

NEW YORK CITY RUBBER ROOMS:  
THE LEGALITY OF TEMPORARY REASSIGNMENT  
CENTERS IN THE CONTEXT OF TENURED TEACHERS'  
DUE PROCESS RIGHTS

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May 14, 2009

## I. INTRODUCTION

Jago Cura, a 32 year-old English teacher, was three months into his teaching assignment in the New York City Public School District (“the District”) when he was assisting students in his class with a group project.<sup>1</sup> For no discernible reason, he began to lose control of his students and the class environment turned chaotic.<sup>2</sup> Unable to deal with the stress, Cura began screaming and cursing at his students and, shortly after that, picked up a chair and flung it toward a blackboard.<sup>3</sup> The chair bounced off the blackboard and grazed a student.<sup>4</sup> After a moment, Cura realized what he had done and left the classroom.<sup>5</sup> The day after this incident, the principal of Cura’s school instructed him to go to a Department of Education building for work instead of his classroom to teach.<sup>6</sup> Unbeknownst to him at the time, Cura was being sent to a Temporary Reassignment Center, or what teachers within the District have termed, a “rubber room.”<sup>7</sup>

Rubber rooms are Department of Education facilities throughout the District that serve as a type of holding facility where teachers awaiting investigations or hearings involving alleged mishaps are sent for an indefinite period of time. This paper analyzes the legality of rubber rooms as a form of re-assignment for teachers that have allegedly engaged in misconduct, in light of a teacher’s tenure rights and right of due process. Part II provides an overview of the New York City Public School District and the District’s unique method

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<sup>1</sup> *This American Life: Human Resources* (Chicago Public Radio broadcast Feb. 29, 2008, [http://www.thisamericanlife.org/Radio\\_Episode.aspx?sched=1286](http://www.thisamericanlife.org/Radio_Episode.aspx?sched=1286)).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

for dealing with alleged teacher infractions.<sup>8</sup> Part III discusses the rights and responsibilities of teachers in public schools, specifically with regard to tenure and a teacher's due process rights.<sup>9</sup> Part IV concludes with an analysis of rubber rooms in the context of teachers' rights to determine whether rubber rooms are a violation of due process.<sup>10</sup> While it is clear that the practice of rubber rooms are a harsh and, at times, excessive action against teachers, New York state law regarding tenure and due process provides little assistance to teachers looking for legal avenues to address this method utilized by the District for dealing with allegations of teacher misconduct.

## II. THE DISTRICT AND RUBBER ROOMS

The District educates the largest number of students in the country with a population of over 1.1 million k-12 students.<sup>11</sup> Those students are educated by almost 80,000 teachers and the District has an annual budget nearing \$21 billion.<sup>12</sup> The District is, without question, the largest public school district in the country.<sup>13</sup> The Board of Education is charged by law with the superintendence, management and control of the District's educational affairs.<sup>14</sup> In June 2002, the State Legislature granted Mayor Michael Bloomberg control of the school system and, using that power, he subsequently appointed Joel Klein to be Chancellor.<sup>15</sup> One issue the new governing mechanism sought to address was the tenure

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<sup>8</sup> See *infra* Part II (discussing the New York City public school district and rubber rooms).

<sup>9</sup> See *infra* Part III (providing an overview of federal and New York state law on tenure and due process rights).

<sup>10</sup> See *infra* Part IV (analyzes rubber rooms in terms of the extent to which they violate a teacher's due process rights).

<sup>11</sup> New York City Dep't of Educ., Statistics (*available at* <http://schools.nyc.gov/AboutUs/default.htm>).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> N.Y. EDUC. LAW § 1709(33) (2002).

<sup>15</sup> Jennifer Steinhauer, "The New Schools Chancellor: Overview," N.Y. TIMES, July 20, 2002, at A1; *see also*, "Mayoral Control of City Schools," N.Y. TIMES, June 7, 2002, at Editorial.

of the District's educators.<sup>16</sup> Tenured teachers in New York City public schools are notoriously difficult to remove, due to union contracts and state labor laws.<sup>17</sup> Mayor Bloomberg and others viewed the "Temporary Reassignment Centers" as tools in dealing with teachers accused of wrongdoing at their schools.<sup>18</sup> Though rubber rooms were in existence prior to the 2002 re-organization, their use and the number of teachers placed for reassignment to rubber rooms has drastically increased.<sup>19</sup>

There are approximately a dozen rubber rooms in the District, holding 700-800 teachers at any given time.<sup>20</sup> Teachers are sent to the rubber rooms to await investigation or disciplinary hearings on offenses ranging from excessive lateness to sexual misconduct.<sup>21</sup> They receive their full salaries during their time in the rubber room.<sup>22</sup> The atmosphere in the rooms is highly territorial due to limited space and the rooms are usually, by the occupants choice, racially segregated and noisy.<sup>23</sup>

Dan Weisburg, the chief executive of labor policy for the New York City Department of Education, acknowledges the existence of these "temporary reassignment centers."<sup>24</sup> He argues that school officials are working with something very distinct, namely the safety and well-being of children, therefore the benefit of the doubt must go to the kids

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<sup>16</sup> Elissa Gootman, "A New Effort to Remove Bad Teachers," N.Y. TIMES, Nov. 15 2007, at B1.

<sup>17</sup> *Id.*

<sup>18</sup> Samuel Freedman, "Where Teachers Sit, Awaiting their Fates," N.Y. TIMES, Oct. 10, 2007, at B7.

<sup>19</sup> David Herszenhorn, "Failing Teachers Face a Faster Ax," N.Y. TIMES, Jan. 15, 2004, at A1.

<sup>20</sup> Samuel Freedman, "Where Teachers Sit, Awaiting their Fates," N.Y. TIMES, Oct. 10, 2007, at B7.

<sup>21</sup> Erin Einhorn, "Teacher in trouble spending years in 'rubber room' limbo that costs \$65M," Daily News, May 4, 2008 (*available at*

[http://www.nydailynews.com/ny\\_local/education/2008/05/04/2008-05-04\\_teachers\\_in\\_trouble\\_spending\\_years\\_in\\_ru.html?print=1&page=all](http://www.nydailynews.com/ny_local/education/2008/05/04/2008-05-04_teachers_in_trouble_spending_years_in_ru.html?print=1&page=all))

<sup>22</sup> Samuel Freedman, "Where Teachers Sit, Awaiting their Fates," N.Y. TIMES, Oct. 10, 2007, at B7.

<sup>23</sup> *This American Life: Human Resources* (Chicago Public Radio broadcast Feb. 29, 2008, [http://www.thisamericanlife.org/Radio\\_Episode.aspx?sched=1286](http://www.thisamericanlife.org/Radio_Episode.aspx?sched=1286)).

<sup>24</sup> *Id.*

when faced with allegations of teacher misconduct.<sup>25</sup> In addition, Michael Best, the Department of Education's top lawyer stated, "I'm not sitting here telling you that I think this is an ideal system. But given the realities of the cumbersome state laws and [union] contracts ... we're in a position where we need to balance our obligation to safeguard children with our legal obligation for fairness to teachers."<sup>26</sup>

It is uncertain how much time a teacher can spend in the rubber room. An Education Department study found that the average accused educator waits four months for formal charges to be brought, then nine months for a hearing and six more for a decision.<sup>27</sup> School officials say that teachers in the rubber room are already under investigation or at some stage of the disciplinary process.<sup>28</sup> Teachers' union officials say that many teachers have had no charges filed against them and are, at times, unaware of precisely why they are in the rubber room at all.<sup>29</sup> In Mr. Cura's case, his time in the rubber room was just under two weeks due to the help of his principal in speeding up the investigation process and placing Mr. Cura back in his classroom.<sup>30</sup> However, there have been teachers that have spent years in the rubber room awaiting charges for their alleged infractions. Possibly the longest-serving teacher in a rubber room has spent 5-1/2 years there on allegations of sexual abuse of a student.<sup>31</sup> This accused teacher is one of seven individuals who have been permanently

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<sup>25</sup> *This American Life: Human Resources* (Chicago Public Radio broadcast Feb. 29, 2008, [http://www.thisamericanlife.org/Radio\\_Episode.aspx?sched=1286](http://www.thisamericanlife.org/Radio_Episode.aspx?sched=1286)).

<sup>26</sup> Erin Einhorn, "Teacher in trouble spending years in 'rubber room' limbo that costs \$65M," Daily News, May 4, 2008 (*available at* [http://www.nydailynews.com/ny\\_local/education/2008/05/04/2008-05-04\\_teachers\\_in\\_trouble\\_spending\\_years\\_in\\_ru.html?print=1&page=all](http://www.nydailynews.com/ny_local/education/2008/05/04/2008-05-04_teachers_in_trouble_spending_years_in_ru.html?print=1&page=all))

<sup>27</sup> *Id.*

<sup>28</sup> Elissa Gootman, "A New Effort to Remove Bad Teachers," N.Y. TIMES, Nov. 15 2007, at B1.

<sup>29</sup> *Id.*

<sup>30</sup> *This American Life: Human Resources* (Chicago Public Radio broadcast Feb. 29, 2008, [http://www.thisamericanlife.org/Radio\\_Episode.aspx?sched=1286](http://www.thisamericanlife.org/Radio_Episode.aspx?sched=1286)).

<sup>31</sup> Erin Einhorn, "Teacher in trouble spending years in 'rubber room' limbo that costs \$65M," DAILY NEWS, May 4, 2008 (*available at*

assigned to a rubber room because although they have not been convicted, school officials say their alleged offenses were too awful to risk letting them near the students.<sup>32</sup> Moreover, your time as a teacher in no way corresponds to the time you will be spend reassigned to the rubber room. One rubber room occupant was a teacher for only one month, yet spent four months in the rubber room.

Misconduct by a tenured educator in the District presents a specific administrative problem due to the extensive effort and evidence that is necessary to even consider bringing charges against a tenured educator. Rubber rooms are viewed by the Department of Education as a valid method to deal with teacher infractions by tenured educators when the investigation process can be long and cumbersome.<sup>33</sup> Yet, these reassignment facilities raise substantial concerns when considering the rights of teachers to maintain their employment and to be given just cause for any action by the District that is seen as disciplinary.

### III. THE RIGHTS OF TEACHERS: DUE PROCESS & TENURE

State law governs the regulation of the terms and conditions of a teacher's employment.<sup>34</sup> Accordingly, state legislatures have defined the process by which a teacher is hired, evaluated, retained, tenured, and dismissed.<sup>35</sup> Teachers, especially tenured teachers, are guaranteed certain procedural protections derived from the due process

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[http://www.nydailynews.com/ny\\_local/education/2008/05/04/2008-05-04\\_teachers\\_in\\_trouble\\_spending\\_years\\_in\\_ru.html?print=1&page=all](http://www.nydailynews.com/ny_local/education/2008/05/04/2008-05-04_teachers_in_trouble_spending_years_in_ru.html?print=1&page=all))

<sup>32</sup> *Id.*

<sup>33</sup> *See generally*, Samuel Freedman, "Where Teachers Sit, Awaiting their Fates," N.Y. Times, Oct. 10, 2007, at B7; *see also*, David Herszenhorn, "Failing Teachers Face a Faster Ax," N.Y. TIMES, Jan. 15, 2004, at A1.

<sup>34</sup> Michael Kaufman and Shereyn Kaufman, Education Law, Policy, and Practice 741 (Erwin Chemerinsky et al., eds., Aspen Publishers 2005).

<sup>35</sup> *Id.*

clause.<sup>36</sup> School districts must ensure that teachers are not subjected to any deprivation of their property interest in their continued employment or their liberty interest in maintaining their reputation for future employment.<sup>37</sup>

In New York state, Education Law § 3020, establishing the disciplinary procedures for teachers, is the exclusive method through which a tenured teacher may be disciplined.<sup>38</sup> The purpose of this provision is to protect tenured teachers from being the subject of arbitrary imposition of formal discipline by providing that “no person enjoying the benefits of tenure shall be disciplined or removed during a term of employment except for just cause” and in accordance with the procedures set forth in Education Law § 3020-a.<sup>39</sup> The statute is not to be construed to “interfere with the day-to-day operation of the educational system.”<sup>40</sup> A hearing is required before the teacher may receive a reprimand, fine, or suspension for a fixed time without pay or dismissal.<sup>41</sup> In addition, charges cannot be brought more than three years after the occurrence which is the subject of the charges, except when the charge is a crime.<sup>42</sup>

A tenured teacher has a protected property interest in his or her position, which raises due process considerations when a teacher is faced with termination of his or her employment.<sup>43</sup> However, tenure “does not entitle a teacher to a specific class or proscribe assignment to proper duties of a teacher other than classroom teaching of a specific

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> N.Y. EDUC. LAW § 3020 (2002).

<sup>39</sup> N.Y. EDUC. LAW § 3020 (2002); N.Y. EDUC. LAW § 3020-a (2002).

<sup>40</sup> *Holt v. Bd. of Educ. of Webutuck Cent. Sch. Dist.*, 52 N.Y.2d 625, 632 (App. Ct. 1981).

<sup>41</sup> N.Y. EDUC. LAW § 3020-a(4); *see also* *Tebordo v. Cold Spring Harbor Cent. Sch. Dist.*, 126 A.D.2d 542 (Sup. Ct. 2d. 1987).

<sup>42</sup> N.Y. EDUC. LAW § 3020-a(1) (2002).

<sup>43</sup> *Matter of Elmore v. Plainview-Old Bethpage Cent. Sch. Dist.*, 273 A.D.2d 307 (Sup. Ct. 2d 2000).

subject.”<sup>44</sup> A “non-teaching assignment at district headquarters, or in other school or district offices which bear reasonable relationship to the suspended teacher’s competence and training and is consistent with the dignity of the profession, is permissible.”<sup>45</sup> Where disciplinary proceedings were completed or pending, respectively, discretionary reassignment of a high school science teacher to “non-teaching duties” was not prohibited by Education Law § 3020-a and reassignment of a school administrator to the District Office did not implicate due process concerns.<sup>46</sup>

There are numerous cases in New York analyzing the legality of tenured teachers being reassigned to particular positions. For instance, cases involving the reassignment of a tenured elementary school teacher to duty as a “floating teacher” and the reassignment of a mathematics teacher to study hall supervision were upheld by state courts as proper even where there was no commencement of disciplinary proceedings.<sup>47</sup> In addition, the courts have held that lateral assignments where there is no change in job title, salary or benefits are matters of administrative discretion and hearings were not required.<sup>48</sup> In contrast, when a

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<sup>44</sup> *Matter of Adlerstein v. Bd of Educ. of the City of New York*, 64 N.Y.2d 90, 99 (App. Ct. 1984).

<sup>45</sup> *See*, *Matter of Adlerstein* at 100 (complaints by tenured art teacher and social studies teaching regarding non-teaching assignments during suspension and pending disciplinary hearing were rejected); *see also* *Brady v. A Certain Teacher*, 632 N.Y.S.2d 418 (tenured teacher reassigned to update curriculum and then directed not to return entitled to salary pending hearing and determination of disciplinary charges filed).

<sup>46</sup> *McElroy*, 783 N.Y.S.2d at 784 *citing* *Taylor v. Hammondsport Cent. Sch. Dist.* 267 A.D.2d 987 (Sup. Ct. 4th 1999); *see also* *Gray v. Crew*, 267 A.D.2d 98 (Sup. Ct. 1st 1999).

<sup>47</sup> *See*, *Mishkoff v. Nyquist*, 57 A.D.2d 649 (Sup. Ct. 3d 1977); *see also*, *Van Heusen v. Bd. of Educ. of City Sch. Dist. of Schenectady*, 26 A.D.2d 721 (Sup. Ct. 3d 1966).

<sup>48</sup> *See*, *Matter of Galatti v. Cty. of Dutchess*, 64 N.Y.2d 1163 (App. Ct. 1985); *Matter of Barresi v. Mahoney*, 192 A.D.2d 649 (Sup. Ct. 2d 1993); *Garelick v. Dowling*, 59 A.D.2d 733 (Sup. Ct. 2d 1977).



lateral assignment does involve a demotion in grade, title, and loss of salary and benefits, it is construed to be discipline and does warrant protective procedures.<sup>49</sup>

#### IV. ANALYSIS: THE LEGALITY OF RUBBER ROOMS

“I have complained publicly about how long this process drags out. But our first concern will always be and, as a former lawyer and somebody who clerked on the United States Supreme Court I will tell you, there is no violation of due process whatsoever.”<sup>50</sup>

---- Chancellor Joel Klein

In light of the discussion above regarding the procedures of reassignment to a rubber room and the rights tenured educators maintain in New York state, it does not appear that the practice of rubber rooms necessarily constitutes a violation of teachers’ due process rights. A court in New York has not issued a specific ruling on the legality of rubber rooms, yet the case law discussed above provides support for their continued practice.<sup>51</sup> Rubber rooms function as reassignment facilities and do not constitute a disciplinary action by the District against the teachers. They are receiving their full salary, benefits and job title and have not been subjected to a reprimand, fine or suspension.<sup>52</sup> Moreover, even though reassignment to rubber rooms is technically a non-teaching assignment, courts have found that an assignment of that sort does not elicit any violation of due process.<sup>53</sup> There appears to be no case within New York where a court has found a violation of due process where the

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<sup>49</sup> See generally, *Matter of Bailey v. Susquehanna Valley Cent. Sch. Dist. Bd. of Educ.*, 276 A.D.2d 963 (Sup. Ct. 3d 2000); *Matter of Campbell v. New York City Transit Auth.*, 253 A.D.2d 813 (Sup. Ct. 2d 1998); *Matter of Borrell v. Cty. of Genesee*, 73 A.D.2d 386 (Sup. Ct. 4th 1980).

<sup>50</sup> From the audiotape of the PEP meeting after filing a FOIL request to the NYC Board of Education (*available at* [nycrubberroomreporter.blogspot.com](http://nycrubberroomreporter.blogspot.com)).

<sup>51</sup> See, Elizabeth Green “Judge Throws Out Suit Over Rubber Rooms,” N.Y. SUN, Aug. 13, 2008 (in August 13, 2008, a state court judge dismissed a lawsuit by teachers alleging mistreatment of those being detained in rubber rooms, however no opinion was given on the due process issues arising from the practice of rubber rooms) (*available at* <http://www.nysun.com/new-york/judge-throws-out-suit-over-rubber-rooms/83769/>).

<sup>52</sup> See *supra* fn. 41; see *supra* fn. 48.

<sup>53</sup> See *supra* fn. 46.

alleged violation has not involved one of the above factors. Therefore, as practiced today, rubber rooms do not violate a teacher's property or liberty interest.

This discussion on the legality of rubber rooms has essentially omitted any public policy considerations, i.e. whether the practice of assigning teachers to rubber rooms indefinitely is against public policy. While this is beyond the scope of this study, it is imperative to note that this practice entails debilitating negative aspects on the morale of the teaching community as a whole and could function to undermine an important goal of the District: namely, ensuring that good educators remain within the New York City school system. It is hardly a strong selling point for those teachers seeking tenure that the District maintains the authority to pull them from their classrooms without notice for an infraction such as excessive lateness. Moreover, there is the issue of the effect the rubber rooms have on the morale of the school district in general, and the perception held by the students in particular. While this too is beyond the scope of this paper, the immediate removal of students' teachers from the classroom without notice or explanation and the lack of openness in the investigation into the teacher's actions surely have a profound effect on the teacher's students. Both these issues present interesting public policy justifications for the elimination of rubber rooms.

## V. CONCLUSION

Tenured teachers are entitled to the right of due process when there have been allegations of misbehavior. However, when there have been no charges filed and a school district is investigating the alleged misconduct, there appears to be a gray area in New York state law. The public school district is granted overwhelming authority to send these teachers to reassignment facilities in the interest of protecting the District's 1.1 million

students. While this does not involve an outright violation of a tenured teacher's due process rights, it is questionable policy when dealing with allegedly minor infractions. Despite the apparent legality of this process, reassignment to rubber rooms continue to be a controversial practice that enables the District to shelve the problem for an indeterminate amount of time while the teachers sit and wait, hoping for the opportunity to return to their students and unaware how long their "detention" may keep them away.