

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> BRIAN ROSS		<b>DEFENDANTS</b> THE NEW YORK CITY DEPARTMENT OF EDUCATION, BETH LUBECK-CEFFALIA, STEPHANIE KOROTZ and DANIELLE SANTORO	
<b>(b) County of Residence of First Listed Plaintiff</b> <u>SUFFOLK</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant <u>KINGS</u> (IN U.S. PLAINTIFF CASES ONLY)	
<b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> LEEDS MORELLI & BROWN, PC ONE OLD COUNTRY ROAD, SUITE 347 CARLE PLACE, NY 11514 (516) 873-9550		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  Attorneys (If Known)	
<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)	
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input checked="" type="checkbox"/> 6
<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)			
<b>CONTRACT</b>		<b>TORTS</b>	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	
<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	
<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		<b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party		<b>BANKRUPTCY</b> <input type="checkbox"/> 28 USC 158 <input type="checkbox"/> 423 Withdrawal  <b>DISBURSEMENTS</b> <input type="checkbox"/> 28 USC 157	
<b>DISBURSEMENTS</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes		<b>OTHER STATUTES</b> <input type="checkbox"/> 7	
<b>V. ORIGIN</b> (Place an "X" in One Box Only)			
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <b>42 U.S.C 1983, 28 U.S.C SECTION 1331 &amp; 1343 (a)(3)</b>			
Brief description of cause: civil rights			
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ <i>To be determined</i> <b>URGENCY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>VIII. RELATED CASE(S) IF ANY</b>		(See instructions): JUDGE	DOCKET NUMBER
DATE	SIGNATURE OF ATTORNEY OF RECORD		
10-26-10	<i>[Signature]</i>		
FOR OFFICE USE ONLY			
RECEIPT #	AMOUNT	APPLYING IFFP	JUDGE
		MAG. JUDGE	

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

BRIAN ROSS

)

*Plaintiff*

)

v.

)

THE NEW YORK CITY DEPARTMENT OF  
EDUCATION, BETH LUBECK-CEFFALIA, et. al,

Civil Action No.

*Defendant*

)

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* SEE THE ATTACHED: DEFENDANT SHEET

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

Brian Ross v. The New York City of Department of Education, et. al.

**Defendants' List**

The New York City Department of Education  
52 Chambers Street  
New York, NY 10007.

Beth Lubeck-Ceffalia, Principal  
Public School 132, The Conselyea School  
320 Manhattan Avenue  
Brooklyn, NY 11211

Stephanie Korotz, Assistant Principal  
Public School 132, The Conselyea School  
320 Manhattan Avenue  
Brooklyn, NY 11211

Danielle Santoro, Assistant Principal  
Public School 132, The Conselyea School  
320 Manhattan Avenue  
Brooklyn, NY 11211

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

BRIAN ROSS,

Plaintiff,

- against -

**COMPLAINT**

THE NEW YORK CITY DEPARTMENT OF  
EDUCATION, BETH LUBECK-CEFFALIA,  
STEPHANIE KOROTZ and DANIELLE  
SANTORO, individually and in their official  
capacities,

Defendants.

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Plaintiff, Brian Ross, by his attorneys, Leeds, Morelli & Brown, P.C., complaining of the defendants herein, alleges, upon knowledge as to himself and his own actions, and upon information and belief as to all other matters:

**JURISDICTION AND VENUE**

1. This is a civil action brought pursuant to 42 U.S.C. § 1983 to redress discrimination against plaintiff in the terms, conditions and privileges of employment of plaintiff by the defendants, as well as deprivation by the defendants, under the policies, ordinances, custom and usage of all rights, privileges and immunities secured to plaintiff by the First and Fourteenth Amendment to the Constitution of the United States and all the laws and statutes thereunder, and any other cause of action which can be inferred from the facts set forth herein.
2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1331 and 1333(a)(3).
3. Venue is proper pursuant to 28 U.S.C. § 1331.

**PARTIES**

4. Plaintiff, Brian Ross ("Brian"), at all times hereinafter mentioned, was and still is a resident of the State of New York, County of Suffolk.
5. Defendant The New York City Department Of Education ("DOE") at all times hereinafter mentioned, was and still is an agency of the State of New York and is a public employer with a principal place of business at 52 Chambers Street New York, NY 10007.
6. Defendant Beth Lubeck-Ceffalia ("Lubeck") is the principal of Public School 132, The Conselyea School, where Brian is employed.
7. Lubeck was responsible for Public School 132, its maintenance and operation, including, but not limited to, the hiring, firing, promotion and discipline of employees and all other employment related issues. Additionally, defendant Lubeck is a policymaker for the DOE, charged with the responsibility of ensuring that employees were not subjected to unlawful retaliation or harassment.
8. Defendant Stephanie Korotz ("Korotz") is the Assistant Principal of Public School 132, The Conselyea School, where Brian is employed.

9. Korotz was responsible for Public School 132, its maintenance and operation, including, but not limited to, the hiring, firing, promotion and discipline of employees and all other employment related issues. Additionally, defendant Korotz was a policymaker for the DOE, charged with the responsibility of ensuring that employees were not subjected to unlawful retaliation or harassment.

10. Defendant Danielle Santoro (“Santoro”) is the Assistant Principal of Public School 132, The Conselyea School, where Brian is employed.

11. Santoro was responsible for Public School 132, its maintenance and operation, including, but not limited to, the hiring, firing, promotion and discipline of employees and all other employment related issues. Additionally, defendant Santoro was a policymaker for the DOE, charged with the responsibility of ensuring that employees were not subjected to unlawful retaliation or harassment.

#### **BACKGROUND FACTS**

12. Brian has been a physical education (“P.E.”) teacher at Public School 132, The Conselyea School, since 2005.

13. Throughout his tenure, Brian received positive evaluations, was never cited for any significant disciplinary issues, was well liked by his fellow teachers, and has been a favorite among his students.

14. On April 23, 2010, Brian was informed by Santoro and Korotz that he would be teaching

P.E. to his students in a building known as "The Settlement House" effective April 26, 2010.

15. Brian expressed several concerns to Santoro, including the Settlement House's lack of security, lack of medical equipment or an on-site nurse, lack of a communication system (phone/P.A. system) for emergencies, as well as a lack of an escape or fire drill plan.
16. Additionally, to make use of The Settlement House, students between the ages of three and ten would have to walk outside of school for three blocks, across several side streets and a busy road, rain or shine.
17. On April 26, 2010, Brian found that The Settlement House was dilapidated, dirty and contained many unsafe and unhealthy conditions including, but not limited to, what appeared to be peeling lead paint and asbestos.
18. On April 26, 2010, Brian met with Santoro regarding the dangerous conditions in The Settlement House.
19. Santoro dismissed Brian's concerns without making any effort to investigate the situation.
20. On April 26, 2010, after failing to receive assistance from Santoro, Brian complained to his Union and submitted pictures detailing the hazardous conditions at The Settlement House.
21. On April 27, 2010, Brian met with Lubeck and advised her that he was concerned about the

health and safety of his students because of the state of disrepair and other dangers existing at The Settlement House.

22. Brian also informed Lubeck that he was having respiratory symptoms from exposure to the conditions in the building.

23. Lubeck stated that Brian had not given the building a fair evaluation and that she did not want him making a big deal about the conditions at The Settlement House.

24. Lubeck relieved Brian of his teaching duties for the remainder of the day (assigning a substitute teacher take over his classes) and told Brian to decide whether or not he wanted to continue to teach P.E. at P.S. 132.

25. On April 27, 2010 fearing for the health and safety of his students, Brian filed an anonymous complaint with the Occupational Safety and Health Administration (“OSHA”).

26. While Brian’s complaint was submitted anonymously, several factors made it apparent that Brian was the employee who complained including, but not limited to, Brian’s previous complaints to administrators, his union, the complaints’ focus on the gym area as well as photos of the unsafe conditions in the gym taken in the presence of other faculty personnel.

27. Since that time, Brian has been subjected to a pervasive pattern of adverse employment actions in retaliation for speaking out regarding a matter of public concern.

28. Lubeck and other administrators have fabricated unsupported disciplinary allegations against Brian and, despite the fact that Brian has categorically denied any wrong doing, entered the charges into his file on several occasions without any investigation.

29. On April 30, 2010, Brian received an email from Korotz alleging that he was not allowing his students sufficient access to water or restrooms, despite the fact that the same policy regarding restroom and water breaks had been in place for five years.

30. On May 5, 2010, Brian was confronted by Fortune Tramonte ("Tramonte") (Testing Coordinator) and ordered, without any justification, to proctor a morning exam and cover other teachers' preparation periods.

31. While Brian was relegated to the duties of a substitute teacher, Mike Ferarra ("Ferarra"), a substitute P.E. teacher taught Ross' scheduled P.E. classes.

32. On May 6, 2010, Tramonte directed Brian to sit in the hallway during an exam instead of performing his usual teaching duties even though all of the monitoring stations were already covered by support personnel.

33. On May 6, 2010, Brian was ordered to cover three teachers' preparation periods while, once again, Ferarra taught his regular P.E. classes.

34. On May 7, 2010, Brian received a letter informing that he was being observed on May 20, 2010 despite the fact that he had not required an observation since March 27, 2007.

35. On May 11, 2010, without consulting Brian, Lubeck ordered six female students that did not have sneakers and 3 male students who had been given a 3 minute time-out due to inappropriate behavior to report to Santoro's office.

36. The students returned with Santoro soon after and Santoro told Lubeck, “[s]ee I got my detective pad.”

37. On May 12, 2010, Brian attended a meeting with Lubeck where Lubeck accused him of removing the three male students from class for talking, not unsafe behavior, as was actually the case.

38. Lubeck informed Brian that she was placing a disciplinary letter in his file regarding his failure to properly implement the school's disciplinary policies.

39. On or about May 20, 2010, OSHA shut down The Settlement House. These violations included the presence of lead paint and asbestos.

40. On May 28, 2010, Brian received a letter directing him to attend a meeting at 10:30 that day and stated that he could have a union representative present.

41. Brian asked Korotz the purpose of the meeting and she immediately accused Brian of giving his entire class a time-out instead of punishing individual students and referenced several alleged parent complaints including, but not limited to, an allegation that Brian was using his cell phone while supervising students.

42. On June 2, 2010, Brian met with Korotz and was told that he would be receiving another disciplinary letter for sitting his entire class out of an activity, despite the fact that the school behavior policy was to punish the class as a whole.

43. Korotz gave Brian two anonymous emails, allegedly from parents, complaining about Brian but would not provide any details when Brian questioned their validity stating that the facts were “confidential.”

44. Brian stated that he did not know how valid the emails were and Korotz replied, “You mean just like the pictures you took?” making an obvious reference to the photographs that Brian had submitted to OSHA.

45. On or around June 3, 2010, Rosemarie Conroy (Spanish teacher), Mina Dye (Computer teacher), David Seidner (Music teacher) and Heather deKoning (Art teacher) informed Brian that they had their own disciplinary policies and were never confronted by administrators for not implementing the school’s discipline policy.

46. On June 7, 2010, Brian attended another disciplinary meeting where Lubeck informed him

that a parent had allegedly observed Brian texting while he was supervising a class.

47. Brian denied the texting accusation noting that, to observe him texting, the parent would have had to look through two fences from over 100 yards away, however Lubeck refused to believe Brian and informed him that she would be interviewing two paraprofessionals to corroborate his story.

48. On June 9, 2010, Brian received another letter from Lubeck dated June 7, 2010, the same day as their last meeting, stating that a new disciplinary letter was being placed in his file regarding the alleged texting incident.

49. The letter did not mention anything about the alleged interviews with the paraprofessionals which, upon information never occurred.

50. On June 17, 2010, Brian received an email from Virginia Matthews (“Matthews”) (District 14 Athletic Director) indicating that Santoro had questioned her regarding parent questions about Brian’s fitness reports and was attempting to ascertain whether Brian imputed data on the forms incorrectly.

51. In previous years Santoro had confronted Brian directly regarding parent questions about fitness reports.

52. On June 21, 2010, James Quail (“Quail”) (Superintendent) contacted Ira Munet (a Union

Representative) saying that Lubeck was willing to give Brian a Satisfactory Rating for the year if Brian agreed, in writing, that he would resign his position at Public School 132.

53. On June 22, 2010, Santoro informed Brian that he was given an unsatisfactory lesson evaluation and presented him with an observation report containing falsehoods and misrepresentations about Brian's lesson.

54. On June 22, 2010 Munet advised Brian to meet with him and Lubeck to enter into some kind of agreement regarding his evaluation and position at the school, and Brian reluctantly agreed to a meeting.

55. On June 23, 2010, before a meeting could take place, Brian officially received an unjustified unsatisfactory rating on his end of the year evaluation for the 2009/10 school year, freezing his salary.

56. On June 30, 2010, Munet told Brian that he could not appeal his unsatisfactory year-end rating until after he grieved all the letters in his file.

57. Brian returned to work on September 7, 2010, after summer vacation.

58. Upon returning, Brian was informed that the behavior policy that he had been disciplined for allegedly violating had only now been made mandatory.

59. Moreover, Brian was informed that a second teacher that was not certified in P.E. would be “team teaching” all of his classes.

60. On September 15, 2010, Brian got official confirmation from the DOE that he would not be receiving his pay raise for the 2010/11 school year as a result of the unsatisfactory rating.

61. On September 20, 2010, Brian was chastised by Santoro for following established school policy by sending a child with a naturally occurring bloody nose to the nurse with a partner.

62. Later, Brian received a letter admonishing him for not personally administering first aid, for not having paper towels available, for not sending a note to the nurse with the bleeding student, and for sending only one partner to escort the student to the nurse.

63. In the past, Brian had been expressly instructed to never administer first aid and send the children to the nurse immediately.

64. Moreover the gym is the only room in the school that is not equipped with a paper towel or tissue dispenser.

65. Further, to take the time to write a note to the nurse when a child was suffering from a nose bleed seemed imprudent.

66. Finally, school policy dictated that the injured student be sent to the nurse with one escort.

67. On September 22, 2010, Brian was advised by the payroll secretary that Lubeck had accused him of leaving before dismissal and ordered his time card pulled and copied.

68. When Lubeck entered the office, Brian denied that he had left early to which Lubeck replied, “[w]hatever Brian, I don't care” and walked away.

69. On September 30, 2010, Brian met with Lubeck and was accused of moving his time card early and told that another disciplinary letter was being placed in his file.

70. On October 1, 2010, Brian was informed by another teacher that a student alleged that Brian denied him permission to use the bathroom.

71. Brian asked the student about the incident and the student said he did ask Brian for permission, but believed that Brian did not hear him and that he did not repeat his request.

72. On October 7, 2010, a disciplinary letter generated after Brian's September 30, 2010 meeting with Lubeck was added to his permanent record.

73. On October 7, 2010, Brian was informed at the last possible moment that the gym would be occupied for an assembly and that he would have to teach P.E. in a classroom with Lubeck observing his lesson.

74. At one point, a fifth grade boy was gently tapped in the cheek with the bean bag. The boy said that he was fine, but Lubeck immediately stopped the lesson. Lubeck repeatedly asked the child if he was "OK," and the child repeatedly said "yes." Finally, Lubeck said, "[a]re you sure that's not a mark on your face?" and sent the child to the nurse.

75. Lubeck asked the children how this game relates to their P.E. curriculum and they gave answers including "working together," and "sharing and eye/hand coordination."

76. Lubeck then reminded the students that the P.E. curriculum for this period was supposed to involve dance and chastised Brian in front of the class about his lessons not being relevant to the unit.

77. Comparatively, Brian's co-teacher taught a lesson to the other fifth grade class in another classroom that also did not relate to the dance unit and did not receive any admonishments.

78. Lubeck ordered Brian to complete an accident report about the child who was sent to the nurse and confiscated the beanbags claiming that "these are not soft balls" despite the fact that they were animal shaped soft beanbags made for elementary children.

79. On October 13, 2010, Brian met with Lubeck to discuss the allegations regarding his denial of bathroom privileges to a student on September 30 and her informal observation of his class on October 7.

80. Lubeck informed Brian that she had witness statements documenting that he denied the student access to the restroom, however these turned out to be statements from the student and the student's mother who was not present at the time of the alleged incident.

81. Lubeck informed Brian that she would be placing another disciplinary letter into his file regarding this incident.

82. Lubeck then informed Brian that the lesson she informally observed was unsatisfactory due to not involving dance and being unsafe.

83. Brian reminded Lubeck that he had received the beanbags from the DOE directly and that, without prior notice, the lesson was moved from the gym and into a classroom with insufficient room to teach a dance lesson.

84. Lubeck dismissed Brian's explanations and informed him that she would be scheduling several more observations and sending Brian to other schools to observe other Physical Education teachers to see what a satisfactory lesson entailed.

85. As a direct and proximate result of the aforementioned retaliation, Plaintiff was caused to suffer loss of earnings, accrued benefits, in addition to suffering great pain, humiliation, as well as physical and emotional damages.

CAUSES OF ACTION AGAINST THE DOE

86. Defendants' have, while acting under color of state law, deprived plaintiff of his constitutional rights, as secured by the First and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. § 1983, and all related provisions of the New York State Constitution. Defendants intentionally committed, condoned or were deliberately indifferent to the aforementioned violations of plaintiff's constitutional rights. Such deliberate indifference may be inferred in the following ways:

- (a) Defendants custom or practice of discriminating and/or retaliating against plaintiff based on his constitutionally-protected forms of speech, expression and association. The discriminatory practices were so persistent and widespread that they constitute the constructive acquiescence of policymakers.
- (b) Supervisors failed to properly investigate and address allegations of retaliation and/or harassment.
- (c) Inadequate training/supervision was so likely to result in the retaliation, and/or harassment that policymakers can reasonably be said to have been deliberately indifferent to the need to provide better training and supervision.
- (d) Policymakers engaged in and/or tacitly condoned the retaliation.

#### **CAUSES OF ACTION AGAINST THE INDIVIDUAL DEFENDANTS**

87. The individual defendants unlawfully participated in and/or permitted the aforementioned harassment and/or retaliation to perpetuate, without abatement, in violation of plaintiff's constitutional and statutory rights pursuant to 42 U.S.C. § 1983.

88. As a direct and proximate result of the aforementioned retaliation, the defendants caused plaintiff to suffer loss of earnings, accrued benefits, in addition to suffering great pain, humiliation, as well as physical and emotional damages. The individuals are also subject to punitive damages for their violations of 42 U.S.C. § 1983.

WHEREFORE, plaintiff demands judgment against the defendants, where applicable, in the amount off fifteen million (\$15,000,000.00) dollars, for all compensatory, emotional, and physical damages, lost compensation, front pay, injunctive relief, punitive and any other damages permitted by law. It is further requested that this Court grant reasonable attorneys' fees and the costs and disbursements of this action and any other relief to which plaintiff is entitled. Punitive damages are sought only against the individual defendants. Plaintiff demands a trial by jury.

Dated: Carle Place, New York  
October 27, 2010

Respectfully submitted,

LEEDS MORELLI & BROWN, P.C.  
Attorneys for Plaintiff  
One Old Country Road, Suite 347  
Carle Place, New York 11514  
(516) 873-9550

By:   
Jeffrey K. Brown (JB5177)