

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

2011 NY Slip Op 32018(U)

July 13, 2011

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

PRESENT: Madden
Justice

PART 11

Bd. of Ed.

INDEX NO. 40080/09

MOTION DATE 2/17/11

- v -

MOTION SEQ. NO. 22

Campbell

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for Campbell

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached Memorandum Decision & Order.

FILED

JUL 19 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: July 13, 2011

[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
COUNTY OF NEW YORK: PART 11

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

Index No. 400780/09

Petitioners,

-against -

BRUCE CAMPBELL,

Respondent.

-----X
JOAN A. MADDEN, J.

FILED

JUL 19 2011

NEW YORK
COUNTY CLERK'S OFFICE

Respondent Bruce Campbell ("Campbell") moves, by order to show cause, for an order enjoining petitioners from refusing to return Campbell to employment in violation of this court's decision, order and judgment dated April 14, 2011 confirming the Opinion and Award ("the Award") of Hearing Officer James Darby ("Darby").¹ Petitioners oppose the motion, which is denied for the reasons below.

Campbell was a tenured teacher employed by petitioner Board of Education of the City School District of the City of New York ("DOE"). In February 2007, Campbell was reassigned based on his alleged violation of the DOE's internet use policy in connection with "accessing pornographic material" on a school computer. Following an investigation, the DOE commenced a disciplinary proceeding against Campbell pursuant to Education Law § 3020-a, charging Campbell with conduct unbecoming a teacher, neglect of duty, and insubordination based on

¹While in his affirmation, Campbell's counsel describes the motion as one for "civil contempt" this description is belied by the language used in the order to show cause. In addition, the order to show cause lacks the warning language required for a contempt motion under Judiciary Law § 756.

Campbell's alleged use of a school computer to access and view pornographic and/or inappropriate materials.

Following a hearing, Darby found that the DOE had failed to demonstrate that Campbell was guilty of the specifications charging him with viewing and downloading pornographic photographs, but that Campbell was guilty of specifications charging him with downloading and viewing two "inappropriate" photographs onto the school computer. In determining the appropriate punishment, Darby considered various factors, including Campbell's 15-year tenure without prior discipline, 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 DOE 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 [i.e. Campbell'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.

Following the issuance of the Award, Campbell underwent a psychological examination conducted by Lew Brown, PHD, a licensed therapist. On October 9, 2009, Dr. Brown issued a report regarding his assessment of Campbell. On October 21, 2009, this report was provided to the DOE. By letter dated November 18, 2009, the Office of Legal Services for the DOE informed Lori Smith, a representative of the Teachers' Union that Dr. Brown's assessment "does not

sufficiently comply with the directive” of Darby. On November 30, 2009, Ms. Smith responded that she disagreed with the position of the Office of Legal Service.

By decision, order and judgment dated April 14, 2010, this court denied petitioners’ application to vacate the Award and granted Campbell’s cross motion to confirm it.

In or around September 2010, DOE briefly reinstated Campbell to payroll. He was subsequently informed that the reinstatement was in error and was asked not to report to work.

On December 3, 2010, Campbell made this motion seeking an order enjoining petitioners to return Campbell to work. In support of the motion, Campbell submits for in-camera inspection the assessment by Dr. Brown.

In opposition to the motion, petitioners argue that the motion is in the nature of an Article 78 proceeding as it challenges DOE’s November 18, 2009 determination that Dr. Brown’s assessment of Campbell did not comply with Darby’s directive and is therefore untimely since the order to show cause was made more than four months after such determination. Petitioners also argue that, in any event, they are not in violation of the Award as Campbell’s reinstatement was conditioned on the requisite psychological assessment and this condition has not been met.

Upon review of Dr. Brown’s assessment, the court finds that it does not satisfy Darby’s directive which required that following an evaluation of Campbell, that the psychologist conclude “that [Campbell] is not addicted to Internet pornography and that his viewing of Internet pornography, as described [in the Opinion and Award], will not adversely affect his ability to teach and will not place students at risk.” This finding is supported by Dr. Brown’s acknowledgment in his report that he could not determine whether Campbell was addicted to pornography, characterizing such determination as “nearly impossible,” and that he was only able

to state that there "is no evidence that Campbell has an internet addiction." In addition, Dr. Brown's conclusion that viewing internet pornography would not put students at risk or affect his ability to teach appears to be based solely on Campbell's lack of recorded history of prior inappropriate behavior (a fact that was known by Darby) and the "lack of information" indicating that Campbell has an impairment that would interfere with his ability to teach.


Thus, as a condition provided in the Award to Campbell's reinstatement has not been met, the motion must be denied, and the court need not reach petitioners' other arguments, including whether Campbell's request for relief is untimely.

Finally, the court notes that the denial of this motion is without prejudice to Campbell seeking a further psychological assessment consistent with the Award.

In view of the above, it is

ORDERED that the motion by respondent Bruce Campbell for an order enjoining petitioners from refusing to return Campbell to employment is denied.

DATED: July ¹³~~14~~, 2011



J.S.C

FILED

JUL 19 2011

NEW YORK
COUNTY CLERK'S OFFICE