

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

2025 NY Slip Op 33263(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 160916/2024

Judge: Lynn R. Kotler

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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. 160916/2024

LISA MACKLIN

MOTION DATE 11/20/2024

Petitioner,

MOTION SEQ. NO. 001

- v -

THE DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK,

DECISION + ORDER ON MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34

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 LISA MACKLIN ("Macklin") seeks an Order annulling and reversing the determination by respondents The New York City Department of Education ("DOE"), reinstating her to her previous position, and granting her a name-clearing hearing. DOE opposes and cross-moves to dismiss. For the reasons that follow, the petition is denied and the cross-motion to dismiss is granted.

Facts

The relevant facts are as follows. On or about September 8, 2021, Macklin began her employment as a physical education teacher on a probationary basis.

On March 18, 2022, Assistant Principal Meghan Kozak ("Kozak") sent Macklin a letter warning her that she had been late or absent from work on 15 occasions.

On June 27, 2022, Macklin received a letter from Principal Gregg Lopez (“Lopez”) regarding an incident on May 31, 2022. The letter detailed how Macklin acted inappropriately with Kozak by speaking to her in an aggressive and unprofessional tone during the school day.

On December 22, 2022, Macklin received a letter from Lopez regarding her absences. The letter stated that Macklin had been absent for 18 days during the 2022-2023 school year and had been absent 35 times during the 2021-2022 school year. The letter warned Macklin that after reviewing the attendance record and responses of Macklin and her union rep that the absences were excessive and a continued pattern of absences may lead to disciplinary action, including termination.

On or about December 4, 2023, Macklin was injured by a student and suffered personal injuries that caused her to miss work. On January 16, 2024, Macklin returned from her medically excused absence. Macklin was also forced to miss six days in May and June 2024 due to a bladder and kidney infection.

On February 5, 2024, Macklin received another letter from Lopez regarding her 14 absences between 9/7/23 and 11/29/23. The letter discussed Macklin’s history of absenteeism, the letters in her file from March 2021 and December 2022, and warned her that if her attendance did not improve, she would be subject to disciplinary action, including termination.

On July 11, 2024, Macklin received another letter from Lopez regarding her 31 absences between November 30, 2023, and June 21, 2024. The letter discussed Macklin’s history of absences and that this was the fourth letter she had received regarding her attendance issues.

On August 7, 2024, Macklin received a letter from Superintendent Ketler Louissant (“Louissant”) informing her that Macklin was being reviewed for termination and informing her that she may submit a written response for consideration in the determination. On August 30,

2024, Macklin received a letter from Louissant informing her that her Discontinuance of Probationary Service was affirmed and she was terminated as of September 2, 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]).

“It is well settled that a probationary employee may be discharged without a hearing or statement of reasons, for any reason or no reason at all, in the absence of a showing that his or her dismissal was in bad faith, for a constitutionally impermissible purpose or in violation of the law” (*Matter of Witherspoon v Horn*, 19 AD3d 250, 251 [1st Dept 2005]). Evidence on the record that establishes bad performance may be used to establish that a termination was made in good faith (*Matter of Vijungco v Metropolitan Transp. Auth.*, 234 AD3d 645, 646 [1st Dept 2025]).

Macklin argues that the DOE acted in bad faith when they terminated her because of time missed due to a workplace injury and time taken off due to COVID-19. Macklin argues that she had been rated as effective during the 2021-2022, 2022-2023 and 2023-2024 school years and that correct evaluation procedures were not followed.

Macklin further claims that she had been rated as effective for the three years she was employed by DOE. DOE has provided the Annual Professional Performance Review Teacher Observation Reports for each of those three years. In 2021-2022 Macklin received 11 Developing and 15 Effective ratings during across the formal and informal observations conducted. In 2022-2023 Macklin received 7 Developing and 22 Effective ratings across the formal and informal observations conducted. On November 11, 2023, prior to Macklin's injury leave, Macklin received 5 Developing and 2 Effective ratings during an informal observation. Across the 2023-2024 school year Macklin received 11 Developing, 8 Effective and 5 Ineffective ratings. Based on the record before the Court, Macklin has not shown that the DOE acted in bad faith based on her inconsistent performance reviews. While the 2022-2023 school year was primarily positive, she received mixed or negative observation ratings in the 2021-2022 and 2023-2024 school years, many of which were prior to her medically excused leave.

Moreover, these reviews were related to her classroom performance, not to her absences. The disciplinary letters in Macklin's file demonstrate that she had exhibited attendance issues for at least two years prior to her excused medical absence in December of 2023 and had received multiple warnings that continued absences could result in termination. Macklin was absent for a total of 78 days over her three years of employment.

Despite claiming that proper evaluation techniques were not followed, Macklin has failed to identify any specific ways in which the evaluations were deficient. Macklin's argument that the evidence for the evaluations was not "lesson specific" and that "[o]bservable components were not rated, and Petitioner was rated on components not observed" are conclusory and not evidence of bad faith.

Based on the foregoing, DOE had a rational basis for terminating Macklin, and she failed to show that the termination was done in bad faith. Macklin’s argument that she is entitled to a name-clearing hearing is rejected outright.

Macklin’s petition also alleged disability discrimination, hostile work environment, and retaliation under the CHRL and SHRL. In its cross-motion to dismiss, DOE argues that Macklin failed to state a cause of action for any of those claims. Macklin failed to oppose that part of the motion to dismiss so those claims are thereby deemed abandoned (*see Saidin v Negron*, 136 AD3d 458, 459 [1st Dept 2016]).

Conclusion

Accordingly, it is

ORDERED that the petition is denied; and it is further

ORDERED that DOE's cross motion to dismiss the Petition is granted.

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.



9/2/2025
DATE

LYNN R. KOTLER, 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