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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 240 SSM 41  
In the Matter of Peter Principe,  
Respondent,  
v.  
New York City Department of  
Education,  
Appellant.

Submitted by Julian L. Kalkstein, for appellant.  
Submitted by Stuart Lichten, for respondent.

\* \* \* \* \*

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and certified question answered in the affirmative. The Appellate Division correctly determined that the penalty of termination imposed on petitioner was excessive in light of all the circumstances (see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 233 [1974]). Chief Judge Lippman and Judges Ciparick, Graffeo, Read and Pigott concur. Judge Smith dissents and votes to reverse for the reason that it cannot be concluded, as a matter of law, that the penalty of termination shocks the judicial conscience (see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 233 [1974]).

Decided December 13, 2012