

## **Precedent-setting attendance and letter-in-file arbitration victory celebrated**

Todd Friedman, an English teacher at Midwood HS, was livid after his principal put a letter in his file for excessive absences after he missed 11 days of class in the 2006-7 school year — the outcomes of surgery and his father's death. Friedman was ensnared by the principal's policy to put a letter in the file of any teacher who accumulated 10 or more absences in a school year. What Friedman started when he challenged his principal's reprimand ended in a major arbitration victory for every UFT member.

Friedman and the union claimed the 10-day cutoff was arbitrary. Arbitrator Martin Scheinman, in a June 11 consent decree, agreed.

UFT President Randi Weingarten noted, "Ironically, this year's zealotry in issuing letters-in-file has resulted in a major ruling circumscribing what letter-in-file can and can't be used for and has created some of the most important precedents in years."

UFT Grievance Department Director Howard Solomon told delegates at the June 19 DA, "What we got codified is that any time a teacher gets a letter in their file that has an underlying issue that deals with a specific clause in our contract, the teacher can file a grievance based on the underlying contract clause and ask as a remedy that the letter be removed.

Another example of how the new right can be used effectively. "In corporal punishment cases, if you believe you have received a letter inappropriately that deals with A420, the Chancellor's Regulation, because the investigation was not done properly, you can file a grievance under Article 20 [Chancellor's Regulation A420 (Pupil Behavior and Discipline — Corporal Punishment)] and ask for a proper investigation and the removal of the letter."

In Friedman's case, the decision affirmed what Friedman and the union argued: that "there was no specific number of absences [in the contract] that automatically triggers discipline, but a good-faith, case-by-case analysis of the facts and circumstances of a particular matter may support a basis for discipline."

The arbitrator also listed factors that had to be taken into consideration before absences could be considered excessive. Were the absences due to unusual circumstances or likely to recur? Was there a pattern of absences? What was the employee's attendance and work history? Was a serious illness involved? Was there an adverse impact on the school and its students? All these now have to be taken into consideration. The numbers alone don't speak.