

Matter of Loren v BYk 'Mcf_'7 Jmi8 Ydh'cZ9Xi W
2012 NY Slip Op 33093(U)
December 20, 2012
Supreme Court, New York County
Docket Number: 401945/12
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

Steve Lonen

INDEX NO. 401945/12

MOTION DATE 9-18-12

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

NYC DEPT. OF ED., ET AL.

The following papers, numbered 1 to 15 were read on this motion to for annual determination

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits Petition
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED	
1-10	
X-mot 11-14	
15	

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ^{CROSS-}motion is granted and the petition dismissed.

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE UNFILED JUDGMENT AND DECISION. 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 1418).

Dated: 12/20/12

JOAN B. LOBIS 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**

-----X

In the Matter of the Application of
STEVE LOREN,

Petitioner,

Index No. 401945/12

For a Judgment Pursuant to Article 78 of the
Civil Practice Laws and Rules,

Decision, Order, and Judgment

-against-

THE NEW YORK CITY DEPARTMENT OF
EDUCATION, and DENNIS WALCOTT, As
CHANCELLOR OF THE NEW YORK CITY
DEPARTMENT OF EDUCATION,

Respondents.

-----X

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

By this petition, Steve Loren, pro se, seeks an order of this Court reinstating him into the New York City Teaching Fellows Program ("NYCTF"), on the basis that Respondents' decision to remove Petitioner from the program was arbitrary and capricious. Respondents New York City Department of Education ("DOE") and Dennis Walcott, as Chancellor, cross-move to dismiss the petition. For the reasons stated below, the cross motion is granted, and the petition is dismissed.

Mr. Loren seeks reinstatement into NYCTF, a training program intended to provide an alternative route to a teaching license. Completion of a pre-service training component makes one eligible for a transitional B certificate, a 3-year license granted to individuals that remain in good standing in NYCTF. Petitioner was accepted in April 2012. He was terminated from the Program on July 31, 2012.

In his petition, Petitioner argues that it was arbitrary and capricious for the DOE to terminate him two weeks prior to obtaining his transitional B Certificate and that he will suffer irreparable harm by losing his ability to be employed as a teacher in the New York City school system and other benefits that followed from the successful completion of the Program. He is also concerned that his termination from the Program will negatively impact his reputation. In further support, he details his academic credentials. It was his understanding that it was not acceptable to miss more than two days of any of the three components of the pre-service training. He asserts that such absences were the only basis for removal and that unsatisfactory field performances would not be a reason for removal as long as the fellow was not a danger to students. He asserts that his record of attendance and timeliness was exemplary.

As to his field experience, Mr. Loren claims that respondents were arbitrary and capricious in the field assignment he was given. As a Math fellow, he believes that his placement at an elementary school was wrong and denied him an appropriate experience. He believes that the termination letter was impermissively vague and that the basis for a "performance concern letter" that he misused his cell phone in videotaping classroom activity was unjustified in light of express encouragement to use video as a pedagogical tool. In support of this argument, he cites to statements in the Fellow Advisory Sessions Manual and the NYCTF Field Experience Guide. He goes on to list additional ways he believed he was thwarted from getting appropriate support and guidance in his field training, particularly in his interaction with Marisol Alicia Ferguson, a teacher-coach. He argues that it was arbitrary and capricious to be told to do things he believes were inconsistent with the NYCTF Field Experience Guide and Regulations of the Commissioner of Education that define

requirements for institutions that provide teacher certificates. 8 N.Y.C.R.R. § 52.21.

In cross-moving, Respondents argue that admission to the Program brings with it no guarantee that a teaching certificate will be obtained. Respondents argue that petitioner is not disputing that his removal was for bad performance, but rather he is disputing the basis for the determination. DOE argues that such a claim does not state a cause of action. Respondents urge that their assessment of Petitioner's performance is rational and is entitled to deference in the absence of any claim of bad faith. The DOE cites to its several instances of complaints about Mr. Loren's performance before his termination, including a Performance Concern Letter.

Since Petitioner's position as a fellow was conditional on his completion of a pre-service training period, his status is similar to that of a probationary employee. As such, he is subject to review by his supervisors. Nothing he has stated in his petition supports his claim that Respondents acted in an arbitrary and capricious manner, that they acted without a sound basis in reason. In re Pell v. Board of Education, 34 N.Y.2d 222 (1974). Nor do any of the regulations he cites support his claims. His reliance on various statements in the NYCTF Field Guide and other manuals do not create contractual rights and do not establish that Respondents' conduct was in bad faith. In re Talamo v. Murphy, 38 N.Y.2d 637 (1976). Moreover, the regulation to which he cited, 8 N.Y.C.R.R. § 52.21, is not applicable to him as an individual. Those regulations are directed at institutions that offer programs for teacher education. Any claim that he has been irreparably harmed by not completing the program does not give rise to a remedy. In re Swinton v. Safir, 93 N.Y.2d 758 (1999). Accordingly, it is

ORDERED and ADJUDGED that the cross motion to dismiss is granted, and the petition is dismissed; it is further

ORDERED that the Clerk of the Court shall enter a judgment of dismissal.

Dated: December 20, 2012

ENTER:



JOAN B. LOBIS, J.S.C.