

Perez v New York City Dept. of Educ.

2025 NY Slip Op 33089(U)

August 13, 2025

Supreme Court, Kings County

Docket Number: Index No. 518878/2021

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 13th day of AUGUST, 2025

P R E S E N T:

HON. RICHARD VELASQUEZ

Justice.

-----X

JAQUELINE PEREZ,

Plaintiff,

-against-

Index No.: 518878/2021
Decision and Order
Mot. Seq. No. 1 & 2

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendants,

-----X

The following papers NYSCEF Doc #'s 1 to 59 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed _____	1-23, 44-59; 25-42
Opposing Affidavits (Affirmations) _____	40
Reply Affidavits _____	42

After having come before the Court and the court having heard Oral Argument on November 20, 2024 and after review of the foregoing papers the court finds as follows:

Petitioner moves for an order seeking review and annulment, vacatur and/or modification pursuant to CPLR Article 75 of a Hearing Officer's decision rendered pursuant to Education Law Section 3020-a. (MS#1). Respondent cross moves to dismiss. (MS#2)

ANALYSIS

In cases of compulsory arbitration, this court has held that CPLR article 75 "includes review ... of whether the award is supported by evidence or other basis in reason." (*Mount St. Mary's Hosp. of Niagara Falls v. Catherwood*, 26 NY2d 493, 508,

311 NYS2d 863, 260 NE2d 508.) This standard has been interpreted to import into article 75 review of compulsory arbitrations the arbitrary and capricious standard of article 78 review. (*Caso v. Coffey*, 41 NY2d 153, 158, 391 NYS2d 88, 359 NE2d 683; *Siegel*, *New York Practice*, § 603, pp. 865–866.)

In addition, article 75 review questions whether the decision was rational or had a plausible basis. (*Caso v. Coffey*, 41 NY2d 153, 158, 391 NYS2d 88, 359 NE2d 683, *supra*.), and to reviewing whether the arbitrator acted in a manner that was arbitrary and capricious, irrational or without a plausible basis. (*Caso v. Coffey*, 41 NY2d 153, 391 NYS2d 88, 359 NE2d 683, *supra*; *Siegel*, *New York Practice*, §§ 602, 603, pp. 861–866.) *Petrofsky (Allstate Ins. Co.)*, *In re*, 54 NY2d 207, 211, 429 NE2d 755, 757–58 (1981).

The court shall briefly address Petitioner's misplaced allegation that Executive Session must be held as a condition precedent to conducting a 3020-a proceeding. ("Pursuant to Education Law § 2590-h, the Chancellor has the authority to promulgate regulations 'necessary or convenient' to the administration of the public school system (internal quotations and citations omitted)). Pursuant to Education Law § 2590-f(1)(b), "a Chancellor may delegate authority to Community School District Superintendents, who may delegate authority to Principals." See NYSCEF Doc No. 28 at pp. 50. "[T]here is no longer a requirement to have a majority vote of the board of education due to the later-enacted Education Law § 2590 that vested authority in the Chancellor in place of the board of education to delegate said authority to superintendents and others he or she deems appropriate." *Matter of Springer v. Bd. of Educ. Of the City Sch. Dist. of the City of N.Y.*, 27 NY3d 102, 106 (2016). Respondents, introduce a letter dated April 2, 2018

from DOE Chancellor, Richard A. Carrazna wherein pursuant to Education Laws § 2590-h(19) and 3020-a, the Chancellor delegates the authority to High School Principals to “[i]nitiate and resolve disciplinary charges against teaching and supervisory staff. *see Education Law § 2590-h(19)* (The Chancellor may “[d]elegate any of his or her powers and duties to such subordinate officers or employees as he or she deems appropriate to modify or rescind any power and duty so delegated.”). Therefore, there is no evidence that the delegation violated due process, and the Chancellor properly delegated authority to Principal Blank.

In the present case, pursuant to Education Law § 3020-a (“§3020-a”), the Board of Education (“BOE”) issued specifications against Petitioner charging her with conduct unbecoming, insubordination, incompetence, excessive absences, and neglect of duties during the 2018-2019 year. *See NYSCEF Doc No. 29, Charges and Specifications, Case No: 35,877.* A virtual Administrative Hearing was held Pursuant to § 3020-a, with full evidentiary offerings by both parties over the span of the twelve days. *See NYSCEF DOC No. 30, 3020-a hearing transcript.* At the hearing all parties were afforded a full and fair opportunity to offer testimonial and documentary evidence, cross-examine witnesses and argue in support of their respective positions. Petitioner testified, called several representatives, a teacher, and introduced ninety (90) exhibits. *See NYSCEF DOC No. 32, petitioner's exhibits received into evidence at §3020-ahearing.* The Hearing Officer rendered an exhaustive eighty (80) page award. As required by § 3020-a, the award contains detailed findings of fact and conclusions for each charge. *See NYSCEF DOC No. 28.* The hearing officer found Petitioner guilty of Specifications 1(a), 4(b), 6, and 11(a) and dismissed Specifications (1)(b), (2), (3)(a), (3)(b), 4(a), 5(a), 5(b),

7, 9, 10, 11(b), 11(c), 11(d), 12, 13, 14.

Petitioner has failed to allege any facts sufficient to warrant a vacatur of the award. The allegations are nothing more than disagreements with the factual and credible determinations, which are insufficient grounds for vacatur. *See Wein & Malkin LLP v. Helmsley Spear, Inc.*, 6 NY3d 471, 479 (2006). Over the span of a twelve-day hearing, the parties were afforded a full and fair opportunity to elicit witness testimony, present relevant evidence, and state their arguments. Hearing Officer issued an 80 page decision that sustained four subsections based on credible witness testimony and evidence, engaged in an "analysis of the facts and circumstances, evaluated witnesses' credibility and arrived at a reasoned conclusion. *See Matter of Board of Educ. of City School Dist. of N.Y. v. Ostrin*, 120 AD3d 1105, 992 NYS2d 401 (Mem), 2014 NY Slip Op. 06249.

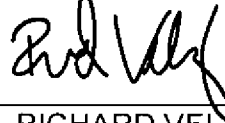
In the present case, petitioner fails to demonstrate that respondent's determination was arbitrary and capricious or an abuse of discretion. **"Arbitrary action is without sound basis in reason and is generally taken without regard to the facts."** *Id.* at 231, 356 NYS2d at 839, 313 NE2d at 325. No such showing has been made in the present case. As such Petitioner's Article 75 petition is hereby denied. Petitioner's conclusory statements, absent any case law, fail to set forth any basis for this court to find that the hearing officers determination was irrational arbitrary or capricious.

Accordingly, petitioners article 75 is hereby denied (MS#1) and respondents cross motion to dismiss (MS#2) is hereby granted, the clerk is directed to mark this matter dismissed, for the reasons stated above.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
August 13, 2025

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ

Hon. Richard Velasquez, JSC

AUG 13 2025