Bedell v Board of Educ. of the William Floyd Sch. Dist.
2015 NY Slip Op 30895(U)
May 13, 2015
Supreme Court, Suffolk County
Docket Number: 13-33895
Judge: John H. Rouse

[* 1]

SHORT FORM ORDER

INDEX No. 13-33895

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 47 - SUFFOLK COUNTY

PRESENT:

Hon. JOHN H. ROUSE
Justice of the Supreme Court

MOTION DATE 1-27-14 (#001)
MOTION DATE 4-23-14 (#002)
ADJ. DATE 12-17-14
Mot. Seq. # 001 - Continued
002 - MD

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ELIZABETH BEDELL, NICOLE BLOCH, SONDRA BURRELL, DAWNA CINTRON, MARGARET CIPRIANO, MARGHERITA GILLEY, EMILY GOMEZ RODRIGUEZ, GREGORY GUNDER, BARBARA HAVELIS, HONDO HUMBERSTONE, LISA INCANTALUPO, MICHAEL KELLERMAN, PAULA KLUSE, LEE MARCLEY, SHANNA MARTE, VIVECA NARGI, DORETTA OROFRIO, INES PAGANO, MARTIN PALERMO, TERRI RANDALL, CHRISTOPHER RIBAUDO, JENNIFER SALKE, LYDIA SULLIVAN, AND ANYA SWISS,

Petitioners,

- against -

BOARD OF EDUCATION OF THE WILLIAM FLOYD SCHOOL DISTRICT, and DR. PAUL CASCIANO, in his official capacity as SUPERINTENDENT OF THE WILLIAM FLOYD SCHOOL DISTRICT,

Respondents,

For an Order and Judgment Pursuant to Article 78 of the Civil Practice Law and Rules.

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Upon the following papers numbered 1 to 29 read on this motion to dismiss petition ; Notice of Motion/ Order to Show Cause and supporting papers 1 - 17; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers 18 - 24; Replying Affidavits and supporting papers 25 - 29; Other notice of petition, dated December 20, 2013 with exhibits and memorandum of law; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion (#002) of respondents for an order dismissing the petition, ostensibly pursuant to CPLR 3211, and CPLR 7804(f), is granted to the extent of dismissing so much of the petition seeking to compel respondents to change petitioners' annual teacher evaluation rating for the 2012-2013 school year from "developing" to "effective", and is otherwise denied; and it is further

ORDERED that respondents shall interpose an answer to the verified petition within ten (10) days of notice of entry of this decision; and it is further

ORDERED that pursuant to CPLR 7804(f), any party may re-notice this matter for hearing upon appropriate notice; and it is further

ORDERED that the party re-noticing this matter shall also serve upon the Clerk of the Court a copy of this order.

In this CPLR article 78 proceeding for declaratory and mandamus relief, petitioners, 22 high school and two middle school teachers, seek to reverse, vacate and annul their "developing" ratings on the Annual Professional Performance Review ("APPR") for the academic school year 2012-2013 issued by respondents Board of Education of the William Floyd School District ("BOE") and Dr. Paul Casciano, in his official capacity as Superintendent of BOE ("Superintendent") (collectively, "respondents"). Petitioners further seek an order directing respondents to change each of their ratings for the 2012-2013 school year from "developing" to "effective".

The majority of the facts in this proceeding are not in dispute. According to the petition, on or about October 1, 2012, petitioners' collective bargaining agent and the BOE agreed to terms and conditions regarding implementation of the BOE's APPR plan for the 2012-2013 school year. The APPR plan was approved by the Commissioner of Education, with changes requested by the State Education Department, on December 3, 2012. The APPR plan, in accordance with the Education Law and the Regulations of the Commissioner of Education, sets forth the criteria for teacher evaluations. The evaluations are comprised of two primary components: 60% based upon teacher effectiveness in accordance with New York State's "rubric" for proficiency and 40% based upon student achievement. The combined score translates into one of four rating categories (in descending order): highly effective, effective, developing or ineffective ("HEDI").

