SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ALEXANDER M. TISCH** **PART** **18**

Justice

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MEGHAN CHADONIC,

Petitioner,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF EDUCATION, MEISHA ROSS PORTER,

Respondents.

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INDEX NO. 153253/2021

MOTION DATE 01/05/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, 36, 37, 38, 39, 40

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

Upon the foregoing documents, petitioner brings this special proceeding pursuant to CPLR Article 78, requesting that this Court reverse and annul the allegedly arbitrary and capricious decision of respondents to remove petitioner from payroll and health insurance benefits without a notice of termination or New York Education § 3020-a hearing.

BACKGROUND

Petitioner was appointed as an English language arts (ELA) teacher for respondent, the New York City Department of Education ("NYCDOE") at P.S./I.S. 30 in October of 2004 (NYSCEF Doc. No. 1, Petition). Petitioner obtained tenure in October of 2007 (NYSCEF Doc. No. 1, Petition). During the 2019-2020 school year, petitioner reported to work until March 17, 2020, when all DOE schools closed due to the global Covid-19 pandemic (NYSCEF Doc. No. 1, Petition). According to petitioner, she continued to teach remotely from home until the end of the 2019-2020 school year (NYSCEF Doc. No. 1, Petition). Before the 2020-2021 school year, petitioner applied for remote teaching accommodations due to preexisting health conditions and

was approved for such by NYCDOE medical (NYSCEF Doc. No. 1, Petition). Petitioner alleges that on or about October 26, 2020, she started to experience severe medical symptoms that rendered her unable to work (NYSCEF Doc. No. 1, Petition). Petitioner argues that she provided medical notes pursuant to employee policy that the school principal acknowledged, which stated she would be out of work from October 30, 2020, to November 9, 2020 (NYSCEF Doc. No. 1, Petition). Having not fully recovered after November 9, 2020, petitioner continued to miss work but alleges to have notified her school daily via email that she was unable to work (NYSCEF Doc. No. 1, Petition). Moreover, petitioner claims that she submitted a doctor's note on November 24, 2020, that validated her absences from November 9, 2020, to December 2, 2020. Nevertheless, on December 2, 2020, petitioner claims that her medical insurance was cut off, and that on December 8, 2020, petitioner was removed from payroll (NYSCEF Doc. No. 1, Petition).

PARTIES' CONTENTIONS

Petitioner argues that cutting off her salary and health insurance benefits resulted in an involuntary termination that deprived her of a constitutional property right, thereby violating her New York Education § 3020-a due process rights as a tenured teacher. In opposition, respondents argue that petitioner fails to state a cause of action because respondents' actions were proper under Department of Education (DOE) protocol. Moreover, respondents argue that petitioner fails to demonstrate that respondents' actions were arbitrary and capricious, and ultimately that this petition is moot because petitioner's applications for restoration of health leave were approved.

DISCUSSION

Pursuant to CPLR 7803(3), "'in a proceeding in the nature of mandamus to review...[t]he standard of review [] is whether the agency determination was arbitrary and capricious or affected by an error of law'" (Anonymous v Comm'r of Health, 21 AD3d 841, 843 [1st Dept 2005] quoting

Scherbyn v Wayne-Finger Lakes Bd. of Co-op. Educ. Servs., 77 NY2d 753, 758 [1991]). "An agency's interpretation of the statutes and regulations that it administers is entitled to deference, and must be upheld if reasonable" (Matter of Delillo v New York State Div. of Hous. and Community Renewal, 45 AD3d 682, 683 [2d Dept 2007] see also Gilman v New York State Div. of Housing and Community Renewal, 99 NY2d 144, 149 [2002]). "It is a long-standing, well-established standard that the judicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record" (Partnership 92 LP v State Div. of Hous. & Cmty. Renewal, 46 AD3d 425, 428 [1st Dept 2007]).

