

<b>Matter of James v Klein</b>
2009 NY Slip Op 33423(U)
June 19, 2009
Supreme Court, New York County
Docket Number: 113875/05
Judge: Lewis Bart Stone
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 50S

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 In the Matter of the Application of :  
 DORITA L. JAMES, :  
 :  
 Petitioner, :  
 :  
 For a Judgment Pursuant to Article 78 of the Civil :  
 Practice Law and Rules, :  
 :  
 - against- :  
 :  
 JOEL KLEIN, Chancellor of the New York City :  
 Department of Education; the NEW YORK CITY :  
 DEPARTMENT OF EDUCATION and THE CITY :  
 OF NEW YORK, :  
 :  
 Respondents :  
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DECISION AND  
ORDER

Index Number  
113875/05

Hon. Lewis Bart Stone, J

This proceeding which was commenced on September 30, 2005 by petitioner Dorita L. James (“James”), pursuant to Civil Practice Law and Rules (“CPLR”), Article 78 against respondents Joel Klein (“Klein”) as Chancellor of the New York City Department of Education (“DOE”), DOE and the City of New York to review a decision of DOE to discontinue James from her position of assistant principal of a DOE school and to review her performance rating of unsatisfactory.

After a transfer of this case by this Court to the Appellate Division, the Appellate Division found James’ challenge to her termination to be time barred and

has remanded this matter to this Court to determine whether Klein's decision to sustain James' unsatisfactory rating was arbitrary and capricious. James v. Klein, 43 AD3d 764 (1<sup>st</sup> Dept. 2007). Respondents have submitted their answer and James has replied and the matter has been submitted to this Court for decision.

James was a probationary acting assistant principal at the Street Academy High School. In June 2004, she was rated unsatisfactory for the period August 25, 2003 through March 26, 2005. The basis for this rating, DOE asserts, related to an incident where James unilaterally changed a number of students' grades on her own, without authority, which action she could not explain. James appealed her unsatisfactory rating and a designated chancellor's committee conducted a hearing on the rating on March 4, 2006, at which time James testified and various documents were received in evidence. After such hearing, Klein sustained the unsatisfactory rating by letter dated June 1, 2005. Such decision/letter states:

"James had been told of the expectations she was to meet; her modification of the grades was not permissible without a supervisor's agreement and she had none, and could give no reason why she modified the grades."

Thus before this Court, the sole question is whether Klein's decision to sustain James' unsatisfactory rating was arbitrary and capricious. This Court finds it was not. James also complains of procedural issues, such as not having received the documents relied upon by the committee, principally the letter documenting the grade

change incident. However, she acknowledged in writing on May 12, 2004 that she did receive such letter, almost two years before the hearing. In any event, as the Appellate Division's decision limited this Court's review of Klein's decision to whether it was arbitrary and capricious, this Court need not address procedural issues raised by James, and hereby declines to do so.

James' transgression was a serious transgression. Students' grades constitute an important measure of the student's progress as well as the quality of teaching at a school. Consistency in grading standards enable proper measurement of the progress of both students and schools and to diagnose and address any needed remediation. Grades also provide measures for access to programs, schools and colleges.

While a principal should have the ability to monitor a teacher's gradings of students to oversee the application of proper standards, proper standards and the integrity fo the grading process requires that a principle's changes in grades awarded by a teacher must not be made in an arbitrary or capricious manner. As James could provide no explanation as to why she had modified students' grades, it was not arbitrary and capricious of Klein to have determined that she acted improperly. Further, considering the centrality of grades to the ability to monitor and evaluate a school, it was not arbitrary or capricious for Klein to have considered that James' own

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arbitrary and capricious modification of the grades without the approval of her supervisor constituted a proper basis to rate her unsatisfactory and to terminate her from her position.

The petition is dismissed.

This is the Decision and Order of the Court.

DATED: JUNE 19, 2009  
NEW YORK, NEW YORK



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Hon. Lewis Bart Stone  
Justice of the Supreme Court

**FILED**

JUL 01 2009

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