The code on your file simply indicates that you are not eligible to be in a DOE school building. It is not disciplinary in nature and will be removed from your file when you are eligible to return to work, either because you are vaccinated or because the mandate has been lifted.

Sent from my iPhone

On Feb 9, 2022, at 1:40 PM,

Dear Ms. Norton,
I have been challenging the DOE though a grievance that started months ago. I sent my Citywide Panel determination to Shaleen Perry, David Campbell, and a few other UFT representatives. The UFT has done nothing for me regarding this undue hardship claim by the NYCDOE. Supposedly, Ms. Perry is reviewing my appeal of the UFT's denial to pursue the grievance I filed pertaining to the NYC DOE's discrimination against me.
My appeal denial did not even attempt to state an undue hardship and certainly did not constitute a bona fide effort to show an undue burden. They were merely rubber-stamped denials from the arbitrator that provided no elaboration.
My third denial, the result of the so-called "fresh consideration" of the Citywide Panel, again stated undue hardship, but did not distinguish why it was an undue hardship.
The NYC DOE has not stated a cost of accommodating me, including the costs of loss of productivity and of retaining or hiring employees. In fact, the NYCDOE cost of not accommodating me itself makes up a significant expense or difficulty on the DOE, as the DOE is currently facing a teaching shortage and has invited teachers who have tested positive for Covid-19 back into the classrooms when I am ready and willing to resume my teaching position.
What is being done to rectify my being denied a religious accommodation because the NYCDOE claims undue hardship? If the NYCDOE is already accommodating other employees' religious exemptions, how is it possible that they are getting away with not accommodating me? Obviously, if they can accommodate other employees, it is not an undue hardship to accommodate me.
There has been no charge made against me. The NYCDOE has done none of the following steps stated in New York Education Law 3020-a.

1. Filing of charges. All charges against a person enjoying the benefits of tenure as provided in subdivision three of section eleven hundred two , and sections twenty-five hundred nine , twenty-five hundred seventy-three , twenty-five hundred ninety-j , three thousand twelve and three thousand fourteen of this chapter shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the actual opening and closing of the school year for which the employed is normally required to serve. Except as provided in subdivision eight of section twenty-five hundred seventy-three and subdivision seven of section twenty-five hundred ninety-j of this chapter, no charges under this section shall be brought more than three years after the occurrence of the alleged incompetency or misconduct, except when the charge is of misconduct constituting a crime when committed.

2. Disposition of charges. a. Upon receipt of the charges, the clerk or secretary of the school district or employing board shall immediately notify said board thereof. Within five days after receipt of charges, the employing board, in executive session, shall determine, by a vote of a majority of all the members of such board, whether probable cause exists to bring a disciplinary proceeding against an employee pursuant to this section. If such determination is

affirmative, a written statement specifying (i) the charges in detail, (ii) the maximum penalty which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found guilty of the charges after a hearing and (iii) the employee's rights under this section, shall be immediately forwarded to the accused employee by certified or registered mail, return receipt requested or by personal delivery to the employee.

If the NYCDOE brings charges against me, then the above steps have to be followed. Have there been charges made against me I am unaware of? If the DOE brings charges against me, then I will request a 3020-a public hearing and I will reserve the right to then chose whether I want a NYSUT attorney or get an attorney to represent me.

Yesterday, I noticed that there was a problem code attached to my file. How come the NYCDOE placed this code in my file? The DOE is stating by putting this code into my file that I have caused a problem because I am following my religious beliefs. This is outrageous! Is the UFT going to get this code removed from my file? This code has to be removed!

Sincerely,

From: Beth A. Norton <BNorton@uft.org>
Sent: Wednesday, February 9, 2022 12:38 PM
To: Mary Atkinson <MAtkinson@uft.org>
Subject: Re: Next Steps Regarding Your Denial from the Citywide Appeals Panel

Mr.

Your appeal was denied by the citywide panel. It was not denied on the basis of sincerity of belief, but on the basis of undue hardship. You may wish to challenge that determination, but it does not change our advice regarding the 3020-a process.

Regards,
Beth A. Norton

From: **Sent:** Wednesday, February 9, 2022 12:25 PM
To: Beth A. Norton <BNorton@uft.org>
Subject: RE: Next Steps Regarding Your Denial from the Citywide Appeals Panel

Dear Ms. Norton,

Attached you will find the Citywide Appeal Panel recognizing the following, "The record before the Panel demonstrated that the employee holds sincerely held religious beliefs sufficient to justify a reasonable accommodation. As I have previously stated, "Since the New York City Department

of Education already accommodates other employees for their religious beliefs, the New York City Department of Education must accommodate me for my religious beliefs."

Best Regards,

From: Beth A. Norton <BNorton@uft.org>
Sent: Wednesday, February 9, 2022 12:21 PM
To: >; 'Division of Human Resources' <DHR@schools.nyc.gov>; LWOPQUESTIONS@schools.nyc.gov
Cc: Mary Atkinson <MAtkinson@uft.org>; Michael Sill <MSill@uft.org>; Marcus Escobar <MEscobar@uft.org>; Michael Mulgrew <MMulgrew@uft.org>
Subject: Re: Next Steps Regarding Your Denial from the Citywide Appeals Panel

Mr.

Do you have a decision from the citywide appeal panel approving your request for a religious exemption? If so, could you please send that to me.

Regards,
Beth A. Norton
General Counsel
United Federation of Teachers

From: >
Sent: Wednesday, February 9, 2022 12:16 PM
To: 'Division of Human Resources' <DHR@schools.nyc.gov>; LWOPQUESTIONS@schools.nyc.gov <LWOPQUESTIONS@schools.nyc.gov>
Cc: Beth A. Norton <BNorton@uft.org>; Mary Atkinson <MAtkinson@uft.org>; Michael Sill <MSill@uft.org>; Marcus Escobar <MEscobar@uft.org>; Michael Mulgrew <MMulgrew@uft.org>
Subject: Re: Next Steps Regarding Your Denial from the Citywide Appeals Panel

To the New York City Department of Education Division of Human Resources,

Who is the DOE Employee you address in the email you sent to me on Monday, February 7, 2022, at 7:39 PM? This termination notice must be a mistake. It is impossible that you are thinking about terminating me because my religious rights are protected under the Free Exercise Clause of the First Amendment, The Establishment Clause of the First Amendment, Title VII of the Civil Rights Act of 1964, the Ninth Amendment, the 14th Amendment, NYS Executive Law, Human Rights Law, Article 15, Section 296, and the New York City Human Rights Law.

This termination notice must be a mistake because the Citywide Appeal Panel has recognized that I have sincerely held religious beliefs as Appeal No. 00004832 clearly states, "The record before the Panel demonstrated that the employee holds sincerely held religious beliefs sufficient

to justify a reasonable accommodation…" Since the New York City Department of Education already accommodates other employees for their religious beliefs, the New York City Department of Education must accommodate me for my religious beliefs.

This termination notice must be a mistake because New York Education Law 3020 and 3020-a were not followed by the New York City Department of Education.
New York Education Law 3020 states the following.

1. 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 specified in section three thousand twenty-a of this article or in accordance with alternate disciplinary procedures contained in a collective bargaining agreement covering his or her terms and conditions of employment that was effective on or before September first, nineteen hundred ninety-four and has been unaltered by renegotiation, or in accordance with alternative disciplinary procedures contained in a collective bargaining agreement covering his or her terms and conditions of employment that becomes effective on or after September first, nineteen hundred ninety-four; provided, however, that any such alternate disciplinary procedures contained in a collective bargaining agreement that becomes effective on or after September first, nineteen hundred ninety-four, must provide for the written election by the employee of either the procedures specified in such section three thousand twenty-a or the alternative disciplinary procedures contained in the collective bargaining agreement and must result in a disposition of the disciplinary charge within the amount of time allowed therefor under such section three thousand twenty-a ; and provided further that any alternate disciplinary procedures contained in a collective bargaining agreement that becomes effective on or after July first, two thousand ten shall provide for an expedited hearing process before a single hearing officer in accordance with subparagraph (i-a) of paragraph c of subdivision three of section three thousand twenty-a of this article in cases in which charges of incompetence are brought based solely upon an allegation of a pattern of ineffective teaching or performance as defined in section three thousand twelve-c of this article and shall provide that such a pattern of ineffective teaching or performance shall constitute very significant evidence of incompetence which may form the basis for just cause removal.

2. No person enjoying the benefits of tenure shall be suspended for a fixed time without pay or dismissed due to a violation of article thirteen-E of the public health law.

"The tenure statutes reflect the intent and purpose of the Legislature to protect educators who have successfully completed a probationary period from being disciplined summarily without the safeguards of Education Law § 3020-a. As stated by this Court in Holt v. Board of Educ. of Webutuck Cent. School Dist., 52 N.Y.2d 625 (1981): At one time, teachers in this state had only so much job security as could be bargained for in their contract of employment. When that contract expired, the decision as to whether or not to continue the teacher's employment was completely within the discretion of the school district. The Legislature, recognizing a need for permanence and stability in the employment relationship between teachers and the school districts which employ them, enacted a comprehensive statutory tenure system, the purpose of which was to provide some measure of security for competent teachers who had rendered adequate service for a number of years. One of the bulwarks of that tenure system is section 3020-a of the Education Law which protects tenured teachers from arbitrary suspension or

removal. The statute has been recognized by this court as a critical part of the system of contemporary protections that safeguard tenured teachers from official or bureaucratic caprice. Id., 52 N.Y.2d at 632"

New York Education Law 3020-a specifies the following.

1. Filing of charges. All charges against a person enjoying the benefits of tenure as provided in subdivision three of section eleven hundred two , and sections twenty-five hundred nine , twenty-five hundred seventy-three , twenty-five hundred ninety-j , three thousand twelve and three thousand fourteen of this chapter shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the actual opening and closing of the school year for which the employed is normally required to serve. Except as provided in subdivision eight of section twenty-five hundred seventy-three and subdivision seven of section twenty-five hundred ninety-j of this chapter, no charges under this section shall be brought more than three years after the occurrence of the alleged incompetency or misconduct, except when the charge is of misconduct constituting a crime when committed.

2. Disposition of charges. a. Upon receipt of the charges, the clerk or secretary of the school district or employing board shall immediately notify said board thereof. Within five days after receipt of charges, the employing board, in executive session, shall determine, by a vote of a majority of all the members of such board, whether probable cause exists to bring a disciplinary proceeding against an employee pursuant to this section. If such determination is affirmative, a written statement specifying (i) the charges in detail, (ii) the maximum penalty which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found guilty of the charges after a hearing and (iii) the employee's rights under this section, shall be immediately forwarded to the accused employee by certified or registered mail, return receipt requested or by personal delivery to the employee.

b. The employee may be suspended pending a hearing on the charges and the final determination thereof. The suspension shall be with pay, except the employee may be suspended without pay if the employee has entered a guilty plea to or has been convicted of a felony crime concerning the criminal sale or possession of a controlled substance, a precursor of a controlled substance, or drug paraphernalia as defined in article two hundred twenty or two hundred twenty-one of the penal law; or a felony crime involving the physical abuse of a minor or student.
Since the New York City Department of Education did not abide by New York Education Law 3020, and 3020-a, I cannot be terminated, thus the termination notice is a mistake, and, in fact, I have been illegally suspended for many months.

Besides this notice being an error, the New York City Department of Education has illegally suspended me (what the NYCDOE has been calling Leave Without Pay). Because I have tenure, and because the New York City Department of Education did not abide by New York Education Law 3020 and 3020-a; and because the New York City Department of Education has circumvented my rights under the Constitution and New York State Law, since I hold sincerely held religious beliefs that justify a reasonable accommodation, the New York City Department of Education will immediately return me to active employment status, will pay me all my back wages, will fully restore all my years in service, will fully restore my seniority rights, will fully

restore all my CAR days, and make me whole in all ways as if I had never been illegally suspended.

Sincerely,

From: Division of Human Resources DHR@schools.nyc.gov
Sent: Monday, February 7, 2022 7:39 PM
Subject: Next Steps Regarding Your Denial from the Citywide Appeals Panel

DOE Employee,

As you were notified in December, the City of New York Reasonable Accommodation Appeals Panel has denied your appeal. Pursuant to the order issued by the Second Circuit Court of Appeals on February 3, 2022, the administrative stay of the deadline to extend your Leave Without Pay (LWOP) and prohibiting the New York City Department of Education (NYCDOE) from taking any steps to terminate your employment for noncompliance with the vaccination requirement is no longer in effect.

According to NYCDOE records, you are currently on LWOP because you are not eligible to work based on your failure to comply with the New York City Health Commissioner's Order requiring vaccination of all NYCDOE staff.

If you remain non-compliant and have not opted by February 14, 2022 to extend your LWOP or return from LWOP status, you will be terminated from service with the NYCDOE, effective February 18, 2022. Please note that your health insurance coverage through the City will also cease upon termination; February 17, 2022 will be your last day of eligibility for benefits. You must return all DOE-issued equipment and materials, including your ID, to your supervisor. Information about COBRA will be mailed separately to you at the address on file in NYCAPS. Your school and/or office will be notified of your termination as well.

If you would like to extend your LWOP status, you may do so by logging into SOLAS and stating your intention **by no later than February 14, 2022**. Employees choosing this option:

- Will remain eligible for health insurance through September 5, 2022.

- May seek to return from this leave prior to September 6, 2022 by following the steps below on returning from LWOP status. Employees who have not returned by September 6, 2022 shall be deemed to have voluntarily resigned.

- Must waive their rights to challenge such resignation, including, but not limited to, through a contractual or statutory disciplinary process

If you would like to return to work from LWOP status, you must complete two steps using the DOE Vaccination Portal **by no later than February 14, 2022**:

a. Upload proof that you have received your first dose of a COVID-19 vaccine. Proof of COVID-19 vaccine can be an image of your vaccination card, NYS Excelsior Pass, or another government record.

b. E-sign the attestation stating that you are willing to return to your worksite within fourteen calendar days of submission.

Once you have completed these two steps, your HR Director and supervisor will also be notified and will work with you to plan your return date. If you encounter technical issues accessing the Vaccination Portal, please contact the DOE Help Desk by opening a ticket online or calling 718-935-5100. If you need support uploading your proof of vaccination, please contact your principal or HRD, who can do so on your behalf.

If you believe you have received this notice in error because you are not currently on LWOP, or have extended your LWOP, or have submitted proof of vaccination, please contact LWOPQUESTIONS@SCHOOLS.NYC.GOV immediately.

Sincerely,

NYCDOE Division of Human Resources

Mary Atkinson UFT emails

From: Mary Atkinson <MAtkinson@uft.org>
Sent: Wednesday, February 9, 2022 6:19 PM
To: Subject: Re: Termination Notice

we agree that you should be served charges if the DOE is asking to terminate you. However, the DOE does not agree and believes it can simply terminate you. We are in court challenging this. However, out of an abundance of caution, we are strongly advising tenured employees in this situation to file for an appeal. This is the recommendation of the UFT's legal counsel. You are of course free to disregard the advice, but since filing for a hearing does not waive any rights that you have, I am not sure why you would want to disregard the advice to do so.

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From:
Sent: Wednesday, February 9, 2022 5:32:17 PM
To: Mary Atkinson <MAtkinson@uft.org>
Subject: RE: Termination Notice

Dear Mary,
The New York City Department of Education has filed no charge against me under New York Education Law 3020, 3020-a, and 3020-b because the NYCDOE has done none of the following steps stated in New York Education Law 3020-a.
1. Filing of charges. All charges against a person enjoying the benefits of tenure as provided in subdivision three of section eleven hundred two , and sections twenty-five hundred nine , twenty-five hundred seventy-three , twenty-five hundred ninety-j, three thousand twelve and three thousand fourteen of this chapter shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the actual opening and closing of the school year for which the employed is normally required to serve. Except as provided in subdivision eight of section twenty-five hundred seventy-three and subdivision seven of section twenty-five hundred ninety-j of this chapter, no charges under this section shall be brought more than three years after the occurrence of the alleged incompetency or misconduct, except when the charge is of misconduct constituting a crime when committed.
2. Disposition of charges. a. Upon receipt of the charges, the clerk or secretary of the school district or employing board shall immediately notify said board thereof. Within five days after receipt of charges, the employing board, in executive session, shall determine, by a vote of a majority of all the members of such board, whether probable cause exists to bring a disciplinary proceeding against an employee pursuant to this section. If such determination is affirmative, a written statement specifying (i) the charges in detail, (ii) the maximum penalty which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found guilty of the charges after a hearing and (iii) the employee's rights under this section, shall be immediately forwarded to the accused employee by certified or registered mail, return receipt requested or by personal delivery to the employee.
b. The employee may be suspended pending a hearing on the charges and the final determination thereof. The suspension shall be with pay, except the employee may be suspended without pay if the employee has entered a guilty plea to or has been convicted of a felony crime concerning the criminal sale or possession of a controlled substance, a precursor of a controlled substance, or drug paraphernalia as defined in article two hundred twenty or two hundred twenty-one of the penal law; or a felony crime involving the physical abuse of a minor or student.

If the NYCDOE brings charges against me, then the above steps have to be followed. Have there been charges made against me I am unaware of?
If the DOE brings charges against me, then I will want a 3020-a public hearing, and I reserve the right to choose whether I want a NYSUT attorney or get another attorney to represent me. This form is unnecessary to fill out until the DOE has followed the law. I don't want to be pigeonholed by a decision I make now, when there isn't any decision to make, because the DOE has to follow the law. The DOE cannot override the 3020 law. If the DOE tries to break it, I expect the UFT to sue them, and the courts will rule against them. You can consider this email as my affirmation that I will, when and if the DOE files charges against me, be requesting a 3020a hearing.
To be abused by the DOE and abandoned by your own union has been an awful ordeal. The UFT has held no rallies, no fundraising drives, it has done nothing for its suspended members. You have responded to my emails, and I appreciate it.
Best Regards,

From: Mary Atkinson <MAtkinson@uft.org>
Sent: Wednesday, February 9, 2022 12:00 PM
To:
Subject: Re: Termination Notice

Hello ,

The Union's position is that the DOE cannot terminate tenured employees without due process at a 3020a hearing. We are advising that you complete the attached form requesting a 3020a hearing. Can you complete this form, making sure to check the box indicating that you are requesting a hearing, and email it back to me? In the attorney section, if you would like NYSUT to represent you, you can leave the section blank.

Let me know if you have any questions about this.

Mary

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From:
Sent: Tuesday, February 8, 2022 10:06:47 AM
To: Shaleen Perry <SPerry@uft.org>; David Campbell <DCampbell@uft.org>; Mary Atkinson <MAtkinson@uft.org>; Michael Sill <MSill@uft.org>; Marcus Escobar <MEscobar@uft.org>; Michael Mulgrew <MMulgrew@uft.org>
Subject: Termination Notice

Dear Mr. Mulgrew, Ms. Perry, Mr. Campbell, Ms. Atkinson, Mr. Sill, and Mr. Escobar,
The NYC DOE sent me the termination notice below. As you already know, I cannot be vaccinated because of my religious beliefs and the NYC DOE has recognized this, yet has claimed an undue hardship in accommodating me. The DOE has already accommodated other employees with religious accommodations, but not me. Now they want me to sign away all my legal rights to extend a so-called

leave that I never requested, which in reality is a suspension. What is the UFT going to do about this situation? I am a tenured teacher, and I have protection under the laws of New York State.