

Balzano v New York City Dept. of Educ.
2022 NY Slip Op 33594(U)
October 17, 2022
Supreme Court, New York County
Docket Number: Index No. 154406/2022
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

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LAUREN BALZANO,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF EDUCATION, DAVID
C. BANKS

Respondent.

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INDEX NO. 154406/2022

MOTION DATE 08/29/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

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

Upon the foregoing documents, Petitioner’s Petition and Respondent’s cross-motion to dismiss are resolved as follows:

Petitioner, Lauren Balzano commenced the instant CPLR Article 78 Petition seeking a declaration that Respondents’ decision to terminate Petitioner’s employment was arbitrary and capricious, against controlling law, in violation of Petitioner’s due process rights and in bad faith and ordering Respondents to restore and reinstate Petitioner to her previous position with an award of back pay and back benefits, plus interest and legal fees, or in the alternative, to initiate a proper hearing under Education Law 3020-a; and order such other and further relief as the Court finds just and proper.

As described in the Petition, Petitioner was employed by Respondents as a teacher since February 2016. On September 1, 2021, Respondents emailed Petitioner and other employees regarding a “Vaccination Requirement as of 9/27.” In this email, Respondents stated, in part, that, “all DOE employees are required to have at least one dose of a COVID-19 vaccine by September

27 . . . You must use the DOE’s Vaccination Portal to upload your proof of vaccination no later than September 27.” On September 9, 2021, Respondents e-mailed Petitioner again, reminding her of said requirement. On September 16, 2021, Petitioner submitted to Respondents a doctor’s note from Dr. Asaf Z. Klein, recommending that she not receive the required vaccine. Petitioner alleges that on October 13, 2021, Respondents sent Petitioner an email confirming she was placed on “a Leave Without Pay (LWOP) due to noncompliance with the DOE’s COVID-19 Vaccine Mandate. On November 29, 2021, Respondents emailed Petitioner confirming that she was still on LWOP status, further stating that if proof of vaccination was not submitted by November 30, 2021, Petitioner would be terminated as of December 1, 2021. Petitioner was terminated from employment on February 11, 2022 but contends that her application for a medical exemption was still pending, resulting in the instant Petition.

Contrary to the allegations in the Petition, on September 20, 2021, Respondents sent an e-mail to Petitioner at lbazano2@schools.nyc.gov, the same e-mail address listed in all other communication, which informs Petitioner of the denial of her medical exemption, contains a brief reasoning for that denial citing the relevant CDC guidance, and informed Petitioner of how to appeal said decision. Said appeal process arises out of a September 10, 2021 arbitration decision which established: (1) a process for exemptions and accommodation requests; (2) a process by which applicants could appeal the denial of their exemption and accommodation requests; (3) options to voluntarily separate from service with certain benefits; and (4) that the DOE may “unilaterally separate employees” who have not complied with the COVID-19 vaccine mandate or have an approved exemption or accommodation and have not opted for the separation options explained in the Decision.

The applicable standard in an Article 78 proceeding is “whether [the] determination was made in violation of lawful procedure, was affected by error of law or was arbitrary and capricious or an abuse of discretion.” CPLR § 7803(3). Administrative action is arbitrary when it is taken “without sound basis in reason” and “without regard to the facts.” *Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 (1974); see *Ward v. City of Long Beach*, 20 N.Y.3d 1042, 1043 (2013). “[T]he Court may not upset the agency’s determination in the absence of a finding...that the determination had no rational basis.” *Mid-State Mgmt. Corp. v. New York City Conciliation and Appeals Bd.*, 112 A.D.2d 72, 76 (1st Dep’t 1985), affirmed 66 N.Y.2d 1032 (1985).


It is well settled that the decisions of public health officials to declare mandatory vaccine requirements are not arbitrary, capricious or an abuse of discretion. See, e.g., *C.F. v. New York City Dept. of Health & Mental Hygiene*, 191 A.D.3d 52, 64-65 (2d Dep’t 2020). Further, the protections of Education Law § 3020-a are not relevant to this action. Section 3020-a hearings are not required in the context of employment qualifications “unrelated to job performance, misconduct, or competency.” *O’Connor v. Bd. of Educ.*, 48 A.D.3d 1254, 1255 (4th Dep’t 2008); see also, *Brown v. Bd. of Educ.*, 2009 N.Y. Misc. LEXIS 5475, *9-10 (Sup. Ct. N.Y. Co. 2009) (“The termination of Petitioner did not implicate the procedural protections of Education Law § 3020-a because Petitioner’s termination was due to her legal ineligibility to serve as a teacher, rather than any alleged misconduct or incompetence on her part.”) A vaccine mandate is a condition of employment, see, *We the Patriots USA, Inc. v. Hochul*, Nos. 21-2179, 21-2566, 2021 U.S. App. LEXIS 32880, at *52- 53 (2d Cir. Nov. 4, 2021) *opinion clarified*, No. 21-2179, 2021 U.S. App. LEXIS 33691 (2d Cir. Nov. 12, 2021); Additionally, Federal Courts ruling on the identical issue have reached the same conclusion, see, *Broecker v. N.Y.C. Dep’t of Educ.*, No. 21-CV-6387, 2021 U.S. Dist. LEXIS 226848, at *18-19 (E.D.N.Y. Nov. 24, 2021); *Garland, et al. v.*

New York City Fire Department, et al., No. 21 CV 6586 (KAM)(CLP), 2021 U.S. Dist. LEXIS 233142 (E.D.N.Y. Dec. 6, 2021). As Respondents have established that they complied with the due process requirements and as Respondents' denial of Petitioner's medical exemption cannot be said to be affected by error of law or was arbitrary and capricious or constituted an abuse of discretion. Petitioner is not entitled to Article 78 relief. Petitioner's failure to exhaust her administrative remedies by failing to appeal the initial denial of her medical exemption is also fatal to this proceeding.

ORDERED that the instant Petition is DENIED; and it is further

ORDERED that Respondents' cross-motion to dismiss is GRANTED in its entirety and this action is dismissed.

10/17/2022
DATE


LAURENCE L. LOVE, J.S.C.

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