Due to Mental Illness” and alleges: “Due to an apparent mental illness, it would create an undue risk to the safety of the students and faculty of the Bedford Central School District if you were permitted to return to your duties.”

65. The five underlying Specifications allege, generally, that:

- a. As determined by Dr. Lerman, Mr. Heller likely suffers from a serious mental illness and that his fitness to return to the classroom depends on his willingness to receive psychiatric treatment he is not willing to receive;
- b. Dr. Lerman was unable to conclude whether Mr. Heller presents a risk to others because Mr. Heller failed to cooperate with the evaluation and, thus, it must be assumed that Mr. Heller presents such a risk;

- c. Mr. Heller expressed in an internet communication that he wanted to “kill people”;
- d. Mr. Heller expressed in an internet communication that he believed the U.S. government programmed the Newtown school shooter, which indicates that he might feel compelled to commit a similar act; and
- e. As determined by Dr. Lerman, Mr. Heller has not cooperated with efforts to treat his mental illness.

66. Dr. Hochman recommended to the Board a penalty of dismissal should Petitioner fail to request a hearing or if one or more of these charges are sustained.

67. Mr. Heller timely requested a hearing on the Charges by a sole hearing officer and a hearing ensued, the Honorable Jeffery Sherman, Esq. presiding as Hearing Officer.

68. Between December 2, 2013 and February 25, 2014, six witnesses gave testimony over the course of eight days (two appearances of which were telephonic). The record consists of a 1,672 page transcript and approximately 40 exhibits.

The Hearing Officer’s Decision

69. On May 12, 2014, the Hearing Officer issued his Decision, which sustained each and every charge and specification and imposed the penalty of discharge.

70. No prior application has been made for the relief now requested.

AS AND FOR A FIRST CAUSE OF ACTION

71. Petitioner realleges and incorporates herein by reference each and every allegations set forth in paragraphs 1 through 70 above.

72. The record does not support a finding that Mr. Heller failed to cooperate with the Section 913 evaluation process.

73. The record does not support a finding that Mr. Heller made intentionally false statements to Dr. Lerman about (a) whether he had experienced depression or emotional distress in recent months; (b) the nature and circumstances of his recent firearms purchases; (c) the circumstances of his childhood family life; (d) his history of drug use; (e) his history of psychiatric treatment; (f) his history of suicidal ideation; or (g) the circumstances of his recent hospitalization.

74. The record does not support a finding that Mr. Heller gave intentionally false answers to a significant number of questions on the MMPI test.

75. The record does not support a finding that Mr. Heller failed to cooperate with Dr. Lerman such that he caused Dr. Lerman to be unable to determine to what extent he is or is not fit to return to work as a teacher or that he intentionally frustrated the Section 913 evaluation process.

76. The record does not support a finding that he suffers from an apparent mental illness that renders him an undue risk to the safety of the Bedford Central School District.

77. The record does not support a finding that Mr. Heller suffers from a serious mental illness, including delusions of thought control, feelings of helplessness and anger, thoughts of suicide, a paranoid thought disorder, and high risk for further deterioration and possible suicide, with the possibility of an acute risk to the safety of others.

78. The record does not support a finding that Mr. Heller's fitness to function in a classroom setting depends upon his willingness to undergo sustained, intensive psychiatric treatment that he is unwilling to undergo.

79. The record does not support a finding that Mr. Heller failed to cooperate with Dr. Lerman such that his noncooperation caused Dr. Lerman to be unable to assess the risk he poses to others or that he poses such risk.

80. The record does not support a finding that Mr. Heller expressed a genuine desire to “kill people” or that any comments he may have made to a friend during the course of a private conversation establish that he poses a risk to the safety of others.

81. The record does not support a finding that Mr. Heller believes that his mind is subject to control or that he might be compelled by such mind control to commit violent acts in the future.

82. The record does not support a finding that Mr. Heller failed to cooperate with efforts to treat his illness in more than a superficial fashion.

83. The Hearing Officer’s decision is infirm for numerous reasons, including:

- a. It fails to comply with State Education Department regulations requiring findings of fact to be stated with respect to each charge;
- b. It ignores significant portions of the record;
- c. It is based, in large part, upon matters outside of the record;
- d. It is internally inconsistent in many respects;
- e. It sustains overly general and vague specifications; and
- f. It lacks a sound basis in fact.

84. Accordingly, the decision is arbitrary and capricious, lacks evidentiary support and violates due process.

PRAYER FOR RELIEF

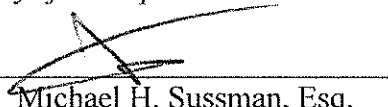
WHEREFORE, Petitioner respectfully requests that this Court enter an order vacating the decision and award of the hearing officer in the underlying N.Y. Education Law § 3020-a proceeding and grant such further relief it deems just, proper and equitable.

Dated: Goshen, New York
May 22, 2014

Respectfully submitted,

SUSSMAN AND WATKINS
Attorneys for Respondent Adam B. Heller

By: _____


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VERIFICATION

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

Adam B. Heller, being duly sworn, deposes and says as follows:

I am the Petitioner in the within action. I have read the annexed Verified Petition, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.


Adam B. Heller

Sworn to before me this
21st day of May, 2014.



Notary Public

CHRISTOPHER D. WATKINS
Notary Public, State of New York
No. 02WA6124421
Qualified in Ulster County
Commission Expires March 28, 2017