

<b>Matter of Skrine v New York City Dept. /Bd. of Educ.</b>
2010 NY Slip Op 33103(U)
October 29, 2010
Supreme Court, New York County
Docket Number: 111714/10
Judge: Joan B. Lobis
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JOAN B. LOBIS  
Justice

PART 6

*Jerome Skunk*

- v -

*NYC Dept of Education*

INDEX NO. 111714/10  
MOTION DATE 9/21/10  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1-8

xnot. 9-16

17-18

Cross-Motion:  Yes  No

**FILED**

Upon the foregoing papers, it is ordered that this motion

NOV 04 2010

NEW YORK  
COUNTY CLERK'S OFFICE

THIS MOTION IS DECIDED IN ACCORDANCE  
WITH THE ACCOMPANYING MEMORANDUM DECISION *and*  
*Order*

Dated: 10/29/10

*[Signature]*  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: IAS PART 6**

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In the Matter of  
JEROME SKRINE,

Petitioner,

Index No. 111714/10

-against-

Decision, Order and Judgment

**FILED**

NEW YORK CITY  
DEPARTMENT / BOARD OF EDUCATION,

NOV 04 2010

Respondent.

NEW YORK  
COUNTY CLERK'S OFFICE

-----X

JOAN B. LOBIS, J.S.C.:

Petitioner Jerome Skrine brings this proceeding by order to show cause under Article 78 of the C.P.L.R., seeking to compel respondent Board of Education of the City School District of New York s/h/a New York City Department / Board of Education ("BOE") to accept the revocation of his resignation. BOE cross-moves under C.P.L.R. Rules 3211(a)(2), (5), and (7), for an order dismissing the petition on the grounds that petitioner has failed to exhaust his administrative remedies; that certain claims that arose prior to May 2, 2010 are time-barred; that the petition fails to state a cause of action; and that petitioner cannot demonstrate that he is entitled to injunctive relief. For the reasons set forth below, the petition is denied and the proceeding is dismissed.

Petitioner commenced this proceeding on September 2, 2010. He sets forth that he resigned from his position as a tenured special education teacher on October 31, 2008. By letter dated June 10, 2010, he attempted to revoke his resignation. Petitioner claims that BOE verbally refused to permit petitioner to revoke his resignation. He concedes that he resigned in October 2008 while disciplinary charges under Education Law § 3020-a were pending against him. However, he

maintains that BOE failed to follow its own rules during the disciplinary process and that he was not afforded due process.

Petitioner maintains that the this proceeding is timely because the statute of limitations runs from the rejection of the revocation itself, which occurred in June 2010. He argues that under Chancellor's Regulation C-205(29), he is entitled to revoke his resignation within five years of the resignation. He claims that as long as he revokes his resignation within five years, BOE is mandated to accept the revocation. He further asserts that he is entitled to revoke his resignation under Chancellor's Regulation C-205(28). Petitioner argues that mandamus lies here because "the revocation of the resignation is *a purely ministerial act* that PETITIONER is entitled to under the law." (emphasis in original).

Chancellor's Regulations C-205(28) and (29) set forth:

**28. Withdrawal of Resignation Generally** – Except for persons covered by Section 24 or subdivision 26b of this Regulation, upon written request, a pedagogical employee who has resigned may, at the discretion of the Executive Director of the Division of Human Resources, be permitted to withdraw such resignation for the purpose of reinstatement to service, regardless of whether the person was tenured or not on the date of his or her resignation, if:

a. at the time of resignation, the individual had completed at least one year (or two full school terms) of satisfactory, regularly appointed service under the license; and

b. the license has not been invalidated and is not subject to invalidation for failure to satisfy requirements. If the employee was untenured at the time of resignation, a three year probationary period will be required.

**29. Withdrawal of Resignation Within Five Years by Tenured Staff** – Except for persons covered by Section 24 or subdivision 26b

of this Regulation, a non-supervisory pedagogical employee who had attained permanent tenure prior to the date of resignation shall, remain tenured and, upon written request, be permitted to withdraw such resignation subject only to medical examination and the approval of the Chancellor, provided that reinstatement is made on or before the opening of school in September next following five years after the effective date of resignation.

(emphasis in original). The petition fails to mention<sup>1</sup> that petitioner is clearly a person covered by Section 24 of this Regulation, which sets forth:

**24. Dismissal for Cause, Resignation or Retirement While Charges Are Pending** - This subdivision applies to persons who were dismissed pursuant to Section 3020a of the New York State Education Law or who resigned or retired while such charges were pending. All licenses and/or certificates held by such a person at the time of separation from service shall terminate permanently. No such person shall be eligible to apply for any new license or certificate, nor for reemployment by any unit of the City District or of any community school district without the recommendation of the Executive Director of the Division of Human Resources and the express written authorization of the Chancellor.

(emphasis in original).

Assuming, arguendo, that petitioner could demonstrate that he exhausted all of his administrative remedies with respect to the allegedly improper disciplinary process (which he has not, in fact, demonstrated), he resigned in October 2008, so any of the claims that he makes against BOE with respect to the disciplinary process up until his resignation in October 2008 are clearly barred by the four month statute of limitations. C.P.L.R. § 217. Assuming further that petitioner's

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<sup>1</sup> Petitioner's attorney, in quoting Chancellor's Regulations C-205(28) and (29) within the body of the petition, actually omits the language "Except for persons covered by Section 24 or subdivision 26b of this Regulation" and instead inserts ellipses (" . . .") in lieu of that language in both regulations. The court is troubled by this glaring omission and blatant attempt to mislead the court.

challenge to BOE's verbal rejection of the revocation is timely, petitioner has failed to state a claim upon which relief can be granted. "[A] mandamus to compel may not force the performance of a discretionary act, but rather only purely ministerial acts to which a clear legal right exists." In re Anonymous v. Comm'r of Health, 21 A.D.3d 841, 842 (1st Dep't 2005). The revocation provisions in Sections 28 or 29 do not apply to petitioner, because he resigned while charges under Education Law § 3020-a were pending against him. There is no clear legal right to revocation. Moreover, the revocation provision in Section 28 is clearly discretionary ("a pedagogical employee who has resigned may . . . be permitted to withdraw such resignation for the purpose of reinstatement to service . . .") (emphasis added). Even construing this proceeding in the light most favorable to petitioner, the request under C.P.L.R. § 7803(1) to compel BOE to accept the revocation of resignation fails to state a claim under C.P.L.R. Rule 3211(a)(7). Accordingly, it is hereby

ORDERED that the cross motion for an order dismissing the petition on the grounds that the statute of limitations expired and for failure to state a cause of action is granted and the Clerk of the Court is directed to enter judgment accordingly; and it further

ORDERED that the petition is denied and the proceeding is dismissed.

Dated: *Oct. 29*, 2010

  
\_\_\_\_\_  
JOAN B. LOBIS, J.S.C.

**FILED**

NOV 04 2010

NEW YORK  
COUNTY CLERK'S OFFICE