

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

2024 NY Slip Op 31778(U)

May 22, 2024

Supreme Court, New York County

Docket Number: Index No. 156602/2019

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

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VIJAY VERMA,

Petitioner,

For a Judgment pursuant to Article 75/78 CPLR and
Education Law § 3020-a

INDEX NO. 156602/2019

MOTION DATE 05/15/2024

MOTION SEQ. NO. 001

- 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,

Respondents.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54

were read on this motion to/for VACATE - AWARD.

ORDER

Upon the foregoing documents, and oral argument thereon on
May 15, 2024, it is

ORDERED that ADJUDGED that the petition pursuant to CPLR §
7511(a) and Education Law § 3020-a is denied and the proceeding is
dismissed, without costs and disbursements.

DECISION

This court has reviewed the decision in O'Neill v Newburgh
Enlarged City School District, Orange County Supreme Court Index
No EF002886-2022 (E. Loren Williams, J) and found such decision
entirely distinguishable on its facts from those herein. In

O'Neill, vacating the arbitration award on the basis that the penalty of termination was shocking to the conscience, the trial judge found, in pertinent part:

"Here petitioner's conduct is not analogous to offenses of corporal punishment, moral turpitude or cheating to invoke the penalty of termination. Petitioner was only charged with failure to bring her recordkeeping logs current. During this time, she performed all of her teaching duties as she has for the past nineteen years. She has never been disciplined for failing to provide speech services to her student. Considering all of the relevant factors, especially the working conditions during Covid, the penalty of termination is shocking to the conscience".

Unlike in O'Neill, where the petitioner was found to have performed all of teaching duties as required, petitioner at bar, following an eleven-day hearing in which she had the opportunity to present evidence, examine and cross examine witnesses, and make arguments to support her position, was determined during the last three of her fifteen years as tenured teacher to have

"failed to properly, adequately and/or effectively plan and/or execute separate lessons", as observed by her supervisors during eleven lessons, * * * [and]

"failed to fully and/or consistently implement directives and/or recommendations for pedagogical improvement and professional development, provided in observational conferences with administrators and/or outside observers; instructional meetings; teacher improvement plans; one-on-one meetings with administrators, school-based coaches, and/or outside development".

Based on the evidence at the hearing, the arbitrator rejected petitioner's argument that because she had been rated effective

for school year 20015-2016, and her pedagogy did not change thereafter, the subsequent charges that her pedagogy was deficient stemmed from her supervisor's retaliating against her for filing a grievance in which she challenged program changes. The arbitrator credited the supervisor's testimony that the school was seeking to improve its students' poor test scores by increasing standards for teacher pedagogy. Moreover, one observation in the 2016-2017 school year that found petitioner's pedagogy ineffective, preceded the date of her grievance.

The controlling precedent is stated in Davis v New York City Board of Education, 137 AD3d 716 (1st Dept 2016):

"The penalty of termination is not excessive. The record demonstrates that respondent provided petitioner with assistance and numerous opportunities to improve her skills. The record supports the Hearing Officer's conclusion that petitioner was either unable or unwilling to adjust her teaching methods to comply with her supervisors' appropriate directives".

Likewise, in Morales v New York City Bd/Dept of Education, 150 AD3d 468, 469 (2017), the Appellate Division, First Department held:

"The penalty of termination does not shock the court's sense of fairness, given petitioner's teaching deficiencies over the course of three years, the absence of any improvement despite assistance offered by respondent, and her refusal to acknowledge her shortcomings" (citations omitted).

Debra A. James

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5/22/2024

DATE

DEBRA A. JAMES, 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