

Matter of Young v Department of Educ. of the City of New York
2019 NY Slip Op 31178(U)
April 24, 2019
Supreme Court, New York County
Docket Number: 159837/2017
Judge: John J. Kelley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART IAS MOTION 56EFM

Justice

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INDEX NO. 159837/2017

In the Matter of

MOTION DATE 11/03/2017

NIGEL YOUNG,

MOTION SEQ. NO. 001

Petitioner,

- v -

THE DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK and THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

DECISION, ORDER, and JUDGMENT

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 6, 7, 8, 9, 10, 11, 12, 34, 36

were read on this motion to/for CPLR ART 78

In this CPLR article 78 proceeding, the petitioner seeks judicial review of a New York City Department of Education (NYC DOE) determination that his temporary certificate to work as a school social worker had expired, that his employment was properly terminated as a result, and that he is a "new hire," rather than an active employee, for purposes of a pending application to work in a public school. The respondents answered the petition and filed the administrative record. The petition is denied, and the proceeding is dismissed.

The administrative record reflects that the petitioner's school social work license expired on August 31, 2016, that he was sent four letters by the NYC DOE between November 2016 and May 2017 reminding him to renew it, and that he was emailed and telephoned several times as well before July 2017 in this regard, with several voicemails left for him reminding him to apply for the extension. He was also given an automatic grace period until June 30, 2017, to renew the license. The petitioner nonetheless failed timely to renew his license in order to work for the NYC DOE during the 2017/2018 school year. Although the petitioner claims that he had changed his address, and that the letters were thus sent to the incorrect address, he did not

update his address with the NYC DOE until May 30, 2017. Nor did he deny receiving the emails and voicemails. Although the NYC DOE had apparently offered the petitioner a position as a school social worker in a school on Staten Island, the offer was rescinded, and his employment was formally terminated on June 30, 2017. The NYC DOE reviewed his records two weeks later, at which time it concluded that he did not have the requisite license and had not applied to extend it within the applicable grace period.

In August 2017, the petitioner finally applied to the New York State Department of Education (NYS DOE) to renew his State license. Although late, the application was granted retroactively, and the petitioner was issued a permanent State license on October 24, 2017. By that time, the position that he had been offered had been filled by another social worker. In light of the termination of the petitioner's employment, he was no longer considered an active employee, but rather a potential "new hire" subject to different regulations.

The petitioner commenced this proceeding on November 3, 2017. As of that date, his NYC DOE license had yet to be restored. The court rejects the petitioner's contention that, inasmuch as his State license was restored by the NYS DOE only a few months after its expiration, the NYC DOE's regulations require any lapse in service attributable to the expiration to be deemed the equivalent of a "leave of absence." There is no merit to the petitioner's contention that, in light of the restoration of his State license, the NYC DOE's rescinded offer to begin employment at a school on Staten Island as of September 2017 should be reinstated.

NYC DOE Commissioner's Regulation C-200-18 defines "license or city license" as "a license *issued by the Chancellor* [that] is required for regularly appointed teaching or other pedagogical service in the New York City public school system" (emphasis added). NYC DOE Commissioner's Regulation C-205-a-9 further defines the term "license" as follows:

"For the purposes of assignment, appointment and service, a license is a *New York City license for which a title was established by the Board of Education*, upon recommendation of the Chancellor, and for which the Chancellor has prescribed requirements as provided by the Education Law (see Section 259j2). For each license for which there exists a comparable state certificate, the

Education Law specifies that the academic and professional preparation required for the city license shall be satisfied by possession of the corresponding state certification. (See Sections 2569 and 2590J). *In addition, applicants must also have completed within two years of the date of appointment the following requirements:*

“Six semester hours of collegiate study of approaches to the teaching of special education children, including the characteristics and problems of these children and the ways of meeting their special needs. In lieu of three semester hours of the specified six semester hours in special education, an applicant may offer in-service course work in special education designated for this purpose by the Executive Director of the Division of Human Resources. Such in-service course work must supplement or be in addition to the preparation for state certification: Two semester hours of collegiate study in human relations courses specifically approved for this purpose by the Executive Director of Human Resources, or two semester hours of in-service course work specifically approved for this purpose by the Executive Director of Human Resources. Such in-service course work must supplement or be in addition to the preparation for state certification.”

(emphasis added). A City license is required for appointment to an enumerated position at a City school (see NYC DOE Commissioner's Regulation C-205-a-6). Licenses “shall be granted” by the Chancellor upon certification that the applicant has presented satisfactory evidence of completion of minimum academic and professional preparation requirements specified for the position by the New York City Education Commissioner or Chancellor (see NYC DOE Commissioner's Regulation C-205-a-1).

NYC DOE Commissioner's Regulation C 200-20 includes school social workers within the definition of pupil personnel service workers (see former Commissioner's Regulation 80.1[w]). NYC DOE Commissioner's Regulation C-230 requires pupil personnel service workers to obtain a permanent or provisional certificate or license from the NYS DOE as a prerequisite to City licensure (see also NYC DOE Commissioner's Regulations C-225, C-240, C-245, and C-251, applying same rule to education administrators, regular teachers, and teachers of special subjects). In addition to the possession of NYS DOE license, NYC DOE Commissioner's Regulation C-230 requires an applicant for a City license to satisfy the additional professional and training requirements set forth above in NYC DOE Commissioner's Regulation C-205.

Thus, a NYS DOE certificate or license is a prerequisite to obtaining a NYC DOE license, but it is not sufficient, in and of itself, to qualify an applicant to obtain a NYC DOE license or to permit a person to work as a school social worker in a city school.

NYC DOE Commissioner's Regulation C-205-23 provides that:

"[a]t the discretion of the Director and for good cause shown, a license other than a supervisory license which was terminated after August 31, 1974 for failure to satisfy full requirements may be restored when the applicant has satisfied the full requirements prescribed for the license, and has performed one school year or two school terms of satisfactory regular substitute or appointed service in the field of the license."

The "Director," as used in that regulation, refers to the Director of Human Resources of the NYC DOE. NYC DOE Commissioner's Regulation 205-23(c), provides that:

"If the employment of such a person under appointment in the license was, in fact, interrupted by the termination of the license, the license is considered to have lapsed between the date of its termination and the date on which appointed service under the restored license resumes. For purpose of status, the period of lapsed validity shall be considered equivalent to a leave of absence granted without salary and without service credit for retirement."

Here, the NYC DOE concluded that, at the time it made its initial determination in June 2017, *none* of the petitioner's licenses had been restored. Particularly, it concluded that the petitioner's *City license* had not been restored, let alone restored at the discretion of the Human Resources Director of the NYC DOE or for good cause shown. Hence, the NYC DOE determined that Regulation C-205-23 was inapplicable. In addition, in declining to reinstate its offer of employment after the petitioner's State license was restored in October 2017, the NYC DOE concluded that the restoration of a *State license* was insufficient to trigger C-205-23. In reaching this determination, the NYC DOE applied Regulation C-205-23(a), a provision that makes subdivision (c) of Regulation C-205-23 applicable only to "the holder of a license other than a supervisory license which has been restored *in accordance with this subdivision*"; it thus concluded that, inasmuch as the petitioner's *City license* was not restored "in accordance with" Regulation C-205-23, he was not entitled to the presumption of a leave of absence, nor to be

deemed an active employee whose employment was "interrupted," rather than terminated due to his own neglect.

Where, as here, an administrative determination is made, and there is no statutory requirement of a trial-type hearing, that determination must be confirmed unless it is arbitrary and capricious, affected by an error of law, or made in violation of lawful procedure (see CPLR 7803[3]; *Matter of Lemma v Nassau County Police Officer Indem. Bd.*, 31 NY3d 523 [2018]; *Matter of McClave v Port Auth. of N.Y. & N.J.*, 134 AD3d 435, 435 [1st Dept 2015]; *Matter of Batyreva v New York City Dept. of Educ.*, 50 AD3d 283 [1st Dept 2008]). The relevant Commissioner's Regulations are clear in that they not only require the restoration of a City license before the license's "period of lapsed validity" may be considered a leave of absence, but that the restoration must have been effected in the discretion of the NYC DOE Human Resources Director and only for good cause shown. Administrative regulations are generally subject to same canons of construction as statutes (see *Matter of ATM One, LLC v Landaverde*, 2 NY3d 472, 477 [2004]). Where, as here, the plain meaning of a regulatory provision leaves no room for interpretation, the court must give effect to that meaning (see *Visiting Nurse Serv. of New York Home Care v New York State Dept. of Health*, 5 NY3d 499, 506 [2005]). The court concludes that the NYC DOE did not commit an error of law in applying the unambiguous terms of the Commissioner's Regulations when it determined that Regulation C-205-23(c) only was triggered when a City, as opposed to State, license was restored.

Even if interpretation were required here, in reviewing an agency's determination, deference must to be given to an agency's interpretation of its own regulations, unless irrational or unreasonable (see *Andryeyeva v New York Health Care, Inc.*, ___ NY3d ___, 2019 NY Slip Op 02258 [Mar. 26, 2019]; *Matter of Ignizio v City of New York*, 85 AD3d 1171, 1175 [2d Dept 2011]). Inasmuch as the NYC DOE's findings of fact were supported by the record and not irrational, and its interpretation of its own regulations was not irrational or unreasonable, its determinations were not arbitrary and capricious.

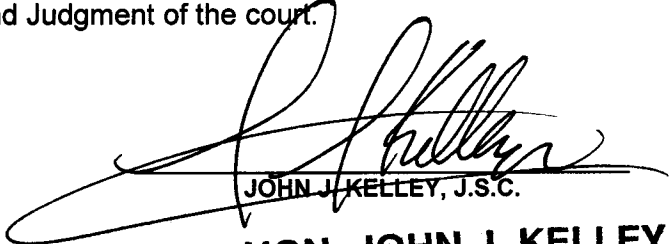
Accordingly, it is

ORDERED that the petition is denied; and it is,

ADJUDGED that the proceeding is dismissed.

This constitutes the Decision, Order, and Judgment of the court.

4/24/2019
DATE


JOHN J. KELLEY, J.S.C.
HON. JOHN J. KELLEY
J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
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