

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D30252
H/hu

_____AD3d_____

Argued - February 10, 2011

MARK C. DILLON, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
JEFFREY A. COHEN, JJ.

2010-03639

DECISION & JUDGMENT

In the Matter of Vernell Cheeseboro, petitioner, v
Board of Education of Port Chester-Rye Union
Free School District, et al., respondents.

(Index No. 4149/10)

James M. Rose, White Plains, N.Y., for petitioner.

Barbara Martensson, North Salem, N.Y. (Sisca and Sisca, P.C. [Frank Sisca], of
counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the Board of
Education of the Port Chester-Rye Union Free School District, dated October 16, 2009, which, after
a hearing pursuant to Civil Service Law § 75, found the petitioner guilty of charges of misconduct
and incompetence, and terminated her employment.

ADJUDGED that the determination is confirmed, the petition is denied, and the
proceeding is dismissed on the merits, with costs.

Contrary to the petitioner's contention, the determination that she was guilty of
misconduct and incompetence was supported by substantial evidence in the record, including, inter
alia, eyewitness testimony regarding an incident in which the petitioner instructed a student to convey
a threat and profanity to another student (*see 300 Gramatan Ave. Assoc. v State Div. of Human
Rights*, 45 NY2d 176, 179-180; *Matter of Overton v Board of Educ. of the Yonkers City School
Dist.*, 72 AD3d 1094; *Matter of Cardenas v Board of Educ. of Yonkers City School Dist.*, 298 AD2d

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390; see also *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230).

Moreover, the penalty of termination was not so disproportionate to the offense as to be shocking to one's sense of fairness, thus constituting an abuse of discretion as a matter of law (see *Matter of Kreisler v New York City Tr. Auth.*, 2 NY3d 775; *Matter of Kelly v Safir*, 96 NY2d 32, 38; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 237; *Matter of Overton of Board of Educ. of the Yonkers City School Dist.*, 72 AD3d 1094).

The petitioner's remaining contentions are without merit.

DILLON, J.P., FLORIO, DICKERSON and COHEN, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court