

**Matter of Board of Educ. of the City School Dist. of
the City of N.Y. v Campbell**

2010 NY Slip Op 31129(U)

April 14, 2010

Sup Ct, NY County

Docket Number: 400780/09

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. JOAN A. MADDEN

PRESENT.

J.S.C.

PART II

Index Number : 400780/2009

BOARD OF EDUCATION

VS.

CAMPBELL, BRUCE

SEQUENCE NUMBER : # 001

VACATE

Justice

INDEX NO. 400780-09

MOTION DATE #001

MOTION SEQ. NO. #001

MOTION CAL. NO. _____

were read on 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 Article 75 petition is determined in accordance with the annexed decision, order and judgment.

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

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1415).

Dated: April 14, 2010

[Signature]
HON. JOAN A. MADDEN c.

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 11

In the Matter of the Application of
THE BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW
YORK, and JOEL I. KLEIN, as
Chancellor of the Board of
Education of the City School District
of the City of New York,

Index No.: 400780/09

Petitioners,

- against -

DECISION/ORDER

BRUCE CAMPBELL, and the UNITED
FEDERATION OF TEACHERS, and
JAMES M. DARBY,

Respondents,

UNFILED JUDGMENT

For a Judgment and Order Pursuant
to CPLR Article 75.

**This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).**

MADDEN, JOAN, J.:

In this special proceeding brought pursuant to CPLR 7511 and
Education Law § 3020-a (5), petitioners The Board of Education of
the City School District of the City of New York (now the
Department of Education), and JOEL I. KLEIN, as Chancellor of the
Board of Education of the City School District of the City of New
York (collectively, the Board) seek an order vacating the penalty
imposed against respondent Bruce Campbell (Campbell) in an
arbitration award dated March 14, 2009, and remanding the matter
to the arbitrator for the imposition of the penalty of
termination. Respondent Campbell cross-moves to dismiss the
petition and to confirm the award.

Background

Bruce Campbell is a tenured teacher employed by the Board, who worked in the New York City school system for about 15 years, until he was reassigned in February 2007. See Arbitration Award (Award), Ex. 1 to Verified Petition (Pet.), at 5; Letter dated Feb. 7, 2007, Ex. 6 to Pet. During the 2005-2006 school year, Campbell worked as a speech and language teacher at two high schools in Queens, Newtown High School and the High School for Arts & Business (A&B High School). In September 2006, a school psychologist at A&B High School, Simon Kopelnitsky (Kopelnitsky), while searching for his documents on a computer shared by A&B High School staff members in one of the guidance counseling offices (subject computer), noticed that "inappropriate" and "pornographic" website links were listed under "recent documents," indicating that the computer had been used to gain access to those internet sites. See Award at 6-7. He reported this finding to the assistant school principal, and in response, the Board's Office of Special Investigations (OSI) began an investigation into whether there was pornographic material on the subject computer. *Id.* at 7-8.

OSI investigators removed the computer's hard drive, and investigator/database programmer Giovanni Perez (Perez), after performing a forensic examination of it, found that there was inappropriate or pornographic material on it, which was

"possibly" downloaded under two user identifications (user id), namely, Campbell's, and that of school psychologist Stacy Epstein (Epstein). *Id.* Under Campbell's user id, Perez found that two pictures of a young Asian woman in a bikini bathing suit had been downloaded on June 1 and June 2, 2006. *Id.* at 10; Hearing Transcript (Tr.), Ex. 23 to Pet., at 798-799, 812. Under Epstein's user id, more than 30 pictures of naked or partially clothed women, some engaged in sexual acts, were downloaded into temporary internet folders on March 24 and March 31, 2006. Award at 8, 10; Tr. at 812-813, 882.

OSI investigator Benjamin Francis (Francis) interviewed Campbell in January 2007, and showed him the two pictures that Perez had located on the computer under his user id. Tr. at 619-627. Campbell acknowledged that he had seen those pictures and explained that he found them while doing research to find out whether, as he was informed by two male students at Newtown High School, two female students were advertising sexual services on a website. Tr. at 622-623. He would not provide the names of the students to the investigator. Tr. at 627. After interviewing Campbell, and receiving statements from staff members present at the time that Kopelnitsky discovered the website links on the subject computer, Francis concluded that Campbell had violated the Board's internet use policy "by accessing pornographic material" on the subject computer. See Memorandum dated Jan. 29,

2007, Ex. 6 to Pet.

Francis subsequently interviewed Campbell in June 2007, in an effort to obtain the names of the students involved (Tr. at 637), and showed him the approximately 30 pictures that had been found under Epstein's user id, and asked him if he had seen them. Tr. at 641. Campbell did not recall seeing the specific pictures, but noted that he had seen hundreds of images during his investigation into the students' alleged activities. Tr. at 641; 1864-1865. After this second interview of Campbell, and after interviewing Epstein and the principals of A&B High School and Newtown High School, Francis submitted an addendum to his first report, again concluding that Campbell had violated the Board's internet use policy. See Addendum dated June 27, 2007, Ex. 6 to Pet.

The Board has established Rules for Internet Acceptable Use for its employees, students, and guests, which provide, under the section entitled General Principles of Access:

Internet access and the use of e-mail through the use of the Department's system, has a limited educational purpose. The term "educational purpose" includes use of the system by students and their parents for learning activities both in school and at home, employee professional or career development, communication between teachers, students and their parents and the facilitation of information-sharing between teachers and administrators throughout the New York City school system. If any user has a question whether their [sic] Internet use is consistent with the Department's

educational purpose, goals, and mission, s/he should consult with the appropriate supervisor, principal, teacher, etc.

Rules for Internet Acceptable Use (Internet Use Policy), Ex. 3 to Pet., Sec. A (2).

The Internet Use Policy further provides, under the subsection entitled Limitation on Internet Use:

Users will not use the Department system to access material that is profane or obscene (e.g., pornography), that advocates illegal or dangerous acts, or that advocates violence or discrimination towards other people (e.g., hate literature). For students, a special exception may be made if the purpose is to conduct research and is approved in writing by both the teacher and the parent.

Department employees may access the above material only in the context of legitimate research expressly approved in writing by the employee's supervisor.

Id., Sec. E (7) (H) (i); see Award at 5-6.

The Board also includes a "Warning" screen on its computers, which appears after a computer is turned on and before a user logs in, and which states:

This computer system, including all related equipment, is the property of the NYC Department of Education (NYCDoE) and is solely for uses authorized by NYCDoE. You have no right to privacy on the system, and all information and activity on the system may be monitored. Any unauthorized use of the system may result in disciplinary action, civil or criminal penalties.

Your use of the system constitutes express consent to the above terms and conditions.

Warning, Ex. 4 to Pet.; see Award at 6.

Following the OSI investigation, the Board commenced a disciplinary proceeding, pursuant to Education Law § 3020-a,

charging Campbell with conduct unbecoming a teacher, neglect of duty, insubordination, and unfitness based on Campbell's alleged use of the subject computer to access and view pornographic and/or inappropriate material on two occasions in March 2006 and two occasions in June 2006. Campbell was served with four specific charges:

Specification 1 charged that Respondent, on or about March 24, 2006, during school hours, "accessed a pornographic website from a school computer located in a room in the guidance suite" and viewed and downloaded one pornographic photograph, in violation of the Board's Internet Use Policy prohibiting use of the Board's computers "to access material that is profane or obscene (e.g. pornography)," and in violation of the Board's "Computer Warning," which provides that the Board's computers are "solely for uses authorized by NYCDOE."

Specification 2 alleged that Respondent, on or about March 31, 2006, during school hours, accessed pornographic website(s) from the subject computer and viewed and downloaded approximately 32 pornographic photographs, in violation of the Board's Internet Use Policy and Computer Warning.

Specification 3 alleged that Respondent, on or about June 1, 2006, during school hours, "accessed an inappropriate website and/or email from a school computer located in a room in the guidance suite" and viewed two "inappropriate" photographs on the

computer, in violation of the Internet Use Policy and Computer Warning.