Within the 40% student achievement parameter, there are two sub-components, each worth 20%, referred to as the Local 20% and State 20%. The Local 20% entails an evaluation for efficiency based upon a series of locally determined measures and standards. The State 20%, which is at issue in this proceeding, measures student growth on either State assessments or, for grades or courses in which there are no State assessments, other comparable measures of evaluating student achievement of course goals referred to as Student Learning Objectives ("SLOs"). Petitioners taught classes for which there were no

State assessments, and therefore, 20% of their evaluations was based upon performance points received on SLOs.

Significant to petitioners' claims, the APPR plan states that "[t]eachers will meet with principals in the fall to determine targets for all HEDI categories" regarding the State 20%. Petitioners allege that the principals failed to meet with them during the school year to determine their SLO targets. Following completion of the school year, in August 2013, each petitioner received an APPR rating of "developing". In accordance with the appeals process set forth in the APPR, petitioners filed an initial appeal with the BOE. Each of these appeals was denied. Petitioners then, further in accordance with the APPR appeals process, filed a second appeal with the Superintendent. In October 2013, the Superintendent denied the appeals and sustained petitioners' initial ratings of "developing" (Petition; Exhibit H).

Thereafter, in November 2013, each petitioner filed a notice of claim against respondents. On or about December 20, 2013, petitioners commenced this article 78 proceeding which contains a lone cause of action challenging the ratings and BOE's compliance with the APPR; namely, petitioners allege that the BOE breached the APPR as a result of the failure of the school principals to meet with the teachers for the purpose of reviewing and determining the SLOs comprising 20% of their evaluations.

Respondents now move, pre-answer, to dismiss the petition on the grounds that it (i) fails to state a cause of action for which relief may be granted; (ii) is barred by the statute of limitations and laches; (iii) is precluded by equitable estoppel; and (iv) further the determinations denying petitioners' appeals were reasonable and in accordance with the intent of the APPR plan.

CPLR 7804(f) provides that respondents in an article 78 proceeding may, within the time allowed for answer, move to dismiss the petition based on an "objection in point of law," which is akin to an affirmative defense (Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C7804:7). On a pre-answer motion to dismiss an article 78 petition, only the petition is to be considered and all of its allegations are deemed to be true (***Matter of East End Resources v Town of Southold Planning Bd.***, 81 AD3d 947, 917 NYS2d 315 [2d Dept 2011]; ***Matter of Long Island Contractors' Assn. v Town of Riverhead***, 17 AD3d 590, 793 NYS2d 494 [2d Dept 2005]). No additional facts in support of the motion may be considered (***Matter of 1300 Franklin Ave. Members v Board of Trustees of Inc. Village of Garden City***, 62 AD3d 1004, 880 NYS2d 133 [2d Dept 2009]).

To the extent petitioners seek a reversal of their ratings based upon respondents' noncompliance with the APPR plan, the court finds the petition sufficient to withstand respondents' motion. Respondents contractually agreed that their principals would meet with petitioners to determine petitioners' SLOs. Although not explicitly alleged, presumably the margin of error attributable to respondents' alleged breach may impact petitioners' overall rating. While courts are generally reluctant to cast aside administrative determinations for failure to strictly comply with technical prerequisites, where the deficiencies "undermine the integrity and fairness of the process" and violate a substantial right of petitioner, the court will remedy the wrong (*see* ***Matter of Kolmel v City of New York***, 88 AD3d 527, 930 NYS2d 573 [1st Dept 2011] [*citing* ***Matter of Blaize v Klein***, 68 AD3d 759, 889 NYS2d 665 [2d Dept 2009]). Thus, the issue is not whether respondents strictly complied with all of their

obligations under the APPR plan, but whether their noncompliance with such requirements deprived petitioners of a substantial right.

In the instant matter, respondents' failure to fulfill their obligations concerning one-fifth of the evaluation process, if proven, would have rendered the review process unfair. Assuming the allegations in the petition are true as the Court must, petitioners have sufficiently alleged a cause of action for the substantial deprivation of their rights based upon respondents' conduct. However, based upon the record before the Court it cannot be determined whether respondents, in fact, breached the agreement and, if so, the extent of the impact resulting from such a breach. Where the Court cannot render a determination, the appropriate procedure is to "deny the motion, direct the respondents to submit an answer without prejudice to their right to assert appropriate affirmative defenses, and resolve the issue presented by the motion as part of its ultimate disposition of the proceeding" (***Matter of East End Resources***, *supra*).

With regard to respondents' claim that the proceeding is time barred, that portion of the motion is denied. Education Law 3813(1) provides that a notice of claim must be served upon a school district in an action arising from a contract within three months from the accrual of the claim (*see* ***Parochial Bus Sys., Inc. v Board of Educ. of City of N.Y.***, 60 NY2d 539, 470 NYS2d 564 [1983]; ***Clune v Garden City Union Free School Dist.***, 34 AD3d 618, 826 NYS2d 87 [2d Dept 2006]). "A claim accrues for purposes of Education Law 3813 when it matures and damages become ascertainable" (***Pope v Hempstead Union Free Sch. Dist. Bd. of Educ.***, 194 AD2d 654, 598 NYS2d 814 [2d Dept 1993]; *see* ***Matter of Blaize***, *supra*). Here, petitioners' claims accrued, at the earliest, in August 2013, when respondents received their performance ratings from respondents. Petitioners thereafter invoked their administrative remedies, as set forth within the contract with respondents. These remedies were exhausted in October 2013 when the Superintendent denied their appeals (*see* ***Clune***, *supra*). Petitioners thereafter filed notice of claims in November 2013, and timely commenced this proceeding in December 2013. Contrary to respondents' assertion, although the SLOs were distributed in December 2012, the petition clearly states that petitioners are challenging their ratings of "developing" and subsequent denial of their appeals in October 2013 (*see* Petition, ¶¶ 1, 67-71). Accordingly, this proceeding was timely commenced.

Respondents' assertion that the doctrine of laches warrants dismissal is similarly without merit. Laches arises where there is a delay in prosecuting independent of the statute of limitations (*see* Siegel, NY Prac § 36, at 44 [3d ed 1999]; 2A Carmody-Wait 2d, NY Prac § 13:4, at 94 [2001]). The Court of Appeals has "defined laches as an equitable bar, based on a lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party" (***Saratoga County Chamber of Commerce v Pataki***, 100 NY2d 801, 766 NYS2d 654 [2003]). The mere lapse of time, without a showing of prejudice, will not sustain a defense of laches (***Id.*** [*citing* ***Galyn v Schwartz***, 56 NY2d 969, 453 NYS2d 624 [1982]). Where, as is the case here, there has neither been a lengthy delay nor any showing of prejudice, the laches defense is unwarranted.

Dismissal is warranted, however, insofar as petitioners seek to compel respondents to change their 2012-2013 school year ratings from "developing" to "effective". "Mandamus lies to compel the performance of a purely ministerial act where there is a clear legal right to the relief sought" (***Matter of Legal Aid Socy. of Sullivan County v Scheinman***, 53 NY2d 12, 439 NYS2d 882 [1981]). However,

while mandamus "is an appropriate remedy to enforce the performance of a ministerial duty ... it will not be awarded to compel an act in respect to which [an officer or board] may exercise judgment or discretion" (***Klostermann v Cuomo***, 61 NY2d 525, 475 NYS2d 247 [1984]). The granting of a teacher evaluation rating of "effective" is not a ministerial act and there is no clear legal right to such relief. Moreover, the basis of this proceeding is petitioners' claim that the principals' failure to meet with them in the fall of 2012 skewed their year-end APPR evaluations. Even if petitioners establish respondents' noncompliance with their substantive rights, that, without more, does not necessarily translate to petitioners' entitlement to a rating of "effective", and each petitioner would still have to establish his or her entitlement to the higher rating.

The Court has considered the remaining arguments and find they are similarly without merit.

Dated: MAY 13, 2015

J.S.C.

____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION