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THE STATE EDUCATION DEPARTMENT
THE UNIVERSITY OF THE STATE OF NEW YORK

In the Matter of
NEW YORK CITY DEPARTMENT OF EDUCATION
v.
BOUBAKAR FOFANA
Section 3020-a Education Law Proceeding (File #8,234)

DATE: September 21, 2007
TIME: 10:50 a.m. to 11:03 a.m.
LOCATION: NYC Department of Education
Office of Legal Services
49-51 Chambers Street
New York, New York 10004
BEFORE: JAY SIEGEL, ESQ.
Hearing Officer
12 Rock Street
Cold Springs, NY 10516

1 Boubakar Fofana - 9-21-2007
 2 APPEARANCES:
 3 FOR THE COMPLAINANT:
 4 LAURA HEMANS BRANTLEY, ESQ., of Counsel
 MICHAEL BEST, ESQ.
 5 NYC Department of Education
 Office of Legal Services
 6 49-51 Chambers Street
 New York, New York 10004
 7 Telephone: (212) 374-6770
 8 FOR THE RESPONDENT:
 9 ANTONIO CAVALLARO, ESQ., of Counsel
 JAMES R. SANDNER, ESQ.
 10 NEW YORK STATE UNITED TEACHERS
 52 Broadway, 9th Floor
 11 New York, New York 10004
 Telephone: (212) 533-6300
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1 Boubakar Fofana - 9-21-2007
 2 THE HEARING OFFICER: Good
 3 morning. My name is Jay Siegel and I am a
 4 hearing officer assigned to a case between the
 5 Department of Education of the City School
 6 District of the City of New York against
 7 Boubaker Fofana, that's B-O-U-B-A-K-E-R,
 8 F-O-F-A-N-A, and we are here for a pre-hearing
 9 conference.
 10 A motion has been submitted
 11 by Mr. Cavallaro on behalf of Mr. Fofana and I
 12 would ask before we begin if I could have
 13 appearances for the record, please?
 14 MS. BRANTLEY: Sure. Laura
 15 Brantley on behalf of the New York City
 16 Department of Education.
 17 MR. CAVALLARO: For the
 18 Respondent, James R. Sandner, general counsel,
 19 New York State United Teachers, Antonio M.
 20 Cavallaro, of counsel.
 21 THE HEARING OFFICER: And Ms.
 22 Brantley, just for the record, the Department
 23 is waiving the five-day notice requirement for
 24 this pre-hearing conference?

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 2 MS. BRANTLEY: Yes.
 3 THE HEARING OFFICER: Okay.
 4 All right. Let's proceed then beginning with
 5 paragraph one.
 6 Ms. Brantley, is there any
 7 objection to that?
 8 MS. BRANTLEY: No objection,
 9 however the Department of Education will
 10 provide the business address for Department of
 11 Education employees and parent contact
 12 information with regards to any students
 13 involved.
 14 THE HEARING OFFICER: Mr.
 15 Cavallaro?
 16 MR. CAVALLARO: That's
 17 acceptable.
 18 THE HEARING OFFICER: Okay.
 19 Moving to paragraph two, Ms. Brantley?
 20 MS. BRANTLEY: No objection
 21 to providing witness statements. However, we
 22 would ask for in-camera review prior to turning
 23 over any documents with regard to the redaction
 24 of any confidential student information, such

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 2 as address, social security number, date of
 3 birth, et cetera.
 4 THE HEARING OFFICER: And Mr.
 5 Cavallaro, that's acceptable?
 6 MR. CAVALLARO: That is
 7 acceptable.
 8 THE HEARING OFFICER:
 9 Paragraph three, Ms. Brantley?
 10 MS. BRANTLEY: Paragraph
 11 three. There is no objection to paragraph
 12 three.
 13 THE HEARING OFFICER:
 14 Paragraph four?
 15 MS. BRANTLEY: No objection.
 16 THE HEARING OFFICER: What
 17 about paragraph five?
 18 MS. BRANTLEY: Paragraph
 19 five, with regard to the statements, we would
 20 ask for in-camera review with any necessary
 21 redactions of confidential student information
 22 as was just discussed with -- discussed with
 23 request number two, prior to turning the
 24 documents over.

