

Jansen v New York City Dept. of Educ.

2026 NY Slip Op 31734(U)

March 18, 2026

Supreme Court, New York County

Docket Number: Index No. 165778/2025

Judge: Gerald Lebovits

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This opinion is uncorrected and not selected for official publication.

issue a “final and lawful” FOIL determination, and provide particularized and specific justifications for each claimed exemption. During the pendency of this proceeding, the Department issued a final response to petitioner’s request on December 24, 2025, providing a copy of the final report in the sixth investigation. (*See* NYSCEF No. 33.)

On December 30, 2025, the Department moved to dismiss the petition on two grounds: first, that its partial response to petitioner’s FOIL request of November 18, 2025, and its final response of December 24, 2025, rendered the case academic in respect of petitioner’s request for disclosure of documents; and second, that the petition is premature in respect of the other requests, because petitioner assertedly failed to exhaust her administrative remedies of agency appeal under Public Officers Law § 89 (4) (a). The motion to dismiss is granted.

The Department’s disclosure of documents in response to petitioner’s FOIL request renders this proceedings academic to the extent that the petition seeks production of documents relating to the investigations and a final determination of her FOIL request. (*See Braxton v Comm’r, New York City Police Dep’t* 283 AD2d 253, 253 [1st Dept 2001]; *Malerba v Kelly*, 211 AD2d 479, 479 [1st Dept 1995]). The Department’s partial response of November 18, 2025, and the final response of December 24, 2025, provided petitioner with information and documents on each investigation specified in her FOIL request. These responses addressed petitioner’s request, which had sought only “information” on the six investigations involving her before the Office of Special Investigations. (*See* NYSCEF No. 6.)

Petitioner’s request for a declaration that the Department constructively denied her FOIL request through multiple extensions is without merit. The Department’s rejection of petitioner’s appeal (*see* NYSCEF No. 17) and the affirmation in support of the Department’s motion to dismiss (*see* NYSCEF No. 23) spell out legitimate reasons that compelled the Department to seek extensions to respond to petitioner’s FOIL request. The involvement of multiple offices in conducting the investigations and the likelihood of disciplinary proceedings involving petitioner (which were postponed to the fall of 2025, after being earmarked for the summer) delayed the collection of information responsive to petitioner’s request and did not make the extensions unreasonable. (*See Matter of Save Monroe v New York State Dep’t of Transp.*, 197 AD3d 808, 810 [3d Dept 2021].) In each of its extensions, the Department cited the large number of other pending FOIL requests and the need to determine which of the requested documents could be disclosed and which were exempt.

Petitioner’s requests for “issuing a final and lawful FOIL determination,” “providing particularized and specific justifications,” and “ordering an in camera inspection” in this proceeding are premature. Petitioner has not exhausted her administrative remedy of filing an appeal against the Department’s final response of December 24, 2025. Exhaustion of administrative remedies is a mandatory requirement before a litigant may seek judicial review against any agency action. (*See Young Men’s Christian Ass’n v Rochester Pure Water Dist.*, 37 NY2d 371, 375-376 [1975].)

The Department, in dismissing petitioner’s appeal, clarified that its extensions were not a denial of petitioner’s request under Public Officers Law § 89 (4) (a). (*See* NYSCEF No. 17.) In

fact, the Department's response of December 24, 2025, informed petitioner of her right to appeal (*see* NYSCEF No. 33), which petitioner did not pursue.

Petitioner contends that once the Department rejected her appeal, no further appeals were permissible and that the rejection constituted an administrative action capable of judicial review. (*See* NYSCEF No. 31 at ¶¶ 11-12.) This is incorrect. The statutory right of appeal remained available to petitioner under Public Officers Law § 89 (4) (a) against the Department's response of December 24, 2025. By not seeking this remedy, petitioner prevented the Department from addressing her grievances on the adequacy of the search conducted, the basis for exempting specific records from disclosure, and the sufficiency of the justifications offered in the Department's partial and final responses in appeal, which she has raised for the first time in this proceeding. Agencies like the Department will be denuded of their power to redress grievances arising from their actions in the first instance if courts allow litigants to seek judicial review without exhausting administrative remedies. (*Young Men's Christian Ass'n*, 37 NY2d at 375-376.)

Having failed to exhaust her administrative remedies, petitioner is now precluded from seeking judicial review of the Department's responses to her FOIL request. (*See Slater v Gallman*, 38 NY2d 1, 4 [1977]; *Moreno v New York County District Attorney's Office*, 38 AD3d 358, 359 [1st Dept 2007].) Accordingly, her petition is dismissed as premature to the extent that it seeks information on the adequacy of the search conducted, particularized justifications for the documents exempted, and an *in camera* inspection.

Petitioner is also not entitled to litigation costs reasonably incurred under Public Officers Law § 89 (4) (c) (i), which requires petitioner to show that she "substantially prevailed" in the proceeding. A party substantially prevails under Public Officers Law § 89 (4) (c) (ii) if the requested information in her request is received "in response to the underlying FOIL litigation." (*Matter of Competitive Enter. Inst. v Attorney Gen. of New York*, 161 AD3d 1283, 1286 [3d Dep't 2018].) In this proceeding, the Department produced to petitioner documents and information in five of the six investigations before the action was filed. (*See* NYSCEF Nos. 10, 12-15.) Most of the information in response to the petitioner's request had therefore been shared by the Department *prior* to the FOIL litigation, which disentitles petitioner from receiving an award of reasonably incurred litigation costs in the action under § 89 (4) (c) (i).

Accordingly, it is

ORDERED that the branch of petitioner's CPLR article 78 petition seeking a declaratory judgment in her favor is denied; and it is further

ORDERED, ADJUDGED, and DECLARED that respondent New York City Department of Education did not constructively deny petitioner's Foil Request No. F23,116; and it is further

ORDERED that the branches of petitioner's CPLR article 78 petition seeking to compel respondent to issue final FOIL determinations within 30 days, to produce all non-exempt responsive records, provide particularized and specific justifications for claimed exemptions, and

to permit an in camera inspection of withheld or redacted records, are denied as premature; and it is further

ORDERED that the branch of petitioner’s CPLR article 78 petition seeking an award of attorney fees is denied; and it is further

ORDERED that respondent’s application for an order dismissing petitioner’s CPLR article 78 petition is granted, and this proceeding is dismissed, no costs; and it is further

ORDERED that respondent serve a copy of this order with notice of its entry on petitioner; and on the office of the County Clerk (using the NYSCEF document type “Notice to the County Clerk - CPLR § 8019 (c)”), which shall enter judgment accordingly.

3/18/2026
DATE


HON. GERALD LEBOVITS
J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE