

**Matter of Matyas v Board of Educ. of the City Sch.  
Dist. of the City of N.Y.**

2023 NY Slip Op 30339(U)

January 31, 2023

Supreme Court, New York County

Docket Number: Index No. 156203/2022

Judge: John J. Kelley

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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: HON. JOHN J. KELLEY PART 56M**

*Justice*

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In the Matter of  
ANNABELLE MATYAS,

Petitioner,

- v -

THE BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF YORK AND COMMUNITY  
SCHOOL DISTRICT 25 OF THE BOARD OF EDUCATION  
OF THE CITY OF NEW YORK, and THE UNITED  
FEDERATION OF TEACHERS,

Respondents.

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**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 54, 55, 56, 57, 58, 60, 61, 62, 63

were read on this motion to/for DISCOVERY.

In this CPLR article 78 proceeding, pursuant to which the petitioner seeks judicial review of an adverse March 28, 2022 City of New York Reasonable Accommodation Appeals Panel (RAAP) determination, the petitioner moves pursuant to CPLR 408 for leave to conduct discovery in aid of the proceeding. The respondents oppose the motion. The motion is denied.

The petitioner sought, and was denied, a religious exemption from the COVID-19 vaccination requirement imposed upon employees of the respondent Board of Education of the City of New York (BOE).

As relevant here, the United Federation of Teachers, Local 2, AFT, AFL-CIO (UFT), the union representing the petitioner, demanded arbitration with the BOE in connection with the BOE's order mandating that all employees working in BOE buildings show proof they commenced COVID-19 vaccination protocols by September 27, 2021. In an arbitration award dated September 10, 2021, arbitrator Martin F. Scheinman of Scheinman Arbitration and

Mediation Services (SAMS), among other things, established a procedure for individual union members, including the petitioner, to request an exemption from the vaccine mandate on religious grounds. The procedure involved in initial application to the BOE's Medical, Leaves, and Records Administration officer, an initial appeal to a SAMS arbitrator, and an appeal of that arbitrator's award to the RAAP. The September 10, 2021 award further provided that, if a BOE employee failed to obtain an exemption after unsuccessfully availing himself or herself of those procedures, the employee would be terminated from employment.

On September 19, 2021, the petitioner applied to the BOE for a religious exemption from the vaccination requirement, apparently employing a boilerplate letter that had been circulating on the internet that incorporated numerous quotations from the Bible, and purported to provide a religious explanation for an applicant's opposition to the administration of available COVID-19 vaccines. By letter dated September 22, 2021, the BOE's Medical, Leaves, and Records Administration officer denied the petitioner's request. In accordance with the September 10, 2021 award, the petitioner appealed the determination to an arbitrator acting under the auspices of SAMS. By decision dated October 5, 2021, arbitrator Timothy S. Taylor denied the petitioner's initial appeal. She then appealed that award to the RAAP. By determination dated March 28, 2022, the RAAP denied the petitioner's second appeal. On April 7, 2022, the BOE terminated the petitioner's employment. On July 26, 2022, the petitioner commenced the instant proceeding.

In aid of the proceeding, the petitioner seeks leave to conduct limited discovery in order to obtain all paper and electronic correspondence relating to the religious exemption and reasonable accommodation process that had been exchanged between the UFT and the BOE, between the BOE and SAMS, and between the UFT and SAMS. She further seeks an unredacted copy of a September 22, 2021 email exchange, entitled "Urgent Need for Help-UFT Accommodation Process," that had been circulated amongst and between Nellie Afshar of the New York City Department of Health and Mental Hygiene (NYC DOHMH), Dave Chokshi, who

was then the Commissioner of the NYC DOHMH, and Jackie Bray, who was then Deputy Executive Director of the NYC COVID-19 Test & Trace Corps. The petitioner's counsel, in effect, conceded that his prior request for production of the September 22, 2021 email pursuant to the Freedom of Information Law (Public Officers Law § 84, *et seq.*; hereinafter FOIL) had been denied because either the BOH or NYC DOHMH determined that the email constituted interagency materials that were not final agency policies or determinations within the meaning Public Officers Law § 87(2)(g)(iii) and, thus, exempt from disclosure under FOIL.

CPLR 3101 (a) calls for "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof" (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 407[[1968] [internal quotation marks omitted]). Evidence is material if sought "in good faith for possible use as evidence-in-chief or rebuttal or for cross-examination" (*id.*). In connection with special proceedings, however, CPLR 408 requires leave of court to obtain discovery, except for requests for admission under CPLR 3123. Hence, "[d]iscovery is disfavored in a special proceeding and is permitted only on leave of court upon a showing of 'ample need.'" (*Matter of People of State of New York v Northern Leasing Sys., Inc.*, 193 AD3d 67, 74 [1st Dept 2021]).

"Under CPLR article 78, a petitioner is not entitled to discovery as of right, but must seek leave of court pursuant to CPLR 408. Because discovery tends to prolong a case, and is therefore inconsistent with the summary nature of a special proceeding, discovery is granted only where it is demonstrated that there is need for such relief"

(*Matter of Town of Pleasant Val. v New York State Bd. of Real Prop. Servs.*, 253 AD2d 8, 15, [2d Dept 1999] [citation omitted]; see *Matter of Johnson v Annucci*, 208 AD3d 1403, 1404 [3d Dept 2022]). Consequently, in this regard, the court has "considerable discretion" (*Matter of Johnson v Annucci*, 208 AD3d at 1405; *Matter of L&M Bus Corp. v New York City Dept. of Educ.*, 71 AD3d 127, 136 [1st Dept 2009]) in determining whether the items of discovery sought by a party to a CPLR article 78 proceeding are material and necessary to the resolution of the matter (see *Matter of Grossman v McMahon*, 261 AD2d 54, 57 [3d Dept 1999]).

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 Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d 131, 135 [2019]; *Matter of Lemma v Nassau County Police Officer Indem. Bd.*, 31 NY3d 523, 528 [2018]; *Matter of McClave v Port Auth. of N.Y. & N.J.*, 134 AD3d 435, 435 [1st Dept 2015]; *Matter of Batyрева v New York City Dept. of Educ.*, 50 AD3d 283, 283 [1st Dept 2008]; *Matter of Rumors Disco v New York State Liquor Auth.*, 232 AD2d 421, 421 [2d Dept 1996]; *Matter of Moscatelli v New York City Police Dept.*, 2022 NY Slip Op 34393[U], \*5, 2022 NY Misc LEXIS 8341, \*9-10 [Sup Ct, N.Y. County, Dec. 22, 2022] [Kelley, J.]. “[J]udicial review of an administrative determination is limited to the record before the agency” (*Matter of For-Med Medical Group v New York State Ins. Fund*, 207 AD2d 300, 301 [1st Dept 1994]), and “[n]either evidence nor arguments outside the administrative record may be considered” (*Matter of L&M Bus Corp. v New York City Dept. of Educ.*, 71 AD3d at 136; see *Brusco v New York State Div. of Hous. & Community Renewal*, 170 AD2d 184, 185 [1st Dept 1991]). A motion to supplement the administrative record must be denied where, as here, the evidence that the petitioner seeks to obtain and place before the court “was not before the” the decision making agency (*Matter of Paladino v Board of Educ. for City of Buffalo Pub. Sch. Dist.*, 183 AD3d 1043, 1045 [3d Dept 2020]), or, for that matter, before the entities who made preliminary determinations, such as the BOE’s Medical, Leaves, and Records Administration officer or the arbitrators (see *Matter of Garcia v Dominican Coll.*, 164 AD3d 1239, 1241 [2d Dept 2018]). Rather, a motion to supplement an administrative record will only be granted where the administrative agency mistakenly failed to include, in the administrative record that it filed with the court, a document upon which it actually relied in reaching its determination (see *Matter of Carty v New York City Police Dept.*, 160 AD3d 504, 505 [1st Dept 2018]; *Matter of Regional Action Group for Env’t. v Zagata*, 245 AD2d 798, 801 [2d Dept 1997]).

The petitioner has not identified any statute or regulation that provides a basis upon which the record before the administrative agency may or should be supplemented with the additional materials that she seeks (*see Matter of L&M Bus Corp. v New York City Dept. of Educ.*, 71 AD3d at 136). Moreover, she has failed to establish that the record must be supplemented with interagency correspondence referable to the manner in which the vaccination exemption procedure should be implemented, or correspondence between her union and City agencies, as her petition does not challenge the manner in which the procedure was promulgated or generally implemented. Rather, her challenge is to the RAAP's denial of her individual application for a religious exemption from the vaccine requirement, made after the exemption procedure already had been promulgated and implemented. Hence, the documents are not germane to the issues before this court (*see generally Matter of Doolittle v County of Broome*, 220 AD2d 864, 865 [3d Dept 1995]). Inasmuch as the scope of the court's review is limited to the administrative record, and the relevant correspondence was not considered by the RAAP in making its determination, let alone by the BOE's Medical, Leaves, and Records Administration officer or the arbitrators, there is no basis upon which to permit discovery for the purpose of the court's consideration of that correspondence. The court concludes it may review the administrative record, as is, under the arbitrary and capricious standard of review.

Accordingly, it is

ORDERED that the petitioner's motion is denied.

This constitutes the Decision and Order of the court.

1/31/2023  
DATE

CASE DISPOSED  
 GRANTED  
 DENIED  
 SETTLE ORDER  
 INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
 GRANTED IN PART  
 SUBMIT ORDER  
 FIDUCIARY APPOINTMENT

OTHER  
 REFERENCE

JOHN J. KELLEY, J.S.C.