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| <b>Cole v Department of Educ. of the City of N.Y.</b>  |
| 2026 NY Slip Op 31987(U)   |
| April 7, 2026  |
| Supreme Court, New York County   |
| Docket Number: Index No. 650365/2025   |
| Judge: Gerald Lebovits   |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

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INDEX NO. 650365/2025

SANDRA D. WILLIAMS COLE,

MOTION SEQ. NO. 001 002

Petitioner,

- v -

THE DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK, and THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,

DECISION + ORDER ON MOTION

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 7, 8, 9, 10, 11, 17, 19, 21, 22, 23, 24, 25, 26, 32, 34

were read on this motion to VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 12, 13, 14, 15, 16, 18, 20, 27, 28, 29, 30, 31, 33, 35

were read on this motion for DISMISSAL.

Stewart Lee Karlin, Esq., New York, NY, for petitioner. Corporation Counsel of the City of New York, New York, NY (Muriel Goode-Trufant, of counsel), for respondent.

Gerald Lebovits, J.:

Petitioner, Sandra D. Williams Cole, was a tenured teacher formerly employed by the Department of Education of the City of New York (DOE) at Public School 004. Respondents are the DOE and the Board of Education of the City School District of the City of New York.

This hybrid proceeding is brought pursuant to CPLR articles 75 and 78 to vacate an opinion and award dated January 8, 2025, issued by hearing officer Hon. Chris M. Kwok following a compulsory arbitration conducted under Education Law § 3020-a. The hearing officer sustained several specifications alleging petitioner’s incompetence and misconduct and imposed the penalty of termination.

Petitioner filed a verified petition challenging the award on numerous grounds, including that it is unsupported by adequate evidence, that DOE failed to provide remediation as required by statute, that the hearing officer improperly relied on conduct from 2021 despite petitioner’s having received an “effective” rating that year and being told no action would be taken, that required classroom observation procedures were not followed, that respondents failed to produce

the administrative record, that the decision was untimely, and that the penalty of termination is shocking to one's sense of fairness.

Respondents cross-move to dismiss the petition under CPLR 3211 (a) (7), arguing that petitioner failed to state a cognizable claim and that the hearing officer's determination is rational, supported by adequate evidence, and entitled to judicial deference. Respondents further argue that the DOE provided remediation efforts towards correcting the behavior of petitioner, that the penalty of termination does not shock the conscience, that petitioner abandoned the delay and due process arguments and that those arguments lack merit in any event, and that respondent's production of the full administrative record is not required at the pleading stage.

## BACKGROUND

On September 15, 2022, the DOE brought disciplinary charges against petitioner under Education Law § 3020-a, alleging that petitioner repeatedly demonstrated pedagogical deficiencies, failed to supervise students, and engaged in professional misconduct during the 2019 to 2020, 2020 to 2021, and 2021 to 2022 school years. Petitioner timely requested a hearing, triggering compulsory arbitration.

The DOE presented five administrative and instructional witnesses and extensive documentary evidence, including observation reports, improvement plans, and investigative records. Petitioner testified on her own behalf and called two fellow teachers. Petitioner asserted that she was unfairly targeted by school administration, classroom observations did not fairly reflect her teaching, and that the hearing officer did not consider contextual factors such as her reassignment to unfamiliar fourth-grade class on short notice and post-pandemic disruptions.

In a detailed written decision issued January 8, 2025, the hearing officer sustained specifications 1 (d), 1 (e), 1 (f), 1 (h), 3, and 4, dismissed other specifications, and concluded that the DOE met its burden of proving petitioner's incompetence by a preponderance of the evidence. The hearing officer further found that the DOE had offered petitioner remediation, but that petitioner had not shown a reasonable likelihood of rehabilitation, warranting penalty of termination.

## DISCUSSION

### 1. Standard of Review and Governing Law

The discipline and termination of tenured teachers is governed by Education Law § 3020 and § 3020-a. Judicial review of a § 3020-a determination is limited to the grounds set out in CPLR 7511. An award may be vacated only upon a showing of misconduct, bias, excess of power, or procedural defect, or where the determination is irrational or lacks adequate evidentiary support.

