

Blackwood v New York City Dept. of Educ.

2025 NY Slip Op 31897(U)

May 21, 2025

Supreme Court, New York County

Docket Number: Index No. 156535/2024

Judge: Lynn R. Kotler

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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. LYNN R. KOTLER PART 08

Justice

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INDEX NO. 156535/2024

LONI BLACKWOOD,

MOTION DATE 07/17/2024

Petitioner,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF EDUCATION, DAVID BANKS

DECISION + ORDER ON MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39

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

Upon the foregoing documents, this motion is decided as follows. In this special proceeding brought pursuant to CPLR Article 78, petitioner LONI BLACKWOOD ("Blackwood") seeks an Order annulling and reversing the determination by respondents New York City Department of Education, and David Banks, Chancellor Of New York City Department of Education ("DOE") and compelling the DOE to grant Blackwood's application for security clearance. DOE cross-moves to dismiss and argues that the determination was supported by a rational basis. For the reasons that follow, the petition is denied and the cross-motion to dismiss is granted.

Facts

The relevant facts are as follows. In or about September 2019, Blackwood began work as a special education teacher at K396, located within District 75. On May 10, 2022, Blackwood was involved in an incident which was investigated by the Office of Special Investigations ("OSI"), where a six-year-old, non-verbal, special needs student under the supervision of

Blackwood exited the classroom and ran outside of the school building before being stopped by a school safety officer. Blackwood was still in the classroom when the child left. Blackwood alleges that she was on lunchbreak at the time of the incident and that the student had been assigned a 1:1 paraprofessional who had been instructed to watch the student. DOE terminated Blackwood from her position as a probationer on August 31, 2022.

Blackwood subsequently obtained employment with Blue Sea Educational Consulting and at Hofstra University's Summer Camp.

On August 3, 2023, Blackwood applied for a teaching position at P.S. 158K but was later informed via an email from the principal dated August 15, 2023, that they would not move forward with the hire.

On August 29, 2023, Blackwood was informed via email from DOE human resources that she had been nominated for a position as a TRTSQ- Teacher- Special Ed Line 3101 at 23K323 - PS323 ("P.S. 323"). Employment was "contingent upon the results of pre-employment screening...".

On September 1, 2023, the principal of P.S. 323, Linda Harris ("Harris"), received an email from DOE human resources that a "problem code" had been placed on Blackwood's status and that she could not begin working until the problem code was resolved. Harris forwarded the email to Blackwood on the same day, informing her that she would not be able to work at P.S. 323.

On September 18, 2023, Blackwood received another email from the New York City Public School's Substitute Application Processing Unit that she had been nominated for a substitute teaching position. On October 12, 2023, AHRC NYC, a DOE educational services vendor, offered Blackwood a position as a "Behavior Trainer" at their Brooklyn Blue Feather

location pending NYS DOE clearance, references and background checks. Blackwood claims that she denied the position at AHRC because of her pending substitute teacher application. On October 21, 2023, Blackwood received another email informing her that her substitute teacher application was denied because of unsatisfactory or ineffective ratings or receiving a prior termination for cause within the NYC Public Schools.

On November 21, 2023, Blackwood emailed a request for reconsideration to the NYC Substitute Disciplinary Unit that detailed her previous employment and reasons for reconsideration. On December 22, 2023, Blackwood received an email from Office of Personnel Investigation (“OPI”) Investigator Ryan Mongan (“Investigator Mongan”) requesting additional information regarding her previous discontinuance at K396. Blackwood responded on January 31, 2024.

On February 14, 2024, while the investigation was still ongoing, Blackwood received an email from Optimal Care Services offering her a position. On February 15, 2024, Blackwood received another email from Optimal Care Services that Blackwood’s Personnel Eligibility Tracking System Status shows as ineligible.

On March 12, 2024, Blackwood attended a virtual interview with Investigator Mongan in order to attempt to gain security clearance.

On March 19, 2024, Blackwood received a letter from OPI informing her that she would not be granted clearance and could not reapply for a position with the DOE or a DOE vendor until 12 months from the denial letter. The letter states in pertinent part that Blackwood had acknowledged during the investigation that “the student had similar instances of running in the past and that you had not brought it to the crisis team or the administration’s attention...” Based on Blackwood’s prior conduct, OPI found that “[t]his reported misconduct is extremely

concerning, as, in the nominated position, you will again be expected to properly supervise your students and always maintain a safe classroom environment, and your prior misconduct casts serious doubts on your ability to do so.”

The letter also emphasized that Blackwood’s application would be denied for failure to disclose the incident in the Background Questionnaire in response to question 6B which asked “[h]ave you ever been the subject of a substantiated report completed by your employer or your employer’s designated investigative office?”

The final rationale provided by the determination stated that “the minimal amount of time elapsed since the reported misconduct makes it difficult for OPI to assess any potential improvements in the areas of concern detailed above.”

Blackwood filed the instant petition on July 17, 2024.

Discussion

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision was made in violation of lawful procedure; affected by an error of law; or arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR § 7803 [3]). “[T]he proper test is whether there is a rational basis for the administrative orders, the review not being of determinations made after quasi-judicial hearings required by statute or law” (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]) (emphasis removed); *see also Matter of Colton v. Berman*, 21 NY2d 322, 329 (1967).

“Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell*, 34 NY2d at 231; *see also Matter of Wooley v New York State Dept. of Correctional Servs.*, 15 NY3d 275, 280 [2010]; *Matter of Ferrelli v State of New York*, 226

AD3d 504, 504 [1st Dept 2024]). If the agency determination is supported by a rational basis, it must be upheld even if a different conclusion could have been reached by the court (*Matter of Ferrelli*, 226 AD3d at 504; *see also Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]).

Blackwood argues that the “denial of security clearance on a few grounds that all essentially stem from one single incident” and that DOE’s decision to deny her security clearance was arbitrary and capricious and an abuse of discretion. Blackwood acknowledges the May 10, 2022, incident, but argues that she took responsibility for the incident and that her subsequent employment demonstrates that she is fit to be approved for security clearance.

DOE disagrees and argues that pursuant to the Chancellor’s Regulation C-105(8), subsequent accomplishments can be considered “no sooner than 12 months after denial.” The Court agrees. Here, DOE was not required to weigh Blackwood’s subsequent employment in their determination to rehire her. Even if DOE was required to consider subsequent employment, it would not have automatically qualified her for the security clearance.

Moreover, Blackwood’s argument that she took responsibility and that it was only “one single incident” is unavailing. DOE’s determination focused on Blackwood’s previous conduct, which cast doubts on her ability to “properly supervise [her] students and always maintain a safe classroom environment.” DOE specifically points out that Blackwood was in the classroom when the child left and failed to notice the missing child as a primary factor in finding her unfit for security clearance. Based on the foregoing, DOE’s decision was rational, and re-weighing any of the factors used in their determination is beyond judicial review (*see Matter of Arrocha v Board of Educ. of City of N.Y.*, 93 NY2d 361, 366-67 [1999]).

The same reasoning applies to Blackwood's second and third arguments. Neither Blackwood's subsequent candor about the incident nor the amount of time, 18 months, that had passed since the misconduct render the DOE's determination arbitrary and capricious.

Blackwood attempts to distinguish the current matter from *Rumley v New York City Dept. of Educ.*, where a 10-year period was still considered a minimal time elapsed since the misconducts and application for security clearance (2021 NY Slip Op 30192[U], *11 [Sup Ct, NY County 2021]). While the conduct in *Rumley* was more severe and criminal in nature, on this record, DOE presented a reasonable basis for finding that Blackwood should not be granted security clearance at this time.

DOE argues that Chancellor's Regulation C-205 ("C-205") precludes petitioner from employment as a special education teacher in other DOE schools. This regulation states that:

the schools operated under the jurisdiction of the Chancellor and Central Board comprise one district, persons whose probationary service was discontinued in one school in the City District may not be reappointed under the same license to another school in the City District. This is true even if the dismissal occurred from one "high school district" and the dismissed employee sought employment in a different "high school district."

DOE further argues that because Blackwood was discontinued from K396, she is barred from employment at other schools within the same school district, and that Blackwood's subsequent applications were all at schools within the same district.

Blackwood argues in response that DOE's reliance on C-205 is misguided, that it has nothing to do with her security clearance, and that the other schools she applied to were in different districts.

Blackwood is correct that she may be nominated for employment in the other school districts (*see Khan v City of New York*, 2019 NY Slip Op 31035[U] [Sup Ct, NY County 2019], *aff'd* 186 AD3d 1159 [1st Dept 2020]). However, Chancellor's Regulation C-105(1) states that

“[n]o one may be licensed, certified, employed by or work in the New York City Public School System without background investigation and clearance from either the OPI, or the Chief Executive of DHR.” Therefore, once nominated Blackwood would still be subject to a background investigation and clearance by the OPI. Based on the foregoing, DOE had a rational basis to deny Blackwood security clearance.

Conclusion


Accordingly, it is hereby

ORDERED that respondent’s cross-motion to dismiss is granted; and it is further

ORDERED that the petition is denied and this proceeding is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

<u>5/21/2025</u> DATE		 LYNN R. KOTLER, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input checked="" type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> DENIED	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE