

**Matter of Strong v New York City Dept. of Educ.**

2013 NY Slip Op 31175(U)

May 28, 2013

Sup Ct, New York County

Docket Number: 400171/13

Judge: Donna M. Mills

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

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

*In the Matter of the Application of*  
*YOLANDA T. STRONG,*

Index No. 400171/13

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

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 \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1-3

Answering Affidavits- Exhibits 4

Replying Affidavits 5

CROSS-MOTION:  YES  NO

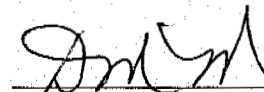
**UNFILED JUDGMENT**

Upon the foregoing papers, it is ordered that this motion

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).

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: 5/28/13

  
\_\_\_\_\_  
J.S.C.

Check one:  FINAL DISPOSITION

**DONNA M. MILLS, J.S.C.**  
NON-FINAL DISPOSITION

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

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In the Matter of the Application of  
YOLANDA T. STRONG,  
  
Petitioner,

For a Judgment Pursuant to CPLR Article 78

-against-

Index No. 400171/13

THE NEW YORK CITY DEPARTMENT OF  
EDUCATION,  
  
Respondent.

-----X

**DONNA M. MILLS, J.:**

In this special proceeding pursuant to C.P.L.R. Article 78, Petitioner Yolanda T. Strong ("Petitioner"), a former teacher employed by the Board of Education of the City of New York ("BOE"), seeks a reversal of the BOE's determination to uphold her annual performance rating of "Unsatisfactory" ("U-rating") for the 2005-06 school year. Petitioner further seeks an annulment of the BOE's determination to place her name on the BOE's Ineligible/Inquiry List effective March 17, 2006, following the termination of her BOE teaching license(s)/certificate(s), and seeks reinstatement as well as compensation for lost wages as well as pain and suffering. Respondent opposes the petition and cross-moves to dismiss the petition.

**BACKGROUND**

Petitioner was employed by the BOE, most recently as a per diem substitute teacher during the 2005-06 school year. On or about February 13, 2006, petitioner was assigned to teach a second grade class at Public School 52 ("PS 52") located in Queens, New York. On or about February 17, 2006, BOE's Office of Special Investigations ("OSI") received a call from an Assistant Principal at PS 52, Deborah Roney, who reported that an accusation of corporal punishment had been made against petitioner. Specifically, a student alleged that petitioner had grabbed him and swung him into a chair, causing him to fall to the floor and to sustain a scratch on his stomach. OSI Confidential Investigator Benjamin Francis was assigned to investigate

the allegations.

Based on his investigation and the student interviews, OSI Investigator Francis issued his conclusions and recommendation on April 26, 2006. Specifically, OSI Investigator Francis concluded that the corporal punishment allegations against petitioner for her acts in grabbing the subject student and swinging him into a chair, causing him to fall, were substantiated. He further recommended that petitioner remain on the Ineligible/Inquiry List and that the matter be transferred to BOE Region 3 Superintendent Judith Chin so she could commence the process of terminating petitioner's employment.

For the school year ending in June 2006, petitioner received a U-rating from PS 52 Principal Linda Pough. Specifically, Principal Pough rated petitioner "unsatisfactory" in the areas of "Effect on character and personality growth of pupils," and "Attention to pupil health, safety and general welfare."

Petitioner requested and had a U-rating review before the Chancellor's Committee on February 8, 2007. Chancellor's Committee Chairperson Michael Agona issued a report and recommendation to the Chancellor's Office. In his report Chairperson Agona found that petitioner engaged in corporal punishment and recommended to terminate any and all license(s)/certificate(s) held by petitioner.

On May 24, 2007, after reviewing Chairperson Agona's Report, Deputy Chancellor Andres Alonso, as the Chancellor's designee, adopted the recommendation, terminated petitioner's teaching license(s)/certificate(s) and sustained the decision to place petitioner's name on the Ineligibility/Inquiry List.

On or about July 30, 2007, petitioner commenced a special proceeding pursuant to Article 78 in New York County seeking to have her name removed from the Ineligible/Inquiry List, her U-rating for the 2005-06 school year annulled, and reinstatement to her position with the BOE as a per diem substitute teacher.

On August 19, 2008, a Justice of this Court granted petitioner's application to annul respondent BOE's determination to terminate petitioner's probationary employment as a per diem substitute teacher. However, the Appellate Division, First Department reversed this decision and dismissed the petition on May 26, 2009. The First Department dismissed the petition as time-barred having been commenced more

than four months after petitioner was informed of BOE's determination that she had engaged in an act of corporal punishment in violation of the Chancellor's Rules and Regulation and that her name would remain on the Ineligible/Inquiry List. Moreover, the First Department found that Respondent BOE's determination that petitioner engaged in an act of corporal punishment was not arbitrary and capricious.

On March 20, 2012, petitioner then requested another U-rating appeal review to challenge the U-rating she received for the 2005-06 school year. Upon consideration of testimony and information presented, the Chancellor's Committee Chairperson Sheila Bobo issued a recommendation to the Chancellor to deny petitioner's U-rating appeal, concurring with the recommendation that her teaching license(s)/certificate(s) be terminated effective March 17, 2006.

On August 28, 2012, Senior Deputy Chancellor Shael Polakow Suransky, acting as the Chancellor's designee, sustained the recommendation of the Chancellor's Committee and denied the appeal of petitioner's U-rating as well as upheld the termination of any and all New York City Department of Education teaching license(s)/certificate(s) held by petitioner, effective March 17, 2006.

On January 28, 2013, petitioner commenced this special proceeding pursuant to Article 78 seeking once again to have the court annul the BOE's determination to place her name on the Ineligible/Inquiry List, reverse her U-rating, and order her reinstatement.

#### LEGAL DISCUSSION

Recognizing that petitioner is a pro se litigant, the court frames its decision by recognizing that a pro se litigant must be given some latitude due to her lack of formal legal training and unfamiliarity with court procedures and that her pleadings and papers should be given every favorable interpretation which can be drawn (see Mosso v Mosso, 6 AD3d 827, 828 [2004]; Sabatino v Albany Med. Center Hosp., 187 AD2d 777 [1992]; Moore v County of Rensselaer, 156 AD2d 784 [1989]). However, a pro se litigant who represents herself proceeds at her own risk, is not entitled to any greater rights than any other party, and cannot get concessions at the expense of another party's rights (see Roundtree v Singh, 143 AD2d 995 [1988]; Johnson v Title North, Inc., 31 AD3d 1071 [2006]).

The well established doctrine of res judicata “ operates to preclude the renewal of issues actually litigated and resolved in a prior proceeding as well as claims for different relief which arise out of the same factual grouping or transaction and which should have or could have been resolved in the prior proceeding’ ” (Luscher v Arrua, 21 AD3d 1005, 1006, 1007 [2005], quoting Koether v Generalow, 213 AD2d 379, 380 [1995]). Here, the petitioner seeks an annulment of the BOE’s determination to place petitioner’s name on the Ineligible/Inquiry List, a reversal of her U-rating, and her reinstatement with Respondent BOE. A comparison between this petition and the 2007 petition brought by petitioner reveals that she previously sought the same relief arising out of the same factual foundation: the removal of her name from the Ineligible/Inquiry List and the reinstatement of her employment. Indeed, both petitions ask the Court to reverse the consequences imposed on petitioner stemming from the BOE’s determination that petitioner had engaged in corporal punishment in violation of the Chancellor’s regulations, a determination the First Department previously held was not arbitrary and capricious. ( see Strong v New York City Dept of Educ., 62 AD3d 592, 593 [1<sup>st</sup> Dept 2009], leave to appeal denied, 14 NY3d 704 [2010]).

Applying the principles of res judicata as set forth above, “it is clear that the relief sought in this action is essentially the same as that sought in the Article 78 proceeding previously determined adversely to the plaintiff, and that the claims arise out of the same or related facts” (Pauk v Bd. Of Trs. of the City Univ. of New York, 111 AD2d 17, 20 [1<sup>st</sup> Dept 1985]).

Accordingly it is

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

ORDERED and ADJUDGED that the cross motion is granted and the proceeding is dismissed.

Dated: 5/28/13

ENTER *Donna M. Mills*  
J.S.C.

**UNFILED JUDGMENT**

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**DONNA M. MILLS, J.S.C.**