Matter of Weisel v Department of Educ. of the City of N.Y.

2025 NY Slip Op 32485(U)

July 2, 2025

Supreme Court, Kings County

Docket Number: Index No. 538072/2022

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 2nd day of JULY, 2025.

P R E S E N T:
HON. RICHARD VELASQUEZ,
Justice.

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In the Matter of the Application of
SARAH WEISEL,

Petitioner,

For a Judgment pursuant to Article 78, CPLR, and Claims under the Executive Law and the Administrative Code of New York,

-against-

Index No.: 538072/2022

THE DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK,

Respondent.

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The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	1-7, 11-17
Opposing Affidavits (Affirmations)	20-21
Affidavits/ Affirmations in Reply	
Other Papers: 22 NYCRR 202.8-c post- submission	23

After having heard oral argument and upon the foregoing papers, petitioner Sarah Weisel (petitioner) moves, in motion (mot.) sequence (seq.) number (no.) one, for: 1) a judgment and declaration against respondent the Department of Education of the City of New York (respondent) declaring that respondent acted arbitrarily and capriciously by not providing her an appeal process, by terminating her without notice and thus violating her due process rights, by failing to reasonably accommodate her religious practice, and failing

to engage in the interactive process; 2) equitable relief against respondent including but not limited to reinstating petitioner to her prior tenured position of a speech and language pathologist retroactively and restoring the years of service and salary according to her retroactive seniority and contributions to her pension plan; 3) judgment for incidental damages including all past salary lost and benefits lost retroactively; and 4) reasonable attorney fees, plus costs and disbursements of this lawsuit. Respondent cross-moves, in mot. seq. no. two, for an order pursuant to CPLR 7804 (f), and CPLR 3211, dismissing the petition as time-barred, and barred by waiver and release.

Background

In this Article 78 proceeding, petitioner seeks to annul the August 31, 2022 denial of her request for a religious exemption and reasonable accommodation from the COVID-19 vaccine mandate. She claims she is entitled to an explanation for why her request for an accommodation was denied. Petitioner began her employment with respondent in 2007 as a speech and language pathologist and was a member of the United Federation of Teachers (UFT) labor union. In 2021, she was employed at Public School 161 in Brooklyn. On or about August 24, 2021, the New York City Commissioner of Health issued an order requiring that respondent and/or city employees or contractors who work in DOE schools or DOE buildings be vaccinated against the COVID-19 virus. On or about September 1, 2021, the UFT filed an objection to the mandate as it did not provide for a religious exemption accommodation. Mediation sessions were subsequently held between the UFT and an arbitrator appointed by the Public Employment Relations Board, resulting in the issuance of an arbitration award/decision on September 10, 2021. The decision established

a process for exemption and accommodation requests related to the vaccine mandate for DOE employees. It further provided an option for DOE employees to voluntarily separate from service with certain benefits or to extend leave without pay ("LWOP") for employees who did not comply with the vaccine mandate. Finally, it provided that the DOE could "unilaterally separate employees" who had not complied with the vaccine mandate or did not have an approved exemption or accommodation or had not either opted for separation or to extend their LWOP pursuant to the provisions set forth in the Arbitration Award (*see* NYSCEF Doc No. 6, at 6-13). The arbitration award required that any religious and medical exemption and accommodation request had to be submitted no later than 5:00 p.m. on September 20, 2021, and that an appeal of the DOE's determination of such request had to "be made [...] to the DOE within one (1) school day of the DOE's issuance of the initial eligibility determination . . . and shall include the reason for the appeal and any additional documentation" (*id.* at 10).

On or about September 13, 2021, petitioner applied for a religious accommodation seeking to be exempted from the vaccine requirement based upon her beliefs as a practicing Orthodox Jew. On September 17, 2021, at 4:32 p.m., petitioner received an email from respondent regarding the determination of her religious exemption application. The email indicated that her application had been denied noting that it had been:

> reviewed in accordance with applicable law as well as the Arbitration Award in the matter of the UFT and the Board of Education regarding the vaccine mandate. Under the terms of the Arbitration Award, you may appeal this denial to an independent arbitrator. If you wish to appeal, you must do so within one school day of this notice by logging into SOLAS https://dhrnycaps.nycenet.edu/SOLAS and using the option "I

> would like to APPEAL". As part of the appeal, you may submit additional documentation and also provide a reason for the appeal (NYSCEF Doc No. 3).

In petitioner's affirmation in opposition to respondent's cross-motion, and in further support of her petition, she states that "[t]he 24-hour time constraint to file my appeal happened on the Sabbath when I cannot use electronic devices. Because I am observant, I could not timely respond between September 20, 2021 to September 28, 2021, due to the Sabbath and the Jewish holiday of Sukkot." Petitioner states that on September 30, 2021, she was informed by the principal of P.S. 161 that unless she complied with the vaccine mandate by October 4, 2021, she could not return to work and would be placed on LWOP. Petitioner then spoke with her UFT representative about opening up the appeal process for her religious exemption request and was informed that respondent refused to do so as there was a roughly 48-hour period when the appeal was open that did not overlap with the Sabbath or Sukkot.