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 2 THE HEARING OFFICER: And
 3 that'll be acceptable, Mr. Cavallaro?
 4 MR. CAVALLARO: That will be.
 5 THE HEARING OFFICER: Okay.
 6 Paragraph six?
 7 MS. BRANTLEY: Paragraph six,
 8 there's no objection to turning the information
 9 over. However, I note here that again notes --
 10 well notes and memoranda are being requested
 11 which may contain confidential student
 12 information as previously discussed with --
 13 with request number five we would ask for
 14 in-camera review and any necessary redactions
 15 prior to turning the documents over.
 16 THE HEARING OFFICER: So,
 17 we'll handle that the same way, Mr. Cavallaro?
 18 MR. CAVALLARO: That's fine.
 19 THE HEARING OFFICER: All
 20 right. Paragraph seven?
 21 MS. BRANTLEY: Paragraph
 22 seven we would object to.
 23 Mr. Fofana has complete
 24 access to his own personnel file. If he

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 2 encounters difficulty in obtaining the file, we
 3 would -- we will assist him.
 4 MR. CAVALLARO: Okay. Mr.
 5 Fofana has been directed to attempt to obtain a
 6 copy of the file. I'll let Ms. Brantley know
 7 if there's any problem with that.
 8 THE HEARING OFFICER: Okay.
 9 That sounds fine. We'll proceed on that basis
 10 then. Paragraph eight. Any objection there,
 11 Ms. Brantley?
 12 MS. BRANTLEY: No objection,
 13 however the request does include statements
 14 which may contain confidential student
 15 information. Again, we would ask for in-camera
 16 review with any necessary redactions, prior to
 17 turning the documents over.
 18 THE HEARING OFFICER: And
 19 that'll be fine, Mr. Cavallaro?
 20 MR. CAVALLARO: Yes.
 21 THE HEARING OFFICER:
 22 Paragraph nine?
 23 MS. BRANTLEY: No objection.
 24 THE HEARING OFFICER:

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 2 Paragraph ten?
 3 MS. BRANTLEY: No objection.
 4 THE HEARING OFFICER:
 5 Paragraph eleven?
 6 MS. BRANTLEY: Paragraph
 7 eleven may contain confidential student
 8 information. Again, we would ask for in-camera
 9 review with any necessary redactions prior to
 10 turning the documents over.
 11 THE HEARING OFFICER: So
 12 we'll handle that the same way. Right, Mr.
 13 Cavallaro?
 14 MR. CAVALLARO: Yes.
 15 THE HEARING OFFICER: Okay.
 16 Paragraph twelve?
 17 MS. BRANTLEY: No objection.
 18 THE HEARING OFFICER:
 19 Paragraph thirteen?
 20 MS. BRANTLEY: No objection.
 21 THE HEARING OFFICER:
 22 Paragraph fourteen?
 23 MS. BRANTLEY: No objection.
 24 THE HEARING OFFICER:

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 2 Paragraph fifteen?
 3 MS. BRANTLEY: Paragraph
 4 fifteen is requesting student records.
 5 We would ask for in-camera
 6 review of any confidential student information
 7 with any necessary redactions prior to turning
 8 the documents over.
 9 THE HEARING OFFICER: I
 10 assume that's acceptable on that basis?
 11 MR. CAVALLARO: That is
 12 acceptable.
 13 THE HEARING OFFICER: What
 14 about paragraph sixteen? That lists two
 15 specific students.
 16 MS. BRANTLEY: We would seek
 17 to request in-camera review for these specific
 18 student records and ask that any necessary
 19 information be redacted prior to turning the
 20 records over.
 21 THE HEARING OFFICER: Is that
 22 acceptable?
 23 MR. CAVALLARO: That is
 24 acceptable.

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 2 THE HEARING OFFICER: Okay.
 3 What about paragraph seventeen?
 4 MS. BRANTLEY: No objection
 5 to providing the class rosters. However, the
 6 Department of Education will provide names of
 7 students only.
 8 THE HEARING OFFICER: Is that
 9 acceptable?
 10 MR. CAVALLARO: That is
 11 acceptable.
 12 THE HEARING OFFICER:
 13 Paragraph eighteen?
 14 MS. BRANTLEY: Okay. With
 15 regards to paragraph eighteen, we do not object
 16 to identifying any and all investigators
 17 involved in investigating the charges. With
 18 regards to the curriculum vitae for
 19 informational technology personnel, we would
 20 object to. We certainly will provide their
 21 name and business address.
 22 With regards to their
 23 background and their qualifications, that
 24 certainly is something that can be explored on

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 2 the record.
 3 THE HEARING OFFICER: Mr.
 4 Cavallaro?
 5 MR. CAVALLARO: There is a
 6 technical aspect of this case that has to do
 7 with information allegedly, I guess, placed
 8 online by Mr. Fofana. And there was a -- an
 9 investigation into the technical aspects of
 10 this case.
 11 As such, we have a right to
 12 seek the curriculum vitae of the technical
 13 personnel that performed that investigation in
 14 order to provide such to our own experts which
 15 we do intend to secure in order to discuss the
 16 technical issues of this case and I think
 17 it's -- it's important that we have an expert
 18 of this nature. That we have information as to
 19 the qualifications of the individual that
 20 performed the search ahead of time. And it's
 21 not unusual in these circumstances when we're
 22 dealing with such expert testimony.
 23 THE HEARING OFFICER: Ms.
 24 Brantley, any further comments as to -- in

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 2 response to Mr. Cavallaro's remarks?
 3 MS. BRANTLEY: As I said, you
 4 know, it's our position that these individuals
 5 are Department of Education personnel and if
 6 there's any inquiry as to what their
 7 qualifications are with regards to being able
 8 to access information, download this
 9 information et cetera, that is information that
 10 can be explored on the record when the person
 11 testifies.
 12 THE HEARING OFFICER: Well,
 13 that may very well be the case. I -- I think
 14 in the end analysis, if this does involve an
 15 assessment of their technology and what they
 16 might have been capable of doing pursuant to
 17 their investigation, I think it may very well
 18 be relevant as to what kind of training and
 19 qualifications they had.
 20 Obviously, if their
 21 curriculum vitae has personally identifiable
 22 information, that could be redacted, submitted
 23 to me for a review before it's handed over.
 24 But, I will allow and order that that be

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 2 provided to Mr. Cavallaro on behalf of Mr.
 3 Fofana.
 4 MS. BRANTLEY: And, so, just
 5 to clarify then, what -- what you're seeking,
 6 Mr. Cavallaro, then is -- is just the training
 7 that these -- that -- the training and I guess
 8 schooling that the individual had?
 9 MR. CAVALLARO: Right. I
 10 mean, the -- the -- the experience that they
 11 have in this particular field or area, any
 12 training, you know, what some experts say is
 13 published in the area and they will list that
 14 on -- on their C.V.
 15 I mean, those sorts of
 16 issues. I mean, obviously, when it comes to
 17 dealing with expert testimony and having your
 18 own expert, they do want to see that sort of
 19 information well in advance of their testimony.
 20 You know, as far as well who
 21 is it that's testifying that this did occur.
 22 So they can, you know, actually comment on that
 23 as well. And, also, I -- I -- I, you know,
 24 it's been my experience that in these technical

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 2 types of cases, there are times when it may be
 3 worthwhile to hold a second preliminary
 4 conference to deal with these particular
 5 evidentiary issues, you know, especially the
 6 issue of, and I think the next item I ask for
 7 forensic copies of electronic evidence, et
 8 cetera, preliminary reports, et cetera provided
 9 by such analysts or experts, et cetera.
 10 So, we may actually, it may
 11 behoove us to have a second conference and
 12 having the C.V. in hand ahead of time will
 13 allow me to prepare for that second conference
 14 as well.
 15 THE HEARING OFFICER: Well,
 16 I -- certainly think that what we -- what we
 17 may want to do is -- well, maybe we can move on
 18 to that in a moment. But, ultimately, I will
 19 assume that that will be provided because that
 20 is relevant and what we may wish to do is have
 21 some of that material submitted well in advance
 22 of the hearing along with the C.V., so that
 23 then you have an opportunity to review it and
 24 then if there are issues pertaining to it, we

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 2 those lines would probably be acceptable.
 3 MR. CAVALLARO: Yeah. I -- I
 4 think that actually, to be honest, I think the
 5 person that -- or the group that performed the
 6 technical investigation was S.C.I. not O.S.I.
 7 So, I don't know how that's going to play
 8 into -- into any of that. So.
 9 THE HEARING OFFICER: All
 10 right. Then why don't we move to paragraph
 11 nineteen.
 12 Ms. Brantley, is there any
 13 objection to that?
 14 MS. BRANTLEY: No. It's just
 15 I will need a copy of a blank C.D. from Mr.
 16 Cavallaro.
 17 MR. CAVALLARO: Absolutely.
 18 Okay.
 19 THE HEARING OFFICER: Is
 20 there anything further that the parties wish to
 21 discuss relative to this motion or this case on
 22 the record?
 23 MS. BRANTLEY: No.
 24 MR. CAVALLARO: You need it

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 2 might then want to conference as to those.
 3 MR. CAVALLARO: Right.
 4 THE HEARING OFFICER: Right.
 5 All right.
 6 Any clarifications required
 7 though on paragraph eighteen further than what
 8 you have, Ms. Brantley?
 9 MS. BRANTLEY: No. If I
 10 believe that there's any information which
 11 should not be turned over, I will submit to
 12 you, Mr. Siegel, for in-camera review.
 13 THE HEARING OFFICER: Right.
 14 MR. CAVALLARO: I have no
 15 objection to that.
 16 THE HEARING OFFICER: Yeah.
 17 And -- and -- you know, few of these people if
 18 they've been long-term Department employees for
 19 what -- they may not have an active C.V. And,
 20 if that's the case, we would probably want them
 21 to print out a listing of their -- their degree
 22 and/or trainings that they've had so that --
 23 and jobs that they've had in the field, so that
 24 that can be used. I think something along

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 2 sooner than Tuesday, or can I just bring it
 3 with me on Tuesday?
 4 MS. BRANTLEY: Bring it on
 5 Tuesday.
 6 MR. CAVALLARO: C.D. or
 7 D.V.D.?
 8 MS. BRANTLEY: I will let you
 9 know.
 10 MR. CAVALLARO: Yes. It's
 11 probably a C.D. that should probably need
 12 enough information. But, if not, just yell at
 13 me, you know, about that.
 14 THE HEARING OFFICER: All
 15 right. Then we're going to go off the record
 16 at this time. It's approximately eleven o
 17 three a.m.
 18 (The prehearing adjourned)

5 (Pages 14 to 17)

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 2 STATE OF NEW YORK
 3 I, Stacey Guay, do hereby certify that the
 4 foregoing was reported by me, in the cause, at
 5 the time and place, and in the presence of
 6 counsel, as stated in the caption hereto, at
 7 Page 1 hereof; that the foregoing typewritten
 8 transcription, consisting of pages number 1
 9 through 17, inclusive, was prepared under my
 10 supervision and is a true record of all
 11 proceedings had at the hearing.
 12 IN WITNESS WHEREOF, I have
 13 hereunto subscribed my name, this the 5th day
 14 of October, 2007.

15 _____
 16 _____
 17 Stacey Guay, Reporter

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1 Boubakar Fofana - 9-21-2007
 2 E R R A T A S H E E T
 3 Case: Boubakar Fofana, File #8,234
 4 Date: September 21, 2007
 5 CORRECTIONS:
 6 Page_-_line_
 7 _____
 8 _____
 9 _____ Word or phrase: _____
 10 _____ Corrected to: _____
 11 _____ Word or phrase: _____
 12 _____ Corrected to: _____
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<p style="text-align: center;">A</p> <p>able 12:7 Absolutely 16:17 acceptable 4:17 5:5,7 6:3 9:10,12,22,24 10:9,11 16:2 access 6:24 12:8 active 15:19 address 4:10 5:2 10:21 adjourned 17:18 advance 13:19 14:21 ahead 11:20 14:12 allegedly 11:7 allow 12:24 14:13 analysis 12:14 analysts 14:9 and/or 15:22 Antonio 2:9 3:19 appearances 2:2 3:13 approximately 17:16 area 13:11,13 aspect 11:6 aspects 11:9 assessment 12:15 assigned 3:4 assist 7:3 assume 9:10 14:19 attempt 7:5 a.m 1:10,10 17:17</p> <hr/> <p style="text-align: center;">B</p> <p>background 10:23 basis 7:9 9:10 beginning 4:4 behalf 3:11,15 13:2 behoove 14:11 believe 15:10 BEST 2:4 birth 5:3 blank 16:15 Boubakar 1:6 2:1 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1,2</p>	<p>20:1 Boubaker 3:7 Brantley 2:4 3:14,15,22 4:2,6,8,19,20 5:9,10,15 5:18 6:7,21 7:6,11,12,23 8:3,6,17,20,23 9:3,16 10:4,14 11:24 12:3 13:4 15:8,9 16:12,14,23 17:4,8 bring 17:2,4 Broadway 2:10 business 4:10 10:21 B-O-U-B-A-K-E-R 3:7</p> <hr/> <p style="text-align: center;">C</p> <p>capable 12:16 caption 18:6 case 3:4 11:6,10,16 12:13 15:20 16:21 19:2 cases 14:2 cause 18:4 Cavallaro 2:9 3:11,17,20 4:15,16 5:5,6 6:3,4,17,18 7:4,19,20 8:13,14 9:11,23 10:10 11:4,5 13:2,6,9 15:3,14 16:3,16,17,24 17:6,10 Cavallaro's 12:2 certainly 10:20,24 14:16 certify 18:3 cetera 5:3 12:9 14:8,8,9 Chambers 1:12 2:6 charges 10:17 circumstances 11:21 City 1:5 3:5,6,15 clarifications 15:6 clarify 13:5 class 10:5 Cold 1:15 comes 13:16 comment 13:22 comments 11:24 COMPLAINANT 2:3 complete 6:23 conference 3:9,24 14:4,11</p>	<p>14:13 15:2 confidential 4:24 5:21 6:11 7:14 8:7 9:6 consisting 18:8 contact 4:11 contain 6:11 7:14 8:7 copies 14:7 copy 7:6 16:15 Corrected 19:6,7,9,10,12 19:13,15,16,18,19,21,22 19:24 CORRECTIONS 19:3 counsel 2:4,9 3:18,20 18:6 curriculum 10:18 11:12 12:21 C.D 16:15 17:6,11 C.V 13:14 14:12,22 15:19</p> <hr/> <p style="text-align: center;">D</p> <p>date 1:9 5:2 19:3 day 18:13 deal 14:4 dealing 11:22 13:17 degree 15:21 Department 1:2,5,11 2:5 3:5,16,22 4:9,10 10:6 12:5 15:18 difficulty 7:2 directed 7:5 discuss 11:15 16:21 discussed 5:22,22 6:12 District 3:6 documents 4:23 5:24 6:15 7:17 8:10 9:8 doing 12:16 download 12:8 D.V.D 17:7</p> <hr/> <p style="text-align: center;">E</p> <p>E 19:2,2,2 Education 1:2,5,7,11 2:5 3:5,16 4:9,11 10:6 12:5 eight 7:10 eighteen 10:13,15 15:7</p>
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<hr/> <p style="text-align: center;">F</p> <hr/> <p>far 13:20 field 13:11 15:23 fifteen 9:2,4 file 1:7 6:24 7:2,6 19:2 fine 6:18 7:9,19 five 5:17,19 6:13 five-day 3:23 Floor 2:10 Fofana 1:6 2:1 3:1,7,11 4:1 5:1 6:1,23 7:1,5 8:1 9:1 10:1 11:1,8 12:1 13:1,3 14:1 15:1 16:1 17:1 18:1 19:1,2 20:1 foregoing 18:4,7 forensic 14:7 four 5:14 fourteen 8:22 further 11:24 15:7 16:20 F-O-F-A-N-A 3:8</p>	<p>HEMANS 2:4 hereof 18:7 hereto 18:6 hereunto 18:13 hold 14:3 honest 16:4</p>	<hr/> <p style="text-align: center;">L</p> <hr/> <p>Laura 2:4 3:14 Law 1:7 Legal 1:12 2:5 Let's 4:4 line 19:4 lines 16:2 list 13:13 listing 15:21 lists 9:14 LOCATION 1:11 long-term 15:18</p>
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