Specification 4 alleged that, on or about June 2, 2006, during school hours, Respondent "accessed an inappropriate website and/or email from a school computer located in a room in the guidance suite" and viewed and saved onto the school computer two inappropriate photographs, in violation of the Internet Use Policy and Computer Warning. See Specifications, Ex. 2 to Pet.; Award at 2-4.

A hearing on the four specified charges was held before respondent Hearing Officer James Darby over six days in April, May and June 2008, at which Campbell testified, witnesses on behalf of the Board and Campbell were presented, and documentary evidence was submitted. Campbell testified at the hearing that he worked as a speech teacher during the 2005-2006 school year, teaching three days a week at Newtown High School, and two days a week, usually Thursdays and Fridays, at A&B High School. Tr. at 1709-1711. At A&B High School, his classes were held in two locations. On Thursdays, he saw students in Room 102B, the room where the subject computer was located, and on Fridays, he was assigned to the principal's conference room, because other staff members used Room 102B on Fridays. Tr. at 1717-1719.

Campbell acknowledged that, in or around May or June 2006, he downloaded onto the subject computer two pictures of a young

woman in a bikini, because he was looking for pictures of students from Newtown High School, who, he was told by other students, were advertising "services" on "Craig's List," an online classified advertising site. Tr. at 1742-1743, 1746-1747. He explained that he was concerned about what a former student was doing, and hoped that if he found evidence, he could confront her and get her to stop. Tr. at 1746-1747. He testified that he started his search at his home, on Craig's List, and looked at hundreds of advertisements under erotic services (Tr. at 1749-1750), but then used the school computer because he did not want his children to see any of the pictures he was finding.

According to Campbell, no students at school had access to the subject computer. Tr. at 1748-1752. When he did not find anything on Craig's List, a male student suggested he look at "Barely Legal" websites. Tr. at 1753-1755. He downloaded the two pictures of a young Asian woman because they seemed to match the description of one of the students he was looking for, and in order to save them until he could print them. Tr. at 1759.

He did not consider the two pictures he had saved to be pornographic (Tr. at 1759), and did not recall seeing the other pictures showed to him by the investigator. Tr. at 1774, 1865. He discontinued his search at the end of the school year, and did not continue it in the fall. Tr. at 1762-1763. He also testified that he did not receive any information about the

Board's rules for acceptable use of the internet, and did not recall seeing the computer warning screen come up when he used the subject computer. Tr. at 1777-1780.'

Perez testified at the hearing that not all of the Board's computers have a warning screen, and he did not know if it was on the subject computer. Tr. at 854. He also testified that nothing in his investigation showed that Campbell accessed the documents identified under Epstein's user id (Tr. at 884), and that those pictures, which all came up on the computer at the same time or seconds apart, could have been "pop-ups," which can appear on a computer screen without warning or a user's direct consent. Tr. at 897-900, 908.

Francis testified at the hearing that there were multiple users of the subject computer, who would go on the computer under others' user ids, but he did not investigate any users other than Campbell. Tr. at 679-681. He only interviewed Epstein on the telephone, for his "addendum" report, and when he asked her if she downloaded pornography, she said no. Tr. at 654-655. When shown a picture that Campbell had downloaded, Francis testified that it was "inappropriate but this doesn't appear to be pornographic." Tr. at 734.

After considering all the evidence, Hearing Officer Darby found that the Board failed to demonstrate by a preponderance of the evidence that Campbell was guilty of the charges presented in

Specifications 1 and 2, which included viewing and downloading pornographic photographs on March 24 and March 31, 2006. See Award at 30. In so finding, the hearing officer noted that the only evidence connecting Campbell to the allegations in Specifications 1 and 2 was that he was at the school on the dates in question. Award at 29. Evidence showed that the pictures had been accessed under Epstein's id, and Campbell testified that he did not ever use her id and did not know what it was. Perez testified that those pictures were not downloaded, and possibly were pop-ups not intentionally viewed or accessed by the computer user. Evidence also showed that both March 24 and 31 were Fridays, when Campbell worked out of the principal's office, and not in Room102B. *Id.*

The hearing officer then concluded that Campbell was guilty of the charges presented in Specifications 3 and 4, that is, viewing and downloading two "inappropriate" photographs onto the school computer on June 1 and 2, 2006. Campbell does not deny that he viewed and downloaded two pictures, and viewed hundreds of other similar pictures, as part of his own investigation into allegations that female students were selling sexual services on the internet. Although Campbell claimed that he was doing this to help students, the hearing officer found his explanation that he was conducting his own investigation unconvincing. Award at 32-33.

In determining what punishment was appropriate, the hearing officer considered, among other things, Campbell's 15-year tenure without any prior discipline, that only two of the four charges were sustained, and the lack of information about the likelihood of a reoccurrence, and concluded that Campbell "shall be suspended without pay for the remainder of the 2008-2009 school year, or 90 days, whichever is longer;" that Campbell's internet use shall be monitored by the Board during the 2009-2010 school year, and any substantiated allegations that he violated the Internet Use Policy will result in his termination, subject to his CPLR § 3020-a rights; and that

The Respondent's return to work shall be conditioned upon his submitting to the Department's Office of Legal Services a written assessment from a licensed therapist. The assessment shall indicate that the therapist has read this Opinion and Award, has evaluated the Respondent, and that he or she concludes that the Respondent is not addicted to Internet pornography and that his viewing of Internet pornography, as described herein, will not adversely affect his ability to teach and will not place students at risk.

Award at 38.

Petitioners do not challenge the hearing officer's findings of fact or conclusions with respect to the four charges against Campbell. Rather, petitioners seek to vacate the penalty imposed by the hearing officer on the grounds that it exceeds his authority, is not final and definite, and violates public policy.

DISCUSSION

It is well settled that "[t]he scope of judicial review of arbitration awards is 'extremely limited.'" *Matter of Brown & Williamson Tobacco Corp. v Chesley*, 7 AD3d 368, 371 (1st Dept 2004). Education Law § 3020-a (5) expressly limits a court's review of an arbitration award "to the grounds set forth in [CPLR 7511]." Under CPLR 7511 (b), an arbitration award may be vacated when the rights of a party in an arbitration proceeding "were prejudiced by corruption, fraud or misconduct in procuring the award, partiality of an arbitrator, that the arbitrator exceeded his power or failed to make a final and definite award, or a procedural failure that was not waived." *Matter of Silverman [Benmor Coats]*, 61 NY2d 299, 307 (1984); *see Hackett v Millbank, Tweed, Hadley & McCloy*, 86 NY2d 146, 154-155 (1995); *Lackow v Department of Educ. (or "Board") of City of N.Y.*, 51 AD3d 563, 567 (1st Dept 2008); *Austin v Board of Educ. of City School Dist. of City of N.Y.*, 280 AD2d 365 (1st Dept 2001).

In cases in which the parties are mandated by statute to participate in arbitration, the arbitrator's determination is subject to closer judicial scrutiny and "must be in accord with due process and supported by adequate evidence, and must also be rational and satisfy the arbitrary and capricious standards of CPLR article 78." *Lackow*, 51 AD3d at 567; *see Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223

(1996); *Hegarty v Board of Educ. of City of N.Y.*, 5 AD3d 771, 772 (2d Dept 2004). Petitioner has the burden of establishing that the arbitration award was arbitrary and capricious, irrational, or otherwise invalid. See *Lackow*, 51 AD3d at 567; *Hegarty*, 5 AD3d at 773. An arbitrary and capricious determination is one that is "without sound basis in reason" and reached "without regard to the facts." *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 231 (1974). An arbitration award is considered irrational only when there is "no proof whatever to justify the award." *NFB Inv. Services Corp. v Fitzgerald*, 49 AD3d 747, 748 (2d Dept. 2008); *Matter of Peckerman v. D & D Assocs.*, 165 AD2d 289, 296 (1st Dept. 1991). Further, "[a]n arbitration award made after all parties have participated ... will not be overturned merely because the arbitrator committed an error of fact or of law." *Matter of Motor Veh. Acc. Indem. Corp.*, 89 NY2d at 223.

When an arbitration award is challenged on the ground that the arbitrator exceeded his or her power, "[s]uch an excess of power occurs only where 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 Tr. Auth. v Transport Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332, 336 (2005); see *Matter of Board of Educ. of*

Arlington Cent. School Dist. v. Arlington Teachers Assn., 78 NY2d 33, 37 (1991); *Nreu v New York City Dept. of Educ.*, 25 Misc 3d 1209A (Sup Ct, NY County 2009). "[T]he scope of the public policy exception to an arbitrator's power to resolve disputes is extremely narrow." *United Fedn. of Teachers, Local 2, AFT, AFL-CIO v Board of Educ. of City School Dist. of City of N.Y.*, 1 NY3d 72, 80 (2003). Judicial intervention on public policy grounds is permitted only in "cases in which public policy considerations, embodied in statute or decisional law, prohibit, in an absolute sense, particular matters being decided or certain relief being granted by an arbitrator." *Matter of New York City Tr. Auth. v Transport Workers Union of Am., Local 100, AFL-CIO*, 99 NY2d 1, 7 (2002) (emphasis in original), quoting *Matter of Sprinzen [Nomberg]*, 46 NY2d 623, 631 (1979).

Petitioners contend that the arbitrator exceeded his powers by conditioning Campbell's return to work on the submission of a written assessment from a licensed therapist. According to petitioners, such a condition contravenes a provision of the teachers' union contract setting forth procedures for the determination of a teacher's medical fitness. See Petitioners' Memorandum of Law in Support of Petition, at 19, citing the UFT Contract, Art. 21 K (4), annexed as Appendix 1. The cited contract provision applies, however, only after there has been a written request by a teacher's supervisor for a medical

examination to determine fitness to teach (see UFT Contract, Art. K (1); Education Law § 2568; *Matter of Gordon v Board of Educ. of City School Dist. of City of N.Y.*, 26 AD2d 545 [2d Dept 1966]), and is not addressed to disciplinary proceedings brought pursuant to Education Law § 3020-a, which provides the exclusive means to dismiss a tenured teacher. See *Matter of Abramovich v Board of Educ. of Cent. School Dist. No. 1 of Towns of Brookhaven & Smithtown*, 46 NY2d 450, 454 (1979); *Matter of Sanders v Board of Educ. of City School Dist. of City of N.Y.*, 17 AD3d 682, 683 (2d Dept 2005). Petitioners offer no legal authority that the contract provision supplants the statutory authority to make a determination of fitness in a disciplinary proceeding pursuant to Education Law § 3020-a (see generally *Young v Central Sq. Cent. School Dist.*, 213 F Supp 2d 202, 208-209 [ND NY 2002] [charge in 3020-a disciplinary hearing was mental/physical incapacity]), or that an arbitrator in such proceeding cannot direct a medical examination. To the contrary, the statute explicitly provides that "the hearing officer, where he or she deems appropriate, may [require] ... counseling or medical treatment." Education Law § 3020-a (4).

Similarly, to the extent that the Board argues that the examination imposed by the hearing officer is beyond the scope of the statute's permissible penalties, Education Law § 3020-a (4) clearly grants discretion to the hearing officer to implement

what he finds to be proper remedial measures:

In those cases where a penalty is imposed, such penalty may be a written reprimand, a fine, suspension for a fixed time without pay, or dismissal. In addition to or in lieu of the aforementioned penalties, the hearing officer, where he or she deems appropriate, may impose upon the employee remedial action including but not limited to leaves of absence with or without pay, continuing education and/or study, a requirement that the employee seek counseling or medical treatment or that the employee engage in any other remedial or combination of remedial action.

See generally *Matter of Tarasow v NYC Dept. of Educ.*, 2008 NY Slip Op 52066U, *8, 21 Misc 3d 1113A (Sup Ct, NY County 2008) (arbitrator free to fashion what he believes is proper remedy).

Courts have found that requiring a physical/mental examination or assessment falls within the scope of the available remedies. See *Matter of Bd. of Educ. of Westhampton Beach Union Free School Dist. v Ziparo*, 275 AD2d 411 (2d Dept 2000) (award upheld which conditioned return to teaching on psychiatric exam); see also *Nreu v New York City Dept. of Educ.*, 25 Misc 3d 1209A, *supra* (court recommended return to teaching be conditioned on mental health exam). Nor does the hearing officer's imposition of a condition for returning to work render the award indefinite and non-final. See *Matter of Bd. of Educ. of Westhampton Beach Union Free School Dist. v Ziparo*, 275 AD2d 411, *supra*.

The Board also contends that the penalty imposed violates public policy that children should be protected from harm by

adults, especially in public education settings (see *Matter of Binghamton City School Dist. v Peacock*, 33 AD3d 1074, 1076 [3d Dept 2006]), and argues that termination of Campbell's employment is the only appropriate punishment.

To vacate an award on public policy grounds, "the courts must be able to examine an arbitration ... award on its face without engaging in extended factfinding or legal analysis, and conclude that public policy precludes its enforcement." *Matter of New York City Tr. Auth.*, 99 NY2d at 7 (emphasis in original). Further, a court may vacate a penalty imposed after a hearing pursuant to Education Law § 3020-a "only if the measure of punishment or discipline imposed is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness." *Matter of Pell*, 34 NY2d at 233; see *Matter of Harris v Mechanicville Cent. School Dist.*, 45 NY2d 279, 284 (1978); *Matter of Bd. of Educ. of City School Dist. of City of N.Y. v Mills*, 250 AD2d 122, 126 (3d Dept 1998).

Here, the hearing officer dismissed two of the four charges, and based the penalty on a finding that Campbell had downloaded two inappropriate pictures, and accessed inappropriate pornographic images, on two days, June 1 and 2, 2006. There was no finding that Campbell otherwise violated the Board's Internet Use Policy, and no other charges of accessing inappropriate material on the subject computer were sustained. There was no

evidence that Campbell's actions were part of a pattern (*compare Lackow*, 51 AD3d at 569), or that he was unwilling to accept the Board's rules going forward. See *Matter of Harris*, 45 NY2d at 285. Although Campbell stated that he did not think that he was doing anything wrong by searching on the computer because he was trying to help students, he testified that he "certainly" would not do the same thing again, and would report any similar alleged student misconduct to a school guidance counselor. While Campbell's conduct was in violation of an important Board policy intended to facilitate use of the internet as a "secure, appropriate virtual learning space," in view of the circumstances here, the penalty imposed by the arbitrator is neither "shockingly lenient" (*Peacock*, 33 AD3d at 1076), nor does it violate public policy. See *Matter of Tarasow v NYC Dept. of Educ.*, 21 Misc 3d 1113A, *supra* (penalty of two-month suspension without pay upheld where teacher guilty of failing to report or monitor student with self-inflicted cuttings, although DOE sought dismissal, and despite teacher showing no remorse); *Nreu v New York City Dept. of Educ.*, 25 Misc 3d 1209A, *supra* (suspension without pay upheld for teacher who had inappropriate relationship with student); *compare Lackow v Department of Educ. (or "Board") of City of N.Y.*, 51 AD3d 563, *supra* (repetitive pattern of teacher's sexually-laced comments in classroom warranted dismissal); *Board of Educ., Peru Cent. School Dist. v Stephney*, 9

Misc 3d 927 (Sup Ct, Clinton County 2005) (finding that second grade teacher repeatedly and increasingly used classroom computer, to which children had access, to search for pornography on internet warranted penalty greater than suspension without pay for remainder of school year).

Accordingly, it is

ORDERED and ADJUDGED that the petition is denied; and it is further

ORDERED that the cross-motion is granted to the extent that it is

ORDERED and ADJUDGED that the award of arbitrator James Darby, dated March 14, 2009, is affirmed.

Dated: April 14, 2010



HON. JOAN MADDEN, J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served issued hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).