[* 1]

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

PRESENT : DONNA M. MILLS **PART 58**

Justice

In the Matter of the Application of
MARGARET POPLINGER,

INDEX NO. 102542/12

Petitioner,

MOTION DATE

-against-

MOTION SEQ. NO. 001

NEW YORK CITY DEPARTMENT OF EDUCATION,

Respondent.

MOTION CAL NO.

The following papers, numbered 1 to were read on this motion to

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause-Affidavits– Exhibits....	1
Answering Affidavits– Exhibits	2, 3
Replying Affidavits	4, 5

CROSS-MOTION: ____ YES ✓ NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: 1/10/13

DONNA M. MILLS, J.S.C.

Check one: ✓ FINAL DISPOSITION ____ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

In the Matter of the Application of
MARGARET POPLINGER,

Petitioner,

for a Judgment pursuant to Article 78 of the
Civil Practice Law and Rules,

- against -

NEW YORK CITY DEPARTMENT OF
EDUCATION,

Respondent.

INDEX NO.
102542/12

DECISION/ORDER

DONNA M. MILLS, J:

In this special proceeding, Margaret Poplinger ("petitioner"), a former tenured teacher employed by the New York City Department of Education ("DOE"), brings this Article 78 proceeding to challenge the decisions of the Chancellor of the DOE ("the Chancellor"), dated December 27, 2011 and February 28, 2012, which denied petitioner's appeals of two "Unsatisfactory" annual ratings ("U-Ratings") for the 2009-2010 and 2010-2011 school years.

Prior to her retirement following the 2011 school year, petitioner had been employed by the DOE as a tenured Special Education teacher for thirty-six years, working almost exclusively with developmentally disabled students. For the last thirty-five of those years, the petitioner taught exclusively at Louis Pasteur Middle School in Little Neck, Queens.

On June 30, 2010, petitioner received the first of two consecutive U Ratings on her annual Performance Review. The 2010 Rating was the first time in the petitioner's teaching career that she received anything less that a satisfactory rating. The following academic year, 2011, petitioner again received a U-Rating on her annual Performance Review.

The DOE based the 2010 Rating and 2011 Rating on a series of unsatisfactory observation of the petitioner conducted by various administrators during the course of the 2009-2010 and 2010-2011 academic years. However, petitioner maintains that the 2010

Rating and 2011 Rating, and the observation upon which they were based, were simply a pretext and a means of harassment through which Zoi McGrath, Principal at Louis Pasteur Middle School, furthered her agenda of forcing the petitioner into early retirement because of her ties to the previous school administration.

Turning to the merits of the Petition, under CPLR 7803(3), the relevant question is "[w]hether a determination was made in violation of lawful procedure, was affected by error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed." Judicial review of an administrative determination brought by an Article 78 proceeding is "limited to the evaluation of whether that administrative determination is consistent with lawful procedures, whether it is arbitrary or capricious, and whether it is a reasonable exercise of the agency's discretion" (Matos v. Hernandez, 10 Misc.3d 1068[A], 2005 N.Y. Slip Op 52188[U], at 2–3, citing Matter of Pell v. Board of Educ. of Union Free School Dist., 34 N.Y.2d 222, 230–231 [1974]). Thus, a court may disturb a respondent's actions only if they were either arbitrary and capricious or lacked a rational basis (see Matter of Hughes v. Doherty, 5 NY3d 100, 105 [2005] ["(u)nless the administrative agency's determinations were arbitrary or capricious, a court should not undermine its actions"] [internal citations omitted]; Matter of Pell, 34 N.Y.2d at 231["where a determination is made and the person acting has not acted in excess of his jurisdiction, in violation of lawful procedure, arbitrarily, or in abuse of his discretionary power, including discretion as to the penalty imposed, the courts have no alternative but to confirm his determination"] [internal citations omitted]). "A rational or reasonable basis for the agency's determination exists if there is evidence in the record to supports its conclusion" (see Gill v. Hernandez, 22 Misc.3d 390, 394 [2008], citing Sewell v. New York, 182 AD3d 469, 473 [1992]). If the administrative determination is determined to be rational, the court must defer to the agency's interpretation of its own regulations in making its determination; however, if the court finds that the agency determination is rational, it may not substitute its judgment for that of the agency (see Howard v. Wyman, 28 N.Y.2d 434, 438 [1971]). Judicial review of an administrative determination is so deferential that courts have said the administrative determination "must be upheld unless it shocks the judicial conscience and, therefore, constitutes an abuse of discretion as a

matter of law" ' (Mayes v. Hernandez, 17 Misc.3d 1140[A], 2007 N.Y. Slip Op 52351[U], 4 [2007], citing Featherstone v. Franco, 95 N.Y.2d 550, 554 [2000]).

Given the great deference afforded to administrative determinations, the court finds that "it [was] a reasonable exercise of the agency's discretion" (Matter of Social Serv. Empls. Union, Local 371 v. New York City Bd. of Collective Bargaining, 47 AD3d 417, 418 [2008]) for the DOE to base its issuance of petitioner's U-Ratings on the formal and informal observations of petitioner. In total, during the 2009-2010 school year, petitioner received three "unsatisfactory" formal classroom observations and no less than seven "unsatisfactory" informal classroom observations. Similarly, during the 2010-2011 school year, petitioner received three "unsatisfactory" formal classroom observations, two "unsatisfactory" informal observation reports and eleven "Lesson Plan Feedback" letters. Moreover, each observation was accompanied by an observation report documenting how petitioner failed in the areas of lesson planning and classroom instruction and giving specific examples and suggestions for how petitioner could improve in those areas.

Petitioner has failed to show that the U-Ratings were arbitrary and capricious or made in bad faith. The detailed observation reports by the principal and assistant principals, describing petitioner's poor performance in areas of lesson planning and classroom instruction, provided a rational basis for the ratings (see id.). Petitioner's contention that the principal harassed her and was biased against her is speculative and insufficient to establish bad faith (see Matter of Che Lin Tsao v. Kelly, 28 A.D.3d 320, 812 N.Y.S.2d 522 [2006]).

While the court certainly sympathizes with the petitioner's situation, it is none the less constrained to decide controversies within the confines of established law. Great deference is afforded to administrative decisions. Such determinations will not be disturbed unless affected by an error of law, are arbitrary and capricious or constitute an abuse of discretion (see CPLR 7803 [3]; Matter of Incorporated Vil. of Lynbrook v. New York State Pub. Empl. Relations Bd., 48 N.Y.2d 398, 404 [1979]). Here, the Committee's determination followed a full and fair hearing where ample evidence supported its determination that petitioner was instructed as to her duties and goals, was counseled throughout the school years about her deficiencies and that she continued to

perform in an unsatisfactory manner. This evidence supported the Committee's decision and the Chancellor's concurrence of same.

Accordingly it is

ADJUDGED that the petition is denied and the petition dismissed in its entirety.

Dated: 1/10/13

ENTER:

J.S.C.

DONNA M. MILLS, J.S.C.