On October 28, 2021, a Court decision allowed DOE members who were denied religious exemptions, and had previously appealed, to reopen the appeal process. As petitioner had not filed an initial appeal, she was not given the opportunity to reapply for an appeal through the new process. Petitioner states that she filed a grievance and attempted to set up a meeting with her principal and when it did not occur, she sought the intervention of her union to move it to a Step 2 grievance. She was then informed that the union would not be pursuing a Step 2 grievance. Petitioner contends she was never given an explanation as to the reason for this decision.

On November 30, 2021, Respondents allege petitioner executed a waiver and release which provided that she would continue to receive health benefits through September 6, 2022, conditioned on her agreeing to a release of all claims against the DOE. It further provided that if she failed to comply with the vaccine mandate prior to September 6, 2022, she would be deemed to have voluntarily resigned her employment with the DOE. The Court notes there is no signature on this waiver the petitioners name is not included on the waiver, there is no date on the waiver. Essentially there is no way for this court to tell that the waiver submitted was signed by the petitioner and when it was signed. Additionally, the court notes that plaintiff alleges she signed the waiver under duress.

On August 30, 2022, petitioner submitted a second request for a religious exemption which was rejected on September 2, 2022. Petitioner did not comply with the vaccine mandate and her health insurance was terminated on September 6, 2022, 4 days after her second request for a religious exemption.

By Notice of Petition and Verified Petition dated December 28, 2022, petitioner commenced the instant Article 78 proceeding seeking an order: "declaring that the Respondent acted arbitrarily and capriciously by not providing her an appeal process, by terminating her without notice and thus violating her due process rights, by failing to reasonably accommodate her religious practice, and failing to engage in the interactive process." In addition, petitioner seeks reinstatement to her position as a speech and language pathologist with the DOE, backpay, and attorney's fees.

On May 24, 2022, New York City issued Executive Order #62 The Private Exemption Order lifted the mandate for athletes, performers, and other artists to be

vaccinated. On July 6, 2022, Petitioner received an email asking if she wanted her case heard in the fall and was given ten days to respond to reschedule an appeal meeting and on the same indicated that she indicated "yes. she would like an appeal meeting scheduled" On August 30, 2022, Petitioner submitted her second request for a Religious Exemption. Exhibit C. On September 3, 2022, the DOE denied Petitioner's request for religious accommodation and there was no appeal process provided. (Exhibit "D"). On September 4, 2022, Petitioner received an email from the DOE that stated she cannot return to the building without a vaccination. (Exhibit "D") On September 6, 2022, Petitioner's health insurance was terminated but she did not receive a notice from the NYCDOE concerning her termination nor did she receive notice to the termination of her health insurance. On November 1, 2022, New York City lifted the private sector mandate for Covid vaccination requirement for employees. On November 4, 2022, Petitioner received an invitation to a grievance appeals meeting. Petitioner asked for an explanation for the previous denial to be able to prepare for the scheduled meeting on November 14, 2022.

Petitioner's second grievance concerned the DOE failure to provide Petitioner the opportunity to submit to the City Wide Panel for an appeal of the denial of her religious accommodation request. The DOE reasoning was that the "application has failed to meet the criteria for a religious based accommodation because, per the Order of the Commissioner of Health, unvaccinated employees cannot work in a school building without posing a direct threat to health and safety. Due to the configuration for the 2021 - 2022 school year, which includes no remote classwork, we cannot offer another worksite as an accommodation, as that would impose an undue hardship (i.e. more than a minimal

burden) on the DOE and its operations." Petitioner contends however, the rational that "offer[ing] another worksite causes an undue hardship" is discriminatory because, more than one individual with the same work requirements as Petitioner (Speech Language Pathologist) were provided remote working accommodations for the year 2021-2022 and 2022-2023 school years. In addition, the DOE failed to conduct an interactive process.

Petitioner contends that she was never afforded an opportunity to appeal the denial of her request for a religious exemption and that respondent's failure to extend the deadline for appeal in order to accommodate her religious practice as an Orthodox Jew was arbitrary and capricious. In this regard, petitioner notes that she received the denial of her request at 4:32 p.m. on September 20, 2021, which was a Friday afternoon, thus occurring during her Sabbath observation. She contends that she was unable to appeal between September 20, 2021 and September 28, 2021, due to the Sabbath and the Jewish holiday of Sukkot, which occurred during this period. Specifically, petitioner argues that respondent violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et. seq., the New York State Human Rights Law, New York State Executive Law § 296, the New York City Human Rights Law, and the New York City Administrative Code § 8-107.

In opposition, and in support of the cross-motion, respondent argues that petitioner's claims should be dismissed as she waived her ability to challenge the denial of her accommodation request and termination when she signed the waiver on November 30, 2021, which extended her leave without pay and health benefits. Next, respondent argues that the instant petition is time-barred. Respondent notes that petitioner has brought this Article 78 proceeding to challenge the denial of her request for an exemption from the

vaccine mandate, which occurred on September 17, 2021. Respondent contends that pursuant to CPLR 217 (1), petitioner had four months from the denial issued on September 17, 2021, to commence a proceeding to challenge said determination. Thus, respondent maintains that petitioner had until January 17, 2022, to commence a proceeding to challenge the denial of her accommodation request. Respondent argues that the failure to commence the proceeding until December 29, 2022, fifteen months after the challenged determination, renders the instant proceeding untimely. Respondent further argues that to the extent that petitioner contends that the proceeding is not time-barred as she submitted a second request on August 30, 2022, which was denied on September 2, 2022, such action was merely a request for reconsideration which does not toll or extend the four-month statute of limitations.

Contrary to respondents' contentions the law does not provide for requests for reconsideration that this court is aware of. The petitioners August 30, 2022 request was a new request and the statute of limitations began to accrue from the date of denial of that request which was September 2, 2022. Therefore, her commencement of this proceeding was timely.

In opposition to the cross-motion, petitioner argues that the release and waiver, which she terms "the Settlement Agreement" is invalid based upon the totality of the circumstances. In this regard, petitioner contends that she did not have possession of the release and waiver document before signing it, the terms were one-sided in favor of respondent who threatened to cut off her health insurance without the required COBRA notices, and that she was not given the opportunity to consult with her union. Moreover,

she contends that the denial of union representation invalidates the release. Additionally, petitioner asserts that she "signed the purported waiver under duress, because there [were] no other options provided by the DOE and [her] health insurance would have lapsed" (NYSCEF Doc No. 2 at ¶ 24). Petitioner further asserts that she emailed respondents a letter as soon as she signed the waiver stating that it was signed under duress.

Respondent's cross-motion is denied. On November 30, 2021, petitioner signed a waiver and release which specifically provided as follows:

> I, SARAH WIESEL, opt to extend my leave without pay due to vaccination status through September 6, 2022. I understand that by selecting to extend such leave, I will be eligible to main health insurance through September 6, 2022. I understand that if I have not returned by September 6, 2022, I shall be deemed to have voluntarily resigned and knowingly waive my rights to challenge such resignation, including, but not limited to, through a contractual or statutory disciplinary process. I understand that upon the effective date of such resignation, as it relates to the DOE, I lose all entitlements to reversion, retention, and tenure . . . I understand that I have the right to return to employment at any time prior to September 6, 2022, if I provide to the DOE documentation that I have complied with the Commissioner of Health's order regarding vaccination of NYC, Department of Education employees and inform the DOE that I seek to return before September 6, 2022. **In exchange for the right to return and extended health benefits as set forth herein, I agree to waive and release the DOE and any of its present or former employees or agents (collectively "Released Parties"), from any all claims, liabilities, or causes of action which were or could have been asserted by me against any of the Released Parties based upon anything that has happened up to now and including the date of the execution of this attestation, including, but not limited to, any right or claim that may exist or arise up to and including the date that this Attestation is signed** (NYSCEF Doc No. 16).

"A release is a contract, and its construction is governed by contract law" (*Kante v 801 Post Realty, LLC*, 224 AD3d 823, 824 [2d Dept 2024], quoting *Warmhold v Zagarino*, 144 AD3d 672, 673 [2d Dept 2016] [internal citations omitted]). "Generally, a valid release constitutes a complete bar to an action on a claim which is the subject of the release" (*Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V.*, 17 NY3d 269, 276 [2011] [internal quotation marks omitted]). "If the language of a release is clear and unambiguous, the signing of a release is a 'jural act' binding on the parties" (*id.* [internal quotations and citations omitted]). "Although a defendant has the initial burden of establishing that it has been released from any claims, a signed release 'shifts the burden of going forward . . . to the [plaintiff] to show that there has been fraud, duress or some other fact which will be sufficient to void the release'" (*Wei Qiang Huang v Llerena-Salazar*, 222 AD3d 1033, 1034 [2d Dept 2024], quoting *Centro Empresarial Cempresa S.A.*, 17 NY3d at 276 [internal citations omitted]; *see Miller v Brunner*, 215 AD3d 952, 953 [2d Dept 2023]).

Here, petitioner asserts that she executed the release and waiver under duress because her health insurance would have lapsed and her opposition indicates that she did not have ample time to review the document; nor was she able to have it reviewed by her union, prior to signing it. A contract or release is voidable on the ground of duress when it is established that the party making the claim was forced to agree to it by means of a wrongful threat precluding the exercise of . . . free will" (*21st Century Radiology & Imaging, P.C. v Dobtsis*, 207 AD3d 689, 690 [2d Dept 2022], quoting *Austin Instrument v Loral Corp.*, 29 NY2d 124, 130 [1971]; *see Lopez v Muttana*, 144 AD3d 871, 871 [2d Dept

2016]). Here, there are numerous issues regarding whether the release was signed under duress.

As to petitioners' discrimination claims. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et. seq., the New York State Human Rights Law, NYS Executive Law 296 and the New York City Human Rights Law, NYC Administrative Code 8-107. Title VII of the Civil Rights Act of 1964 makes it unlawful "to discriminate against any individual with respect to her compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)(1). Under Title VII, "[t]he term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate . . . an employee's . . . religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). To establish a prima facie case of religious discrimination under Title VII, NYSHRL and NYCHRL, an employee must show that he: (1) holds a sincere religious belief that conflicts with a job requirement; (2) informed his employer of the conflict; and (3) was disciplined for failing to comply with the conflicting job requirement. *EEOC v. GEO Grp., Inc.*, 616 F3d 265, 271 (3d Cir. 2010). In the present case, Petitioner established a prima facie claim because she: (1) has a sincere religious belief that prohibits her from taking the Covid vaccines, and that conflicts with the Covid vaccine requirement; (2) informed the DOE of this conflict; and (3) was disciplined (placed on leave denied a religious accommodation and then terminated). After such showing, "the burden then shifts to the DOE to show either it made a good-faith effort to reasonably accommodate the religious belief, or such an

accommodation would work an undue hardship upon the employer and its business." The DOE failed to offer any evidence of any accommodation nor have they provided any evidence of an interactive process, regarding the reasonable accommodation nor have they demonstrated that an accommodation would cause an undue hardship. Title VII requires the DOE to show how Petitioner's accommodation would harm (educationally) its students. Here, it is alleged other speech and language pathologist were working remotely they were allowed to work remotely and given exceptions based on their religious belief. The DOE has failed to meet their burden.

In an Article 78 proceeding for judicial review of a determination of an educational institution, the standard to be applied is whether the action taken by the institution is arbitrary or capricious, or without rational basis or whether the institution has acted in good faith *Tedeschi v. Wagner College*, 49 NY2d 652, 661, 404 NE2d 1302, 1307, 427 NYS2d 760, 765 (1980); *Pell v. Board of Educ. Union Free Sch. Dist. No. 1*, 34 NY2d 222, 356 NYS2d 833, 313 NE2d 321(1974); *Matter of Gray v. Canisius College of Buffalo*, 109 AD2d 1100, 486 NYS2d 1018 NYAD,1985. The arbitrary and capricious test has been said to chiefly relate to whether a particular action should have been taken, is justified or is without a foundation in fact or without a sound basis in reason [emphasis added]. *See Pell, supra.; See also Peckham v. Calogero*, 12 NY3d 424, 431 (2009). Pursuant to *Pell v. Board of Education*, "the arbitrary or capricious test chiefly relates to whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact". *Pell, supra Accord, Bigler v Cornell University*, 266 AD2d 92 (1st Dept. 1999). *See also Gilman v. N.Y.State Div. of Hous. & Cmty. Renewal*, 99 NY2d 144,

149 (2002). "judicial review of an agency decision is limited to the reasons given by the agency in its decision. An agency cannot use its answer in a CPLR Article 78 proceeding as a substitute for providing a rational reason in its determination." *Central N.Y. Coach Lines, Inc. v. Larocca*, 120 AD2d 149, 152 (3d Dep't 1986).

As such, it is clear Respondent acted arbitrarily and capriciously by not providing petitioner an appeal process, by terminating her without notice and thus violating her due process rights, by failing to reasonably accommodate her religious practice, and failing to engage in the interactive process and afford her the same accommodations or options of accommodations that were afforded to others similarly situated.

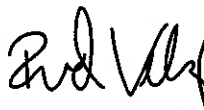
Accordingly, petitioner's motion (mot. seq. no. one) is GRANTED; it is further

ORDERED; this matter is hereby referred back to the board for a determination as to the appeal process, the request for a religious accommodation, and a determination as to the request to reinstate petitioner to her prior tenured position of a speech and language pathologist retroactively and restoring the years of service and salary according to her retroactive seniority and contributions to her pension plan; it is further

ORDERED that respondent's cross-motion (mot. seq. no. two) to dismiss the petition is DENIED.

The foregoing constitutes the decision, order and judgment of the court.

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ

KINGS COUNTY CLERK
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