SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EMILY JANE GOODMAN PART 17

Justice

Index Number : 113281/2006
KORPAH, KWEICENA

INDEX NO. _____

VS

NYC DEPT. BOARD OF EDUCATION

MOTION DATE _____

Sequence Number : 001

MOTION SEQ. NO. _____

VACATE OR MODIFY AWARD

MOTION CAL. NO. _____

The following papers, ... this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☑ Yes ☐ No

Upon the foregoing papers, It is ordered that this ~~motion~~ petition and cross motion to dismiss the petition are decided per attached

FILED

MAR 30 2007

COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: 3/26/07

EMILY JANE GOODMAN J.S.C.

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17
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In the Matter of the Application of

KWEICANA KORPAH,

Petitioner,

Index No. 113281/06

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION

Respondent.

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Emily Jane Goodman, J.S.C.:

Petitioner Kweicena Korpah (Korpah) brings this Article 75 petition to vacate the determination of the arbitrator in a proceeding to determine Korpah's fitness to teach as a special education teacher in the New York City school system. The New York City Department of Education (the Department) cross-moves to dismiss the petition.

I. Background

At all times relevant, Korpah was an employee of the Department as a tenured special education teacher. Korpah was assigned to teach special education at Fort Hamilton High School for the 2000-2001 and 2001-2002 school terms.

Following these two terms, disciplinary charges were brought against Korpah, pursuant to Education Law § 3020-a, alleging incompetence. In early 2003, Korpah and the Department settled

the charges by entering into a Stipulation (the Stipulation).[1] The Stipulation apparently required Korpah to pay a fine, attend a graduate-level teaching course, and enter into his collective bargaining agreement's Peer Intervention Program (PIP). Trans., at 19.

Following execution of the Stipulation, Korpah was transferred to New Dorp High School (New Dorp) in the Fall of 2003. Following the completion of the 2003-2004 school year, the Department brought a second Education Law § 3020-a proceeding against Korpah. In that proceeding, Korpah was charged with 11 specifications alleging incompetence, insubordination, and other acts of misfeasance. The proceeding followed a year of supervision and observation, in which Korpah's teaching performance was repeatedly rated unsatisfactory. Korpah was also cited as having missed two departmental meetings, and of failing to take one of his classes to a special program at the school auditorium.

Korpah requested an impartial hearing, pursuant to Education Law § 3020-a. Hearings before Eric Lawson, an independent hearing officer (Hearing Officer) commenced on October 2005, and proceeded until July 2006. The hearing took a total of 32 days, resulting in a transcript numbering over 4,600 pages.

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[1]None of the documents referred to in the transcript of the hearing, or by the parties to this proceeding, have been made part of the record before this court.

The hearing terminated with a report in the Department's favor. In the decision, dated September 8, 2006 (Decision), the Hearing Officer, in a detailed 69-page report, with exhaustive citation to the record, determined that many of the 10 remaining charges of incompetence had been established.[2]

In fashioning the award, the Hearing Officer found, among other things, that Korpah had repeatedly failed to take advantage of the supervisory aid which had been offered to him, including failing to pursue the PIP; had repeatedly failed to air his grievances with his supervisors, so as to allow for discussion; had failed to control his classes; and had failed to keep up with class material, so that his classes were significantly behind the required curriculum.

The Hearing Officer commented at some length on Korpah's demeaner in answering questions posed to him. He found that Korpah's responses to many questions were "confusing, unclear or non-responsive." Decision, at 65. The Hearing Officer felt that "Korpah's obstinance was obvious and his resistance to accept the obligation to answer questions, despite his polite and respectful demeanor, raised questions with the [Hearing Officer] about difficulty Korpah may have dealing with persons in authoritative positions." *Id.*

The Hearing Officer devised a penalty short of the

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[2]The eleventh specification was dropped.

termination sought by the Department. The award provides that Korpah is to be suspended without pay for three marking periods amounting to 3/4th of the school year, or 1.5 semesters; is required to enroll, at his own expense, in at least six credits of university classes relating to teaching methodology for special needs students, as well as monitor special education classes taught by experienced teachers (at his own expense, if required); and, upon his return to teaching, "cooperate to see that he is immediately enrolled in the PIP and he must complete that program." Decision, at 70.

II. Amended Petition

The basic gist of the amended petition is that Korpah was denied the special attention, supervision, and training that he was entitled to under the Stipulation, and also under his collective bargaining agreement, the latter of which requires that PIP be made available to Korpah. He complains that the failure to remediate his deficiencies violated his right to due process. He claims that he was prejudged by his supervisors at New Dorp, in violation of the Stipulation, which Korpah says provided that he was not to be supervised by any of the supervisors responsible for the prior Education Law § 3020-a proceeding and the Stipulation.[3]

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[3]Although Korpah was never actually supervised by any supervisor from Fort Hamilton after he arrived at New Dorp, Korpah alleges that one of his old supervisors, Tobias Weissman,

Korpah also complains of the "slipshod" manner in which he was treated by New Dorp's principal (Amended Petition, at 12), and New Dorp's assistant principal, and other supervisory personnel. Thus, Korpah concludes that "[i]t is irrational to hold Petitioner, the victim, accountable for the misdeeds of his supervisors." Amended Petition, at 20. He also maintains that he was disparately treated, in that other teachers who had been rated unsatisfactory had not been brought up on charges.

In his first cause of action, Korpah claims that the arbitral award "explicitly evinces an impermissible nationalist and ethnocentric bias," and that the Hearing Officer "all but tells Petitioner to 'go back where he came from.'" Amended Petition, at 18. In his second cause of action, Korpah claims that the Hearing Officer "substituted his own opinions for facts in the record." *Id.* at 19. As a result, the Hearing Officer allegedly "exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made" (Amended Petition, at 2) in rendering a decision which was not supported by the record, and in doing so, "prejudiced the substantial rights of Petitioner." *Id.*

Korpah's third cause of action alleges that it is

"divulged" Korpah's Education Law § 3020-a proceeding to New Dorp's principal prior to Korpah's arrival at New Dorp, which "poison[] the well" of his tenure at New Dorp. Amended Petition, at 8.

"unintelligible" as to whether the Hearing Officer reach a conclusion as to the eighth specification. *Id.*, at 23. Korpah, in his fourth cause of action, claims that the award "shocks the conscience" (Amended Petition, at 23), because the Hearing Officer ignored the "statutory schema of progressive discipline" encoded in Education Law § 3020-a (4) (*id.*), and "overstepped his authority" (*id.* at 24) by assessing a penalty against Korpah "effectively terminating Petitioner by placing economic impediments in the way of his return." *Id.* The Hearing Officer is also accused of wrongly publishing Korpah's confidential information. Korpah further maintains that the award shocks the conscience because it punishes him for the errors of his supervisor in "programing Petitioner to fail" by giving Korpah an assignment for which he was not qualified, without giving him the support he required and was entitled to. *Id.* at 25.

In his fifth and final cause of action, Korpah claims that the award is "violative of public policy" because it required petitioner to pay for his additional training, including paying a stipend to a training teacher, if needed. He maintains that the award violates public policy because such payments to teachers in the employ of the Department "is in contravention of New York City's Charter Provisions prohibiting conflicts of interests as well as the Department of Education's own policies prohibiting the same." Amended Petition, at 25-26. He argues that the

Department has used Education Law § 3020-a to "target individuals charged with the public trust" based on "'personality conflicts' or age," violating concepts of "democratic ideals and good citizenship." *Id.* at 26.

III. Discussion

Initially, in response to the cross motion, Korpah argues that "motions to dismiss pursuant to CPLR 3211 must be categorically rejected as they are not the proper vehicle upon which to establish a record for a decision to be rendered." Pet. Memo. of Law, at 4. He argues that the Department must, instead, serve an answer to the petition. Korpah bases this argument on the well-established rule that, on a motion to dismiss, the facts alleged in a complaint are to be accepted as true, the plaintiff must be accorded the benefit of all favorable inferences, and the court is to determine only whether the facts alleged fit into any cognizable legal theory. *See Leon v Martinez*, 84 NY2d 83 (1994). Motions to dismiss special proceedings under CPLR 404 are to be addressed in the same manner. *Matter of County of Niagara v Bania*, 6 AD3d 1223 (4th Dept 2004).

Korpah's argument is without merit. A motion to dismiss is not negated merely because Korpah is entitled to the benefit of all favorable inferences; moreover, bare legal conclusions based on a party's version of the facts will not be afforded the same favorable inference. *See Skillgames, LLC v Brody*, 1 AD3d 247

(1st Dept 2003). The cross motion is properly brought.

CPLR 7511 provides for the vacatur of an award in arbitration where "an arbitrator ... exceeded his power or so imperfectly executed it that a final and definite award upon the subject submitted matter was not made ... ." CPLR 7511 (b) (1) (iii). The scope of judicial review of arbitration awards is extremely limited. *Matter of Brown & Williamson Tobacco Corporation v Chesley*, 7 AD3d 368 (1st Dept 2004). Where a party to arbitration claims that the arbitrator exceeded his or her powers, "[s]uch an excess of power occurs only when the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power." *Matter of New York City Transit Authority v Transport Workers' Union of America, Local 100, AFL-CIO*, 6 NY3d 332, 336 (2005); *see also Matter of United Federation of Teachers, Local 2, AFT, AFL-CIO v Board Education of City School District of City of New York*, 1 NY3d 72, 79 (2003).

Judicial review of arbitral awards pursuant to Education Law § 3020-1 (5) is limited to the grounds set forth in CPLR 7511. *Matter of Hegarty v Board of Education of City of New York*, 5 AD3d 771 (2d Dept 2004). "However, where, as here, the parties are forced to engage in compulsory arbitration, judicial review under CPLR article 75 requires that the award be in accord with due process and supported by adequate evidence in the record

[internal quotation marks and citations omitted]." *Id.* at 772. Further, "closer judicial scrutiny of the arbitrator's determination" is required of the court in the cases of compulsory arbitration. *Matter of Motor Vehicle Accident Indemnification Corporation v Aetna Casualty & Surety Company*, 89 NY2d 214, 223 (1996). Thus, the award must have "evidentiary support and cannot be arbitrary and capricious." *Id.* at 223.

In his first cause of action, Korpah accuses the Hearing Officer of acting with a "nationalist and ethnocentric bias," to the prejudice of Korpah. While he does not specifically say that this perceived bias renders the award against public policy, he does claims that the statements "are in conflict with the conscience of our diverse community." Amended Petition, at 19 (First Cause of Action).

"[J]udicial restraint under the public policy exception is particularly appropriate in arbitrations pursuant to public employment collective bargaining agreements [internal quotation marks and citation omitted]." *United Federation of Teachers, Local 2, AFT, AFL-CIO v Board of Education of City School District of City of New York*, 1 NY3d at 80; *see also Matter of Selman v State of New York Department of Correctional Services*, 5 AD3d 144 (1st Dept 2004). An arbitration award may be vacated on public policy grounds where "the award itself [would] violate a well-defined constitutional, statutory or common law of this

State [internal quotation marks and citations omitted]." *Matter of Mineola Union Free School District v Mineola Teachers' Association*, ___ AD3d___, 2007 WL 466045 *1 (2d Dept 2007). Although Korpah does not offer any precedent to support the notion that a Hearing Officer's ethnic bias might offend public policy, the Court presumes that where such bias is proven, public policy is offended.

In the Decision, the Hearing Officer refers to Korpah's Liberian background[4] on several occasions. For instance, on page 61 of the Opinion and Decision, the Hearing Officer states that:

> Korpah was described by a number of witnesses as very polite, a characteristic the [Hearing Officer] noted during the lengthy proceeding here. As will be discussed below however, Korpah's politeness, perhaps a legacy of his Liberian education and training, frequently surfaced in the record which covered the period of the specifications and included a period prior to the date of the earliest specification, as acquiescence, even obsequiousness toward his supervisors. It tended to disguise an increasing tendency Korpah displayed, as his testimony was taken, to avoid giving clear answers when directed by the [Hearing Officer] to do so.

On page 65, the Hearing Officer states that:

> [f]rom the outset of his testimony, [Korpah] either had difficulty giving direct responses to questions asked of him, because the questions confused him, because, culturally, he felt obligated to respond indirectly or because he deliberately avoided supplying direct answers when it was within his capacity to do so.

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[4]Korpah was educated in Liberia, where he earned a law degree, before coming to the United States. He obtained a masters degree at Long Island University.

While it was improper for the Hearing Officer to speculate as to whether Korpah might have a cultural impediment to answering the questions in a certain manner, in each instance, the Hearing Officer's statements appear to be a misguided attempt to give Korpah the benefit of the doubt as to why his answers appeared confused, indirect or evasive, and therefore did not evince an award which is ethnically biased, so as to render the award against public policy.

In Korpah's second cause of action, he alleges that the Hearing Officer exceeded his powers by finding, against the evidence, that Korpah was sufficiently supervised, and argues, without any legal citation, that Education Law §3020-a puts the burden of remedial efforts on respondent. He also claims that his supervisors "never clearly articulated a single, unchanging standard of what would 'satisfy' them," and that "petitioner can fail to 'satisfy' his supervisors and still not be considered incompetent." Amended Petition, at 22. He argues that "[i]ncompetent is not the equivalent of unsatisfactory" (*id.*), and that the award, being without foundation, denied him due process.

Korpah further maintains that the Department violated the Stipulation, the Collective Bargaining Agreement and the Department's own manual for Rating Pedagogic Staff Members, and that by doing so, violated Korpah's due process rights, citing

Lehman v Bd of Ed., 82 AD2d 832 (2d Dept 1981) (Board of Education's decision to terminate a probationary special education teacher, which was not made in accordance with the requirements of a circular promulgated by Chancellor, was vacated because the circular was a rule or regulation providing the teacher with a substantial right).

The Court finds nothing in Education Law §3020-a which puts the burden of remediation on respondent. However, Korpah is correct in maintaining that respondent's violation of its own rules or regulations could support the relief sought here. However, Korpah provides no support for a determination that the Stipulation, Collective Bargaining Agreement or the Rating Manual is a rule or regulation. *See Munoz v Vega*, 303 AD2d 253 (1st Dept 20030 (termination of probationary school principals was not unlawful on the basis that the school district failed to comply with the requirements of Principal Performance Review, because it was not a rule or regulation, but rather a compilation of instructions having no legal effect).

In any event, as previously noted, Korpah's argument that the Stipulation was breached because he was observed by Tobias Weissman, is unsupported. The Stipulation apparently provided that he was not to be supervised by any of the supervisors

responsible for the prior Education Law § 3020-a proceeding.[5] The fact that Weissman observed Korpah is not evidence that he supervised him.

Further, although Korpah maintains that the Stipulation was violated because it provided that Korpah was to receive remediation, which was not adequately provided, the Hearing Officer did not act arbitrarily in determining that Korpah was adequately supervised. The Hearing Officer noted that Korpah's supervisors bore some responsibility for Korpah's poor performanance. However, the Hearing Officer also noted that:

> [w]hile responsibility rests with administrators regarding the supervision of teachers, particularly so with a teacher possessing documented pedagogical deficits, it is incumbent upon that teacher to take the initiative to at least give those administrators notice of concerns he has regarding his educational program. This is an essential aspect of professionalism and is essential for a program attempting to rehabilitate a teacher.

The Hearing Officer found numerous instances where Korpah's inability or unwillingness to express concerns about his supervision served to undermine his supervisors' ability to help him. For instance, the Hearing Officer described many instances where Korpah received negative assessments from his supervisors,

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[5]Korpah has not cited that portion of the transcript where this argument was made to the Hearing Officer. However, for the purposes of this proceeding, the Court assumes that the argument was raised.

but never grieved those assessments, nor did he attempt to obtain services which were available to him. The Hearing Officer noted that, while Korpah had a conversation with a representative of the United Federation of Teachers concerning his required participation in the PIP, upon being told that there was, at that time, no mentor available, Korpah never again attempted to participate in the program. The Hearing Officer went on to say that "Korpah's lack of engagement in the PIP is symptomatic of the approach he took repeatedly to other situations where he might reasonably have been expected to speak out." Decision, at 62. For example, the Hearing Officer noted that "Korpah was given a note advising him that an assembly program he had been invited to attend with his students had been cancelled. Despite being criticized by [staff developer Libby] Gerstman (Gerstman) for not attending the assembly, Korpah never disclosed the note to her." *Id.*

The Hearing Officer also noted that, pursuant to the record,

> [t]ime after time Korpah testified to reservations he had about lesson planning which occurred in pre-observation conferences, yet, almost without exception, he said nothing to Gerstman, [Assistant Principal in charge of social studies, Ira] Zornberg or [New Dorp Principal, Diedre] DeAngelis about his concerns. He testified that he complained to Gerstman about not having proper textbooks but the complaint was not repeated, despite the books not being supplied, nor was it made to other supervisors." *Id.*

In another example, the Hearing Officer notes that "Korpah complained that no one ever modeled a lesson for him but that

then too, he never requested such modeling, and that "Korpah said that he expected to benefit from a plan of assistance and yet, when none was forthcoming, he registered no complaint." *Id.* at 63.

The Hearing Officer pointed out that Korpah testified to a great degree of reticence on his part to make any complaints to his superiors concerning problems he was having. For example, the Hearing Officer noted that

> [w]hen questioned about his reticence, Korpah explained that as a new and transferred teacher to [New Dorp], he did not want to appear as a troublemaker or uncooperative. He said that events which he thought were grievable were not grieved or were not grieved until months after they occurred because Korpah said that he did not want to draw attention to himself as a grievant. He said that he did not question DeAngelis because 'she is the principal.'"

Decision, at 62.

The findings of the Hearing Officer, based on the specific references to the testimony, show that Korpah's own failures to participate in any effort at supervision overcame any percieved deficiencies in that supervision, and that Korpah did not make an effort to obtain the benefits of supervision.

Further, there is sufficient evidence that Korpah received instruction as to how he was to proceed, and how he had failed. From the record, and the Decision, it appears that Korpah had many pre- and post-class discussions with his supervisors, in which possible lesson plans and teaching approaches were

discussed. For example, Korpah met with Gerstman prior to a class he was to teach the next day. She stated that they discussed "what ... a lesson comprises of" (TR., at 42), and discussed "do-now[6], motivation, aim, homework." *Id.* The Hearing Officer noted that Korpah and Gerstman reviewed strategies "to assist in the presentation of the lesson." Decision, at 4. In the record, Gerstman testified that they discussed the need to

> have a stimulating motivation for the students to engage them into the lesson. We made suggestions of what he could possibly do. We had discussed possibly explaining to students about designing a route from their home to school for - so that they would get involved in understanding maps and some things like that.

TR, at 49. After the class, Gerstman spoke with Korpah in a post-observation conversation, where they talked about various techniques for improving his teaching. *Id.* at 57. Other examples of pre- and post-observation conferences discussed in the record were mentioned by the Hearing Officer. *See e.g.* Decision, at 4 - 6. These classes were observed by Gerstman and/or Zornberg, and post-observation reports were written, and given to Korpah.

Korpah also complains that the Hearing Officer did not take into consideration witnesses who testified as to the positive

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[6]A "do-now" is "designed for students to come into the classroom, so that when they come in - it's supposed to be a springboard into the lesson" or a "review of yesterday's lesson ... ." Gerstman Test., TR, at 47.

nature of Korpah's teaching. However, the decision shows otherwise. The Hearing Officer recites, among others, the testimony of sub-paraprofessional Edna Gardner, in which she says that Korpah's class was "no different from anybody else's classroom" (Decision, at 16); the testimony of special education teacher Judith Rosenstein, who testified that Korpah's classroom had a "good appearance" (*id.*); and paraprofessional Paul Chihocky, who testified that Korpah's class was not "unusual at all." Decision at 17. Therefore, Korpah cannot say that this evidence was ignored. Moreover, Korpah's argument that his supervisors' opinions concerning his abilities should be ignored because they were "subjective" is perplexing, as that is the nature of opinions.

Therefore, the Hearing Officer's determination on the question of adequate supervision was not arbitrary or capricious, and was supported by the record, and Korpah's second cause of action is insufficient as a ground to vacate the award. While Korpah claims that the irrational nature of the Hearing Officer's decision deprived him of due process, he has failed to make such a showing.

In his third cause of action, Korpah complains that the Hearing Officer "sustained five out of the eleven charges and it is unintelligible as to whether he did so for a sixth, to wit, Specification 8, as he reached no conclusion therein." Amended

Petition, at 23.

First, it is noted that the eleventh specification was dropped, so it is more correct to speak of the Hearing Officer as sustaining five of 10 specifications. As for the eighth specification, the Hearing Officer, in bold, notes that "[a]lthough the [Hearing Officer] dismisses the observation report of the March 31st observation, there is no arguing that it provided further evidence to Korpah that his pedagogical performance was substandard." All of the other conclusions are written in bold.

The Hearing Officer dismissed the post-observation report of March 31 because there had been no pre-observation conference, in violation of the collective bargaining agreement, which requires a pre-observation conference "for classes being observed of teachers facing unsatisfactory annual reviews." Decision, at 68.

Although the Hearing Officer obviously intended that the specification be sustained, from the language quoted above and the appearance of the conclusion in bold, that conclusion would be irrational, as the post-observation report cannot be both dismissed, and effective against Korpah. However, the mere fact that the conclusion in specification eight is irrational does not render the Hearing Officer's other conclusions irrational, and the court does not feel that the failing of this one conclusion calls for the vacatur of the entire award.

Korpah's fourth cause of action alleges that the Hearing Officer exceeded his authority by fashioning a penalty ignoring the "statutory scheme of progressive discipline" he claims is contained in Education Law § 3020-a (4); that the award punishes Korpah for his supervisors' alleged "malfeasance and nonfeasance"; and in allegedly compelling the publication of Korpah's file.

Alleged public policies which are "merely 'general considerations of supposed public interests' are not sufficient grounds for vacatur." *Matter of Local 33, United Marine Division International Longshoreman's Association, AFL-CIO v New York City Department of Transportation*, 35 AD3d 211, 212 (1st Dept 2006), quoting *W.R. Grace and Company v Local Union 759, International Union of United Rubber, Cork, Linoleum and Plastic Workers of America*, 461 US 757, 766 (1983). None of Korpah's concerns set forth in the fourth cause of action rises to the standard set forth above.

Education Law § 3020-a (4) (a) does not contain a mandatory "statutory scheme of progressive discipline." It states that a penalty can be "a written reprimand, a fine, suspension for a fixed time without pay, or dismissal." *Id.* There is no requirement that the penalty start at a reprimand before it reaches other forms of penalty. Korpah's penalty of temporary suspension, plus the requirement that he complete certain

educational goals at his own expense, is not irrational or against any public policy. This court disagrees with Korpah's contention that his suspension was tantamount to termination, merely because he is required to pay for his own education.

Nor do either of the two remaining complaints made in the fourth cause of action "shock the conscience," as Korpah claims. There is no indication that information which might be considered confidential has gone to any party who does not have an interest in it, and it is doubtful if such publication would be irrational or against public policy in any event. It has already been established that the Hearing Officer's findings as to the propriety of the acts of Korpah's supervisors was not irrational, and similarly, there is no ground to find them to have been rendered against public policy.

Korpah's fifth cause of action alleges that requiring Korpah to pay any stipend that a training teacher might require offends public policy, because "[t]hese trainers would necessarily also be teachers in the employ of the Department of Education," thus creating a conflict in contravention of the New York City Charter and the policies of the Department. Korpah also claims that any payments he might make to a training teacher would jeopardize his career, and those of the trainers involved. Respondent does not address this argument, and only maintains that the Hearing Officer's penalty of suspension without pay pending completion of

university classes, and the requirement that Korpah monitor special education classes is a fair penalty and allowable under Education Law § 3020-a (4) (a).

In the Decision, the Hearing Officer stated that "[i]f costs are associated with Korpah's monitoring of an experienced teacher, such as a stipend, they shall be Korpah's obligation." This directive applies to instruction "whether offered as part of a university curriculum or arranged for by Korpah, with the assistance of the Department of Education." There is nothing in Regulation of the Chancellor C-120 (governing disclosure of financial interests) which would support Korpah's argument. Section 2604 (b) (13) of New York City Charter Chapter 68 provides that "[n]o public servant shall receive compensation except from the city for performing any official duty or accept or receive and gratuity from any person whose interests may be affected by the public servant's official action." The Court interprets the Decision as requiring Korpah to make such payment only (1) to an experienced teacher through a university program, or, (2) to a Department of Education teacher, acting outside the scope of his or her official duties.[7] Otherwise, the Court

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[7]Korpah's final complaint is that the Department is using the Education Law to target him, based upon "personality conflicts" and age. Amended Complaint, at 26. However, there has been no discussion in Korpah's motion papers in support of his allegation of age discrimination, and this claim is unsupported.

agrees that such a directive would have been in excess of the Hearing Officer's powers and/or arbitrary and capricious.

As a result of the foregoing, there is no evidence that the Hearing Officer rendered the Decision and award in excess of his powers, in that the award neither violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power. In conclusion, the petition must be denied.

Accordingly, it is

ORDERED that the cross motion is granted; and it is further

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

This Constitutes the Decision, Order and Judgment of the Court.

Dated March 26, 2006

ENTER:

J.S.C.

EMILY JANE GOODMAN