According to the New York City Department of Education attendance and service of school staff, as it pertains to unauthorized absences,

> "the failure of any member of the teaching, supervisory or other staff in a school or equivalent organizational unit to be present and to perform any portion of assigned duties constitutes unauthorized absence. No salary payment is due for unauthorized absence and the period of any such absence must be reported for appropriate payroll deduction. Such deduction shall not preclude any disciplinary action with the Chancellor, responsible superintendent or executive director deems appropriate, including preferral of charges of unauthorized absence from duty and/or excessive lateness" (NYSCEF Doc. No. 34, Regulation of the Chancellor).

Respondents argue that the Chancellor's Regulations outline specific requirements that a teacher must follow when they are out on sick leave. For C-603 of the Regulation of the Chancellor which covers "responsibilities of absent employees," states that "each employee is responsible for informing the principal or office head of the nature and probable duration of any actual absence or leave as soon as possible" (NYSCEF Doc. No. 33, at ¶ 1 Responsibilities of Absent employees). Moreover, "pending receipt and approval of the required application for excuse or leave, time lost must be considered unauthorized absence," and the "submission of any application, of and by itself, does not constitute authorization for absence or leave prior to approval" (NYSCEF Doc. No.

33, at ¶ 1 Responsibilities of Absent employees). Therefore, the fact that petitioner submitted emails stating that she would not attend work because she was sick does not mean her requests for leave were accepted. Moreover, respondents argue that said emails were vague and insufficient under the applicable regulations because they failed to inform the school about the nature of petitioner's absence and the probable duration, which is required under C-603, notice by absent employees. Respondents further argue that petitioner was rightfully placed on unauthorized leave on November 9, 2020 because petitioner accumulated two weeks of unauthorized absences, failed to properly apply for any kind of leave, and did not have any sick days to pull from.

Though petitioner submitted medical notes attesting to her lack of ability to work, these medical notes were not provided on the actual days' petitioner was not reporting to work. Each note was provided subsequently, which is important because petitioner failed to properly notify the school staff about the nature of her absence and the probable duration. Additionally, petitioner argues that, pursuant to New York Education § 3020-a, she was denied due process rights as a tenured teacher. However, petitioner was not denied certain rights as a tenured teacher because the rules governing attendance applied to "any member of the teaching, supervisory or other staff in a school" (NYSCEF Doc. No. 34, Regulation of the Chancellor). Petitioner's tenure status does not exempt her from adhering to the rules and protocols of attendance, and she was not denied due process rights as she claims.

> "[New York] Education Law § 3020(1) governs the discipline of tenured teachers and provides that '[n]o person enjoying the benefits of tenure shall be disciplined or removed during a term of employment except for just cause' and in accordance with statutory procedures. This statute is the 'exclusive method of disciplining a tenured teacher in New York State'" (Anderson v Bd. Of Educ. Of Oyster Bay-E. Norwich Cent. Sch. Dist., 186 AD3d 597, 598 [2d Dept 2020]).

Petitioner was not disciplined or removed during a term of employment in accordance with New York Education Law § 3020 as she claims. Petitioner was temporarily removed from payroll and lost her health insurance benefits because she failed to adhere to the attendance and service protocol of school staff. Though petitioner submitted medical notes that verify her inability to work, these notes were not submitted pursuant to school protocol. Petitioner also failed to apply for the proper leave while she was out from work, relying solely on the medical notes she provided. Moreover, petitioner's two applications for restoration of health leave were retroactively approved and petitioner's status is that of a DOE employee on a restoration of health sabbatical.

Without more, the Court cannot interfere with respondents' decision to remove petitioner from payroll and health insurance benefits as that was agency protocol for unauthorized absences (see 47-40 41st Realty Corp. v New York State Div. of Hous. & Cmty. Renewal, 225 AD2d 547 [2d Dept 1996] ["an administrative agency's interpretation of the statutes and regulations that it administers, if reasonable, must be upheld"]); accordingly, it is hereby ORDERED and ADJUDGED that the petition is denied and dismissed.

This constitutes the decision and order of the Court.

7/25/2023
DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE