

Saunds v Department of Educ. of the City of N.Y.

2021 NY Slip Op 31065(U)

April 5, 2021

Supreme Court, New York County

Docket Number: 159650/2019

Judge: W. Franc Perry

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

-----X

MICHAEL SAUNDS,

Petitioner,

- v -

THE DEPARTMENT OF EDUCATION OF THE CITY OF
NEW YORK, THE CITY SCHOOL DISTRICT OF THE CITY
OF NEW YORK

Respondent.

-----X

INDEX NO. 159650/2019
MOTION DATE 02/03/2021
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 5, 6, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

In this Article 78 proceeding, Petitioner Michael Saunds ("Petitioner") seeks an order reinstating him to his previous position as a high school football coach, expunging a rating of "Unsatisfactory" (the "U Rating") that he received for the period of August to December 2018 for his "per session" coaching work¹, and lost income. Petitioner alleges that the U Rating assigned to him by the Department of Education of the City of New York ("Respondent")² was arbitrary and capricious. The petition has been fully submitted.

Background.

Petitioner is a licensed and tenured physical education teacher who has been employed by Respondent since 2008, and worked at the World Academy for Total Community Health High

¹ "Per session" employment refers to additional employment activities that take place outside of regular school hours. (NYSCEF Doc No. 17.)

² The named Respondents are one entity and thus will be referred to as such. (NYSCEF Doc No. 18 at 2, fn 1.)

School (“Watch”) since 2015, where he was also the head coach of the varsity football team on a “per session” basis. (NYSCEF Doc No. 1, Petition, at ¶¶ 3-4.)

In August 2018, Petitioner was arrested for a DWI.³ (*Id.* at ¶ 7.) After a brief suspension, Respondent notified Petitioner by letter dated September 6, 2018 that he could return to his position as a physical education teacher, but that all further per session activities, including serving as the football coach, were prohibited until the Respondent’s disciplinary investigation process concluded. (NYSCEF Doc No. 11.)

On December 12, 2018, Dr. Michael Steele, Petitioner’s rating officer, informed Petitioner by email that he was to receive a U Rating for his performance as the football coach for the per session period of August to December 2018. (NYSCEF Doc No. 13.) Dr. Steele based the U Rating off of personal observations, stating that he was “very much uncomfortable and disappointed with what [was] happening to [the] football [program],” that he had “never seen so many parents and students shared [sic] and vent about the lack of leadership and professionalism,” that there were “too many issues that were shared about your leadership as a head coach, from excessive alcohol bottles in the locker room to lack of communication as it relates to parents.” (*Id.*) Dr. Steele further asserted that Petitioner “failed to exert [the required] leadership” which was “evident in the consistent deteriorating parental turnout at games” despite having been “given enough time to make improvements” and that football statistics had gone “from the sublime to the ridiculous.” (*Id.*) Lastly, Dr. Steele noted that Petitioner did not provide adequate documentation for the funds collected during football games and from fundraising, and that Petitioner failed to provide evidence of fingerprinting for three volunteer coaches. (*Id.*)

³ Petitioner alleges that he was arrested in August 2018, while Respondent alleges that Petitioner was arrested in September 2018. (NYSCEF Doc No. 9.) The distinction ultimately proves to be immaterial.

Petitioner appealed the U Rating and a hearing was held on June 3, 2019 before the Department of Education's Chancellor's Committee, where Petitioner was represented by a United Federation of Teachers' Advisor and was able to cross-examine Dr. Steele. (NYSCEF Doc No. 8, Committee Report.) Dr. Steele testified that this was the second disciplinary hearing regarding Petitioner's performance, and that he had given all relevant documentation to Petitioner at a prior time, including letters placed in Petitioner's file.

In her report, the presiding chairperson recommended that the U Rating be sustained. (NYSCEF Doc No. 8, "Report".) The Chancellor of the Department of Education adopted the recommendation and notified Petitioner that his appeal was denied via letter dated June 3, 2019. (NYSCEF Doc No. 2.) Petitioner commenced this proceeding thereafter on October 3, 2019.

Petitioner argues that the U Rating was arbitrary and capricious and without a rational basis because it was based on "false reasons and for alleged instances that occurred while Petitioner was volunteering as a coach," that Respondent "failed to follow its own procedures and state law," and that it was improper to rate him as a volunteer coach. (Petition at ¶¶ 18-20.)

Respondent argues that the U Rating was not arbitrary and capricious, as it was based on multiple issues as documented in Dr. Steele's December 12, 2018 email, that the presiding chairperson recommended sustaining that U Rating after a full hearing where Petitioner had representation, and that the recommendation was ultimately adopted by the Department of Education after conducting its own review. (NYSCEF Doc No. 18, "Resp.'s Mem." at 1-4.)

Discussion

"In the context of a judicial review of a less than effective rating, the court shall consider whether it violated a lawful procedure or a substantial right, was arbitrary and capricious or made in bad faith." (*Smith v City of New York*, 2019 WL 2929562, at *3 [Sup Ct, NY County 2019],

citing *Matter of Richards v Board of Educ. of the City Sch. Dist. of the City of N.Y.*, 117 AD3d 605, 606 [1st Dept 2014].) “[A] U-rating must be upheld where there is evidence in the record that rationally supports that determination.” (*Brown v. Bd of Educ. of City Sch. Dist. of City of New York*, 156 AD3d 451, 451–52, [1st Dept 2017], citing *Matter of Murnane v Dept. of Educ. of the City of N.Y.*, 82 AD3d 576 [1st Dept. 2011].) “The court may not substitute its judgment in place of the agency’s, even if the court believes that a better determination could thereby be obtained.” (*Budnick v New York City Dep’t of Educ.*, 25 Misc 3d 1235[A], at *5 [Sup Ct, NY County 2009].)

“The arbitrary or capricious test chiefly relates to whether a particular action should have been taken or is justified and whether the administrative action is without foundation in fact.” (*Matter of Pell v Board of Educ. of Union Free School Dist. No.1 of the Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974].) “An administrative determination is not inherently ‘arbitrary and capricious’ simply because there were technical deficiencies in the process employed.” (*Weber v City of New York*, 2012 WL 2648266 [Sup Ct, NY County 2012].) However, “[c]ourts will look for a showing of deficiencies in the performance review process that ‘were not merely technical, but undermined the integrity and fairness of the process.’” (*Goaring-Thomas v City of New York*, 2018 WL 6619786, at *2 [Sup Ct, NY County 2018], quoting *Joyce v City of New York*, 161 AD3d 488, 488-89 [1st Dept 2018].)

Here, the court finds that the U Rating must be sustained. Petitioner fails to demonstrate that the U Rating was arbitrary and capricious, violated procedure, or was made without a rational basis. Like the presiding chairperson stated in her Report, Dr. Steele’s allegations were that Petitioner was responsible for the football program’s overall decline due to his lack of leadership and professionalism, including his failure to be a positive role model to his students. Petitioner

had received a DWI, was reported to have hidden alcohol bottles in the ceiling of his school office, failed to provide receipts from fundraising endeavors, allowed a student (who was a football player) to leave a classroom with an unfinished exam, covered up for a student (also a football player) who brought a knife to school, and failed to conduct thorough background checks on volunteer assistant coaches. (Report at 4.) As such, the record indicates that the U Rating was not arbitrary and capricious, as the U Rating was based on the rating officer's observations and knowledge of unprofessional conduct. (*See Kinkle-Ansah v New York City Dept. of Educ.*, 189 AD3d 1048, 1050 [2d Dept 2020].) Further, Petitioner's allegations to the contrary are wholly conclusory and unsupported by any evidence. (*See Greene v City of New York*, 2013 WL 769445 [Sup Ct, NY County 2013].)

Additionally, although Dr. Steele failed to bring any documents to the hearing, he testified that Petitioner had reviewed all relevant documentation at a prior meeting and offered to provide those documents to the chairperson at a later date. (Transcript at 6, lns 3-8; 11 at lns 3-11.) The chairperson fully credited Dr. Steele's testimony, which this court will not second guess, as "courts cannot substitute their judgment for that of a hearing officer who had the opportunity to hear and see witnesses." (*Douglas v New York City Dep't of Educ.*, 52 Misc 3d 816, 822 [Sup Ct, NY County 2016], citing *City School Dist. of the City of N.Y. v McGraham*, 75 AD3d 445, 450 [1st Dept.2010].) Thus, it is hereby

ORDERED AND ADJUDGED that the application is denied and the petition is dismissed, with costs and disbursements to respondent; and it is further

ORDERED AND ADJUDGED that respondent, does recover from petitioner, costs and disbursements in the amount, as taxed by the Clerk, and that respondent have execution therefor.

This is the decision and order of the court.



04/05/2021

DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE