

Matter of Moore v New York City Dept. of Educ.

2014 NY Slip Op 30819(U)

March 10, 2014

Supreme Court, New York County

Docket Number: 106849/11

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: BILLINGS
Justice

PART 46

MOORE, EDWARD

INDEX NO. 106849/11

MOTION DATE _____

MOTION SEQ. NO. 03

MOTION CAL. NO. _____

- v -

N.Y.C. DEPT. OF EDUCATION

The following papers, numbered 1 to 3 were read on this ^{petition} ~~motion~~ to ^{review respondent's} ~~for~~ ^{determination}

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

2

3

Cross-Motion: Yes No

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

The court denies the petition to annul respondent's unsatisfactory rating of petitioner and, having dismissed the remainder of the petition in an order dated 10/26/12, dismisses the proceeding. C.P.L.R. §§ 7803, 7806.

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 141B).

Dated: 3/10/14

Lucy Billings
LUCY BILLINGS J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 46

-----X

In the Matter of the Application of

EDWARD MOORE,

Index No. 106849/2011

Petitioner,

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

DECISION AND ORDER

- against -

NEW YORK CITY DEPARTMENT OF EDUCATION,

Respondent

-----X

I. BACKGROUND

Petitioner commenced this proceeding pursuant to C.P.L.R. Article 78 challenging respondent's termination of his probationary employment as an assistant principal and respondent's unsatisfactory rating (U-rating) of petitioner's performance for the 2009-2010 school year.. Petitioner claimed respondent's determination was an abuse of discretion, because the penalty of termination was too severe considering his employment record, and arbitrary and in bad faith, because during his administrative appeal hearing respondent prevented him from presenting evidence of retaliation against him for reporting his principal's corporal punishment of a student. C.P.L.R. § 7803(3).

The court granted respondent's motion to dismiss the petition only insofar as it sought review of respondent's termination of petitioner's probationary employment, because more

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than four months elapsed between June 21, 2010, the termination's effective date, and his commencement of this proceeding.

C.P.L.R. § 217(1); Kahn v. New York City Dept. of Educ., 18 N.Y.3d 457, 462 (2012); Anderson v. Klein, 50 A.D.3d 296, 296 (1st Dep't 2008); Friedland v. New York City Dept. of Educ., 39 A.D.3d 395, 396 (1st Dep't 2007); Lipton v. New York City Bd. of Educ., 284 A.D.2d 140, 141 (1st Dep't 2001). Respondent answered, maintaining that the petition, even insofar as it seeks review of the U-rating, is barred by the statute of limitations and that petitioner fails to state a claim, because respondent acted rationally, in good faith without malice, and according to the applicable statutes and regulations.

II. PETITIONER'S CHALLENGE TO THE U-RATING

Petitioner's challenge to the U-rating is timely since the determination of his unsatisfactory performance did not become final and binding until respondent denied his appeal and sustained the rating on May 10, 2011, less than four months before petitioner commenced this proceeding. Brown v. City of New York, 111 A.D.3d 426, 426 (1st Dep't 2013); Hazeltine v. City of New York, 89 A.D.3d 613, 614 (1st Dep't 2011). Petitioner raises no procedural infirmities in the U-rating, but claims that the principal's conclusions regarding petitioner's unsatisfactory performance were arbitrary and an abuse of power, based solely on the principal's personal aversion to petitioner and not on petitioner's professional performance.

Petitioner refers first to his expression of interest in

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March 2009 in becoming a principal, but nowhere explains how or why his professional objective would cause the principal's animosity toward petitioner, nor is any such causal connection discernible from the record. While a personal bias on the principal's part may undermine his credibility, the record does not show any irrationality, bad faith, or other misconduct that would disqualify him as a rating officer. See Bienz v. Kelly, 73 A.D.3d 489, 490 (1st Dep't 2010); Che Lin Tsao v. Kelly, 28 A.D.3d 320, 321 (1st Dep't 2006).

The seven disciplinary letters from the principal to petitioner, issued in November and December 2009 and January, March, and April 2010, detail a consistent pattern of petitioner's failure to complete his assigned duties adequately and provide support for the teaching staff. V. Answer Ex. 2. Contrary to petitioner's contention that the letters were retaliatory, they show that three of the seven letters, addressing petitioner's performance deficiencies in October and November 2009, were issued before petitioner reported any allegation of corporal punishment by the principal on December 1, 2009. Id. The ensuing four letters are consistent in content and tone with the first three. They do not suddenly become irrational, malicious, or abusive. Even if the disciplinary letters may have been issued to create a record supporting the discontinuance of petitioner's probationary employment, they addressed specific deficiencies in his performance of his duties, such as his failure to follow the principal's directives, perform

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assigned tasks, and maintain school records adequately, to rationally support a U-rating. Goonewardena v. State Workers Compensation Bd., 95 A.D.3d 638, 638 (1st Dep't 2012); Kolmel v. City of New York, 88 A.D.3d 527, 528 (1st Dep't 2011); Bienz v. Kelly, 73 A.D.3d at 490. See Friedman v. Board of Educ. of City School Dist. of City of N.Y., 109 A.D.3d 413, 414-15 (1st Dep't 2013).

Petitioner insists that his satisfactory rating for the 2008-2009 school year, notwithstanding his 33 absences, and his unsatisfactory rating for 2009-2010, when his absences totalled only 15, further demonstrates a retaliatory motive. Respondent's extension of petitioner's probationary period, which otherwise would have terminated at the end of the 2008-2009 school year, expressly for petitioner to improve his performance as an assistant principal, adequately explains the inconsistency. Although petitioner's attendance may have improved, albeit still far from perfect, petitioner points to no other improvement in following the principal's directives, completing assigned duties, school recordkeeping, or providing support for the teaching staff. Nor does he refute any of the charges that his performance in each of these critical respects was inadequate.

Petitioner's claim relates to the administrative appeal: that respondent's hearing committee prevented petitioner from presenting relevant evidence. This claim is not borne out by the transcript of the hearing. Although the committee did limit the scope of petitioner's and his witness' testimony to curtail

irrelevant digressions, the committee provided petitioner ample opportunity to present his allegations of corporal punishment by the principal and deterioration of the principal's relationship with petitioner as motives for retaliation. V. Answer Ex. 1, at 82-84.

III. CONCLUSION

In sum, no deficiency in the review of the U-rating undermined the integrity and fairness of the review process. The evidence of petitioner's repeated poor performance provided rational, unbiased, and non-retaliatory support for the rating. Cohn v. Board of Educ. of City Sch. Dist. of City of N. Y., 102 A.D.3d 586, 586-87 (1st Dep't 2013); Murmane v. Department of Educ. of the City of N.Y., 82 A.D.3d 576, 576 (1st Dep't 2011). For these reasons, the court denies the petition to annul respondent's unsatisfactory rating of petitioner for the 2009-2010 school year and, having dismissed the remainder of the petition in a prior order, dismisses the proceeding. C.P.L.R. §§ 7803(3), 7806.

DATED: March 10, 2014

Lucy Billings

LUCY BILLINGS, J.S.C.

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 141B).

LUCY BILLINGS
J.S.C.