Because § 3020-a proceedings constitute compulsory arbitration, judicial scrutiny is stricter than a consensual arbitration. Even so, this court reviews only whether the determination is rational, supported by evidence or another basis in reason, and not arbitrary and capricious.

(See *Lackow v Dept. of Educ.*, 51 AD3d 563, 567 [1st Dept 2008] [explaining that compulsory arbitration requires closer judicial scrutiny, and that the arbitral determination must accord with due process, be supported by adequate evidence, be rational, and satisfy the arbitrary-and-capricious standard of CPLR article 78]; *Petrofsky v Allstate Ins. Co.*, 54 NY2d 207, 211 [1981].) This court cannot substitute its judgment for that of the arbitrator simply because this court believes its interpretation is superior to that of an arbitrator who has made errors of judgment or fact. (See *Matter of New York State Correctional Officers & Police Benevolent Assn. v State of New York*, 94 NY2d 321, 326, 726 [1999].)

## 2. Sufficiency of the Evidence and Scope of Review

Petitioner argues that the award must be vacated because it is not supported by adequate evidence; that the DOE failed to meet its burden of proof by a preponderance of the evidence, particularly as to specifications 1, 3, and 4; and that a tenured teacher may be removed only for just cause. (See *Matter of Gould v Bd. of Educ. of Sewanhaka Central High School District*, 81 NY2d 446, 451 [1993]; *Martin v Ambach*, 67 NY2d 975, 976 [1986].) Petitioner also argues that a finding of teacher incompetence requires proof that the teacher cannot provide a minimally acceptable educational experience. (NYSCEF No. 22 at 11-12, citing *Board of Educ. v Arrak*, 28 Educ. Dept. Rep. 302, 303 [1989].) Petitioner's arguments seek to reweigh evidence and reassess credibility determinations resolved during the hearing. These challenges are beyond the scope of judicial review under CPLR 7511 and 7803.

Respondents argue that the hearing officer applied the correct standard; and that the record reflects that the hearing officer sustained only those specifications proved by a preponderance of the evidence, and dismissed others, showing that the hearing officer independently evaluated the charges rather than giving DOE's position blanket acceptance. Respondents further argue that, given the limited judicial review applicable here, petitioner has not shown that the award was irrational, unsupported by adequate evidence, or arbitrary and capricious, and that the award therefore should not be vacated. (See *Lackow*, 51 AD3d at 567.)

The record reflects that the hearing officer considered testimony from multiple witnesses, evaluated documentary evidence, and dismissed several specifications as to which the DOE failed to meet its burden. This careful analysis undermines petitioner's claim that the decision was arbitrary or unsupported.

## 3. Production of the Administrative Record

Petitioner argues that respondents' cross-motion must be denied, because respondents failed to annex the full administrative record, including hearing transcripts and exhibits; and that without the record, respondents cannot demonstrate rationality or adequate evidence.

Respondents counter that on a CPLR 3211 (a) (7) motion to dismiss, the court's inquiry is confined to whether a petition states a cause of action within its four corners, and that respondents are not required to submit the full record at this procedural stage.

Respondents' position is persuasive. On a CPLR 3211 (a) (7) motion, the court assesses the legal sufficiency of the pleading, not the ultimate merits. The absence of the full record does not, at this stage, require denial of the cross-motion if the petition fails to plead facts establishing a basis for vacatur under CPLR 7511.

#### **4. The 2021 "Effective" Rating and Reliance on the 2021 Incident**

Petitioner argues that the hearing officer erred in relying on conduct from 2021, on the ground that she received an "effective" rating that year and was told by the administration at the time that no disciplinary action would be taken with respect to the 2021 incident. This contention is unavailing.

The existence of favorable ratings does not preclude a hearing officer from sustaining disciplinary charges based on specific proven incidents of incompetence or misconduct. (*See Matter of Douglas v New York City Department of Educ.*, 2016 NY Slip Op 26179, 17 [Sup Ct, NY County 2016] [holding that even an unblemished record does not preclude termination of a teacher, and that less severe conduct may warrant termination where it forms part of a pattern of incompetence].) A hearing officer may sustain disciplinary charges based on specific proven incidents of misconduct or incompetence where the record provides adequate evidentiary support (*See Lackow*, 51 AD3d at 567).

Here, the hearing officer did not treat petitioner's 2021 rating as dispositive. Nor did he impose discipline based on a generalized disagreement with petitioner's overall evaluation. Rather, the hearing officer evaluated discrete specifications alleging failures of instruction and supervision, sustained only those supported by a preponderance of the evidence, and dismissed others when the DOE failed to meet its burden. That approach is neither irrational nor arbitrary and capricious. (*See id.*)

#### **5. Remediation and Rehabilitation**

Petitioner argues that the DOE failed to provide remediation as required by Education Law § 3020-a (4) (a). That paragraph requires the hearing officer, in determining the penalty, to consider the extent to which the employing board made efforts to correct the conduct that resulted in the charges, including through remediation. Petitioner also argues that her termination is improper absent meaningful corrective efforts.

Respondents counter that the hearing officer expressly considered remediation and found that petitioner received repeated feedback, coaching, and opportunities for improvement, but nonetheless failed to demonstrate sustained progress. (*See Matter of Benjamin v New York City Bd. of Educ.*, 105 AD3d 677, 678 [1st Dept 2013] [the hearing officer's determination was adequately supported by evidence showing that the teacher was unwilling or unable to implement constructive criticism]. Respondents further argue that where a hearing officer considers remediation and finds that the teacher was not receptive to corrective efforts and demonstrated sustained inadequate performance, termination is appropriate and does not shock the conscience. (NYSCEF No. 13 at 20, citing *Matter of Jackson v Department of Educ. of City of New York*, 184 AD3d 500,01 [1st Dept 2020].) This court agrees with respondents.

The hearing officer's decision reflects explicit findings about remediation and a finding that further efforts at remediation would be futile. Petitioner's disagreement with those findings does not establish a basis for vacatur. The hearing officer expressly considered remediation and rehabilitation, as required by Education Law § 3020-a (4) (a). (*See Benjamin*, 105 AD3d at 677, 678.) The hearing officer's decision reflects that petitioner received repeated feedback, classroom observations, instructional coaching, and opportunities for professional development over multiple school years. The hearing officer found that despite these efforts, petitioner did not demonstrate sustained improvement and that there was no reasonable expectation of rehabilitation.

## 6. Penalty and Delay

Petitioner argues that termination is shocking to one's sense of fairness, particularly given her tenure and partial dismissal of charges. (*See* NYSCEF No. 22 at 23, citing *Matter of Pell v Bd. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck*, 34 NY2d 222, 235 [1974].) Petitioner also raises arguments concerning delay and due process.

Respondents argue that the penalty is proportionate to the sustained misconduct and incompetence and that delay alone, absent prejudice, does not warrant vacatur. Even if the hearing or decision were untimely, petitioner must show prejudice resulting from that delay. Petitioner does not allege any such prejudice here. (*See* NYSCEF No. 13 at 21, citing *Matter of Martin v Department of Educ. of the City of New York*, 167 AD3d 545, 545 [1st Dept 2018]; *Matter of Leon v Department of Educ. of the City of New York*, 115 AD3d 435, 436 [1st Dept 2014].) Respondents further contend that petitioner abandoned several procedural claims by failing to address respondents' arguments in opposition to the cross-motion, including claims relating to delay, due-process violations, observation-procedure irregularities, and record production. In any event, respondents argue that these claims fail to state grounds for vacatur under CPLR 7511.

Given the sustained findings and the hearing officer's consideration of the appropriate penalty, petitioner's termination does not shock the conscience. (*See Benjamin*, 105 AD3d at 678; *Lackow*, 51 AD3d at 569.) Petitioner's delay arguments do not warrant vacatur: Petitioner does not allege any prejudice resulting from the delay. (*See Martin*, 167 AD3d at 545; *Leon*, 115 AD3d at 435, 436.)

Accordingly, it is

ORDERED that the petition (mot seq 001) is denied; and it is further

ORDERED that the motion to dismiss the petition (mot seq 002) is granted, and the proceeding is dismissed, no costs; and it is further

ORDERED that respondents 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.

4/7/2026  
DATE

  
**HON. GERALD LEBOVITZ**  
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