

**Hill v Klein**

2012 NY Slip Op 31710(U)

June 25, 2012

Supreme Court, New York County

Docket Number: 113908/10

Judge: Judith J. Gische

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

HON. JUDITH J. GISCHE

Index Number : 113908/2010 J.S.C.

PART 10

HILL, TERRENCE

vs

KLEIN, JOEL I.

Sequence Number : 001

ARTICLE 78

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answering Affidavits – Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

<sup>Petition</sup>  
-motion (s) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 6/25/12

HON. JUDITH J. GISCHE J.S.C. 

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must

SUPREME COURT OF THE STATE OF NEW YORK appear in person at the Judgment Clerk's Desk (Room COUNTY OF NEW YORK: PART 10 141B).

-----X  
**Terrence Hill,**

Decision/Order

Petitioner,

Index No.: 113908/10  
Seq. No.: 001

For an Order and Judgment pursuant to **Article 78** of the Civil Practice Law and Rules,

Present:  
Hon. Judith J. Gische  
J.S.C.

-against-

**Joel I. Klein, as Chancellor of the New York City Department of Education, and The New York City Department of Education,**

Respondents.  
-----X

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

<b>Papers</b>	<b>Numbered</b>
Pet's n/pet, verified pet .....	1
Resp's n/x-m to dismiss w/ GMM affirm .....	2
Pet's opp to x/m to dismiss w/ EW affirm (sep back) .....	3
Pet's opp to x/m to dismiss w/ TH affid (sep back) .....	4
Resp's reply in further supp of x-m to dismiss w/ GMM affirm .....	5
Pet's submission <u>Matter of Lucio v. The NYC Dept. of Ed.</u> , Sup. Ct. NY County, October 12, 2011, Singh, J., index No. 109096/2010 .....	6
Resp's Answer .....	7

Hon. Judith J. Gische, J.S.C.:

*Upon the foregoing papers, the decision and order of the court is as follows:*

Petitioner Terrence Hill ("Hill" or "petitioner") seeks to annul the school chancellor's decision denying his appeal of an unsatisfactory rating ("u-rating"). The respondents, the New York City Department of Education ("DOE") and the school Chancellor, Joel I. Klein ("Chancellor") (collectively "respondents"), initially sought the pre-answer dismissal of the

petition for failure to state a cause of action (CPLR §§ 3211 [a][7], 7804 [f]). Respondents later submitted an answer to the petition. CPLR § 7804[f], Nassau BOCES Cent. Council of Teachers by Dreaper on Behalf of Adult Educ. Instructors v Bd. of Co-op. Educ. Services of Nassau County, 63 N.Y.2d 100, 103 [1984].

Since an Article 78 proceeding is a special proceeding, it may be summarily determined upon the pleadings, papers, and admissions to the extent that no triable issues of fact are raised (CPLR § 409[b]; CPLR §§ 7801, 7804 [f] [h]). Therefore, the court will decide the issues raised on the papers and grant judgment for the prevailing party, unless there is an issue of fact requiring a trial (CPLR § 7804 [h]); York v. McGuire, 99 A.D.2d 1023 [1<sup>st</sup> Dept 1984] *aff'd* 63 N.Y.2d 760 [1984]; Battaglia v. Schumer, 60 A.D.2d 759 [4<sup>th</sup> Dept 1977]).

Unless otherwise provided, the following facts have been established or are unrefuted in the record before the court:

### **Procedural Background**

Hill, a tenured guidance counselor, employed by respondents, commenced this Article 78 proceeding seeking the reversal of an unsatisfactory annual performance rating he received dated, June 22, 2009, for the 2008-2009 school year. Hill challenged the u-rating administratively before the Office of Appeals and Review ("OAR"), which resulted in a report and recommendation, dated May 11, 2010. The proceeding before OAR consisted of the taking of testimony and considering of documentary evidence. Thereafter, on June 22, 2010, the Chancellor's Designee upheld and adopted the adopted the committee's May 11, 2010 report.

This Article 78 petition, challenging the administrative decision upholding the u-

rating, ensued. Petitioner asserts four separate claims in the petition:

(1) that respondents' determination was made in violation of the Chancellor's Regulations, rules and procedures and the bylaws of the DOE;

(2) that respondents' failed and refused to comply with their own rules and regulations because the petitioner was denied due process at the C-30 hearing as the panel accepted a u-rating, which was not previously provided to petitioner, and which did not include any documentation from petitioner's file;

(3) that respondents' determination was affected by an error of law as the process of the original determination and the process of the appeal was grossly unfair as applied to petitioner;

(4) that respondents' determination was an abuse of discretion because respondents have failed to perform a duty enjoined upon them by law, pursuant to their own regulations, the applicable collective bargaining agreement and the New York State Education Law.

Respondents initially cross-moved to dismiss the petition for failure to state a cause of action on the grounds that the allegations of the petition fail to satisfy petitioner's burden of establishing that respondents determination was arbitrary, capricious or an act of bad faith. Respondents' substantive opposition is, similarly, that the u-rating was not arbitrary or capricious, or otherwise made in bad faith and that the decision to deny the appeal was rationally based.

### **Underlying Facts**

Petitioner worked as a Guidance Counselor at Eximus College Preparatory Academy, Community School District 9, in the Bronx during the 2008-2009 school year. On June 22, 2009, petitioner received a u-rating on his Annual Professional Performance Rating Sheet ("rating sheet"). Petitioner's u-rating was based on several grounds, including

attendance and punctuality, and also in all areas related to guidance activities and interpersonal relationships.<sup>1</sup> Furthermore, petitioner claims that he received the rating sheet late, in the first week of July 2009.

Petitioner's Attendance and SCI Investigation.

For the period of September and November 2008, Hill had used a total of six out of the allotted 10 sick days. By letter dated November 26, 2008, petitioner wrote to Principal Tammy Smith ("Principal Smith") informing her that he needed to take an emergency leave of absence, starting December 1, 2008, for a minimum of three months, due to personal business and family matters. By letter dated February 24, 2009, petitioner submitted another letter request to Principal Smith, seeking an additional leave of absence beginning February 25, 2009 until July 1, 2009, as a result of personal family business. He also asserted personal medical issues, which he claimed he would document later.

Only part of these requests were approved by respondents (the periods of January 1, 2009 to January 22, 2009 and March 25, 2009 to June 30, 2009) and petitioner was out of work for the approved time. Although petitioner was out of work for the period between February 24, 2009 and March 24, 2009, petitioner's sick leave request was denied, based upon his failure to submit requested documentation.

In May 2009, the Special Commissioner of Investigation ("SCI") investigated whether petitioner abused leave time, after receiving a report from Principal Smith. Respondent claims that a copy of the SCI closing report was submitted to former

---

<sup>1</sup> A point of contention between the parties is a discrepancy between the two exhibits, the petitioner's copy of the rating sheet does not have attendance and punctuality checked off, while the respondent's copy does.

Chancellor stating that petitioner had requested a leave of absence without pay, for restoration of health, from January 23, 2009 to July 1, 2009. Principal Smith informed SCI that she signed and approved petitioner's leave application, but petitioner failed to submit the proper medical documentation required for the leave and did not respond to requests from the DOE's Human Resources Medical Division ("HR Connect") to provide that documentation. Ultimately, the period between February 24, 2009 and March 24, 2009 was not approved. The reason stated was that petitioner failed to respond to several requests from HR Connect to submit the required documentation.

Based on the foregoing, SCI substantiated the allegations that petitioner abused leave time, by failing to submit the required documentation for a portion of his request for a leave of absence for personal illness and recommended that respondents review SCI's findings and take appropriate action.

In total, petitioner was absent from the school more than 39 times during the 2008-2009 school year, for the periods that were not approved leaves of absence.

Guidance Performance.

Additionally, petitioner was rated unsatisfactory due to a finding of ineffective performance as a guidance counselor, by failing to conduct and document guidance activities, and for failure to meet and service the needs of the students.

On December 9, 2008, petitioner received a letter to the file for dereliction of duties ("letter of dereliction") from Assistant Principal Constantino Trillana ("AP Trillana"). This letter summarized a meeting between petitioner, AP Trillana and Principal Smith, in which inadequacies in petitioner's oversight of the 8<sup>th</sup> grade high school application process were identified and discussed. Specifically, it was noted that important information pertaining

to the high school application process was never distributed to students or their parents, that petitioner failed to follow up with parents regarding certain matters pertaining to the application process, and that petitioner failed to submit student's high school choice sheets to Principal Smith for review. This letter warned petitioner that:

"the administration needs to see marked improvements on the discharge of [his] responsibilities, particularly when...expressly asked to produce positive outcomes. Failure to improve in this regard may be grounds for further disciplinary action and may lead to an unsatisfactory rating."

A handwritten note on the letter indicates that petitioner "refused to sign" it.

U-rating Review.

Petitioner's u-rating followed on June 22, 2009. Thereafter, petitioner filed an appeal from the 2008-2009 u-rating with respondent's OAR. A review pursuant to Chancellor's Regulation C-31 and Article 4.3.1 of the Bylaws of the Board of Education ("the review") was held before the Chancellor's Committee Chairperson, David Harris ("Chairperson Harris" or "Committee")<sup>2</sup>, on May 11, 2010.

At the Review, the Committee: (1) heard from petitioner and his union representative, Mr. Sliwa ("UFT representative" or "Sliwa"), Principal Smith, AP Trillana, and (2) received documentation including the 2008-2009 rating sheet, the December 9, 2008 counseling letter, attendance records and petitioner's application for a medical leave of absence.

Petitioner's UFT representative objected to Exhibits 4.0 through 4.5 being part of the record, because they were either not signed by petitioner and/or not placed in his

---

<sup>2</sup> The "committee" consisted of only one person, David Harris.



personnel file and were not provided to petitioner in advance of the review. The Committee sustained this objection and held that the documents would be removed from the review file and not considered. However, Chairperson Harris stated that the documents could be referred to during the review.

Principal Smith represented that petitioner received a u-rating for the 2008-2009 school year as a result of excessive absences and because he was ineffective when he was present at work. Principal Smith explained that petitioner's absences were disruptive to the school and negatively impacted upon the services provided to the students. Further, she also explained that, even when present, petitioner was ineffective as a guidance counselor. Principal Smith stated that many informal meetings were held to discuss petitioner's excessive absences and work ethic, but petitioner repeatedly failed to provide the requested documentation or evidence to demonstrate the work he was engaging in and completing in his position.

Principal Smith also stated that in the first three months of the 2008-2009 school year, even before petitioner submitted any requests or applications for leave time for personal or medical reasons, he was out of school on six separate occasions. Thereafter, he was absent from January 1, 2009 to June 30, 2009. At the review, petitioner did not contest the fact that he was excessively absent. Indeed, his UFT representative stated on the record "We're not arguing about that -- his absences." See Resp. Answer Exh. 12

In addition to corroborating with Principal Smith's account of the absences, AP Trillana corroborated Principal Smith's representations pertaining to petitioner's unsatisfactory performance when present. In addition to discussing the letter of dereliction (see supra), AP Trillana stated that petitioner failed to appropriately document his guidance

activities, even after being asked to do so. All teachers have data binders documenting their activities. As a guidance counselor, Hill was required to keep a date binder documenting the actions he took with respect to the children and their parents. The documentation also included keeping track of his daily activities, including individual staff development with teachers, group staff development, individual consultation with parents, group consultation with parents, preparation maintenance and user of guidance materials, participation in community activities and agency referrals. AP Trillana further stated that petitioner has failed to provide any such documentation to the respondents. Petitioner disagreed with this assessment, stating that not only did he keep a data binder, but that he never had problems with students, parents or staff members.

At the review, petitioner argued that he was unaware that he was u-rated as a result of excessive absences, because his copy of the Rating sheet did not have that category checked off. However, Principal Smith also testified that the Rating sheet and the supporting documentation of the attendance report, including the December 9, 2008 letter, were mailed to petitioner three times at the conclusion of the 2008-2009 school year. She further represented that while petitioner was absent, the school reached out to him many times to inquire into his leave status, but petitioner often failed to return the phone calls. Further, the UFT representative objected that the rating sheet and documentation were not mailed properly, via registered mail. However, Principal Smith stated that she believed they were in fact mailed properly.

At the conclusion of the review, Chairperson Harris issued a written Report and Recommendation in which he recommended that petitioner's appeal be denied and the u-rating be sustained based on excessive absences and the failure to effectively meet with

and service the students. Chairperson Harris based this recommendation after consideration of all documentation and statements accepted at the review. Specifically, Chairperson Harris noted that the following were elicited and/or presented:

- (1) the principal received a letter for the DOE medical Office that [Hill] was not fit for work;
- (2) the rating sheet and other documents were sent to [Hill] without any reply;
- (3) the third set of documents and other documents was [sic] sent out by registered mail;
- (4) the school reached out to [Hill], however, he never responded;
- (5) when [Hill] was at the school, he was ineffective as a guidance counselor;
- (6) there were many informal meeting to discuss his excessive absences and his work ethic;
- (7) the guidance activities listed on the rating sheet were all rated unsatisfactory;
- (8) [Hill] did not provide any evidence or documentation of his guidance activities."

Based on the foregoing, Chairperson Harris, in his report, found that the documentation presented was "convincing" and that petitioner failed to present any "compelling evidence" that Principal Smith, the Rating Officer, was inaccurate or unfair, particularly to the extent that petitioner's performance was unsatisfactory.

Additionally, Chairperson Harris noted that excessive absences, regardless of whether they are medically certified, are "disruptive to the school and the children's education." Although petitioner's absences between January 1, 2009 to January 22, 2009 and March 25, 2009 to June 30, 2009 were ultimately approved leave, the time between

February 24, 2009 and March 24, 2009 was not. Chairperson Harris concluded by noting that Principal Smith's "assertions were persuasive and her supervisory judgment must be honored, especially since the Union did not disprove the documentation's accuracy."

Further, Chancellor's Regulation C-601, states in pertinent part that:

While actual absence which has been excused in accordance with regulation does not, of and by itself, constitute grounds for disciplinary action, absences which are so numerous as to limit the effectiveness of service may lead to disciplinary action for incompetent service or unfitness to perform obligations properly to the service. The fact that excuse or leave was applied for and granted properly does not preclude disciplinary action which may range from adverse rating to the institution of proceedings for dismissal or termination of service. Such disciplinary action shall not be precluded even when the cause of absence is a medical or physical condition.

See Chancellor's Regulation C-601 (l) (c).

*Denial of Appeal.*

By letter dated June 22, 2010, petitioner was informed by Santiago Taveras, the Chancellor's Designee, that his appeal of the u-rating was denied, based on excessive absences and based on his failure to effectively meet with and service the students. The decision was based upon Chairperson Harris' Report and Recommendation.

Thereafter, petitioner commenced the present proceeding by verified petition on October 18, 2010.

### **Discussion**

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision being challenged has a rational basis. CPLR § 7803 [3]. Thus, where it is alleged the decision was arbitrary and capricious, or without a rational basis, the petitioner must set forth facts that establish it is "without sound basis in reason." Matter of

Pell, Jr. v. Board of Educ. of Union Free School District No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester County, 34 N.Y.2d 222 at 231 [1974]; Matter of Colton, Jr. v. Berman, 21 N.Y.2d 322 [1967]; Matter of Peckerman v D & D Associates, 165 A.D.2d 289, 296 [1st Dept 1991]. Moreover, the Court's review is limited to those claims and issues petitioner raised at the review. Petitioner may not supplement the record with information that he did not present to the review officer.

While pure issues of law should be determined by the court, issues concerning the interpretation of a statute or regulation by the agency responsible for its administration should be upheld, if they are not irrational or unreasonable. Madison-Oneida Board of Comparative Educational Services v. Mills, 4 N.Y.3d 51 [2004]; Allstate Ins. Co. v. Libow, 106 A.D.2d 110 [2nd Dept. 1984] *aff'd* 65 N.Y.2d 807 [1985]. Thus, the court cannot and must not disturb a decision, even if it would have arrived at a different decision itself.

Upon review of the record, the court finds that petitioner has failed to demonstrate that the administrative decision upholding the u-rating was arbitrary, capricious, or irrational. See Matter of Peckham v Calogero, 12 N.Y.3d 424, 431 [2009]; Batyreva v. New York City Dep't of Educ., 50 A.D.3d 283 [1st Dept 2008]. See also Cove v. Sise, 71 N.Y.2d 910, 912 [1988]; Matter of Peckerman v D & D Associates, 165 A.D.2d 289, 296 [1st Dept 1991].

#### *The Friedman Consent Award Was Followed*

Petitioner claims that the Friedman Consent Award<sup>3</sup>, although mentioned, was mis-

---

<sup>3</sup> Dept. of Ed. for the City of New York v. United Federation of Teachers, (AAA), Consent Award, June 12, 2008, Re: Todd Friedman ("Friedman Consent Award").

characterized and incorrectly applied by Chairperson Harris in his advisory opinion. For that reason, petitioner claims that the failure to follow the Friedman Consent Award was arbitrary and capricious and a denial of due process. Petitioner argues that the Friedman Consent Award established a binding course of conduct in the case of a charge of excessive absence, providing that each charge would be reviewed for excessiveness on a case by case basis, applying the following factors: (a) whether absences occurred under unusual circumstances; (b) whether they are likely to reoccur, (c) whether there is a pattern of absences; (d) the employee's absences and work history.

After considering the facts and representations presented at the Review, the Committee issued a report in which Chairperson Harris relied on the representations of petitioner, the UFT representative, petitioner's rating officer, Principal Smith and AP Trillana, as well as documents, including the Rating sheet, a counseling letter dated December 9, 2008, attendance records, and petitioner's application for a medical leave of absence. See generally Resp's Answer, Exhibit 4. In his Report and Recommendation, Chairperson Harris concluded, based on the record before him, that in addition to excessive absences, petitioner failed to effectively meet and service the students. Therefore, it was not arbitrary or capricious, nor irrational for Chairperson Harris to conclude that the absences were excessive and that petitioner was unable to satisfactorily perform the duties required of him as a guidance counselor. See Brown v Bd. of Educ. of City School Dist. of City of New York, 89 AD3d 486 [1st Dept 2011]; Cicero v Triborough Bridge and Tunnel Auth., 264 A.D.2d 334, 335 [1st Dept 1999]; Wallis v. Sandy Cr. Cent. School Dist. Bd. of Educ., 79 A.D.3d. 1813 [4th Dept 2010]; McKinnon v. Board of Educ., 273 A.D.2d 240, 241 [2d Dept 2000].

The court agrees with the respondents, and finds that Chairperson Harris was aware of and did take into account the totality of the representations and the record, and properly applied the substance of the Friedman Consent Award. See Matter of Peckham v Calogero, 12 N.Y.3d 424, 431 [2009] [Courts must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise].

*Chairperson Harris Followed The DOE's Rules And Regulations*

To the extent raised by the Petitioner at the review, the Court finds that Chairperson Harris followed the DOE's rules and regulations. Relevant to this discussion, petitioner raised two procedural issues at the review: (1) that the rating sheet used at the review was (a) not the same sheet mailed to petitioner in June 2009, and (b) that there is no proof of its mailing in June 2009; and (2) that neither petitioner nor his UFT representative received the documents labeled exhibit 4, submitted by the principle for the review.

*The Rating Sheet*

During the review, petitioner and his UFT representative initially objected to the admissibility of the rating sheet Principal Smith submitted. Petitioner claims that the rating sheet received by Petitioner in the first week of July 2009 is not the same as the rating sheet produced by Principal Smith for the review.

Petitioner also claims, that Chairperson Harris waived the DOE's regulation regarding evidence of registered mailing of the appeals documents and cites to The New York City Public Schools Appeals Process manual ("Appeals Manual"). See Budnick v New York City Dept. of Educ., 25 Misc 3d 1235(A) [Sup Ct 2009]. The Appeals Manual, at section 2.a., states that "the Appellant is to be furnished with a complete set of the documentation used by the Rating Officer to support the reasons for the adverse rating."

The Appeals Manual, at section 2.b., further provides that "Dated postal receipts, as well as a listing and description of the documentation issued, should be obtained by the Rating Officer and sent to the Office of Appeals and Reviews."

The arguments about the rating sheet are rejected. First, petitioner, through his UFT representative, waived his objection to the admissibility of the rating sheet at the review:

"I can not [sic] object to a document in this sense, but I am just curious as to when the client received this, because as of June, he had never received his package in a timely manner in June...But we're not gonna object 'cause the rating sheet is here and we have a few documents to talk about."

See Resp's Answer, Exhibit 12. In addition, petitioner relies upon incorrect authority for his argument to the Court. The Appeals Manual sets out the process for the appeal from an adverse rating for pedagogical employees. At issue here is the mailing of the initial rating sheet to petitioner at the end of the school year because he was on leave, not the package sent in response to the appeal of the u-rating. Petitioner has not cited to authority which required Principle Smith to send the June 2009 mailing of the rating sheet via registered mail.

Moreover, based on the record before the Court, it is clear that Chairperson Harris made positive credibility determinations as they pertained to Principal Smith's representations that she mailed petitioner three copies of the rating sheet and supporting documentation relied upon at the Review on three separate occasions at the conclusion of the 2008-2009 school year.<sup>4</sup> Matter of Peckham v Calogero, 12 N.Y.3d 424, 431 [2009];

---

<sup>4</sup> Principal Smith testified that three separate attempts were made to mail petitioner the complete end of year rating and that when school staff and administration



Lackow v Dept. of Educ. (or "Bd.") of City of New York, 51 A.D.3d 563, 568 [1st Dept 2008]. It is well settled that a hearing officer has the authority to determine the credibility of the witnesses. As the Court stated in Lackow v Dept. of Educ. (or "Bd.") of City of New York (51 A.D.3d 563, 568 [1st Dept 2008])

"[a] hearing officer's determinations of credibility...are largely unreviewable because the hearing officer observed the witnesses and was able to perceive the inflections, the pauses, the glances and gestures – all the nuances of speech and manner that combine to form an impression of either candor or deception [internal quotation marks and citation omitted]."

Consequently, Chairperson Harris' finding that the June 2009 rating sheet was mailed was not contrary to the DOE rules and regulations.

#### *The Excluded Exhibit 4*

The record reflects that when petitioner objected to the introduction of certain documents contained in Exhibit 4 at the review, pertaining to the completion of assignments as directed by Principal Smith, the objection was upheld and the documents were excluded from consideration by Chairperson Harris. A review of the Report and Recommendation demonstrates that in recommending petitioner's appeal to his u-rating be denied, Chairperson Harris noted petitioner and his UFT representatives objections and granted them with respect to excluding Exhibit 4. The Court, therefore, finds that Chairperson Harris did not consider the documentation that was subject to an objection. Consequently, the argument in this petition that Exhibit 4 was never received is irrelevant.

#### **Conclusion**

The court rejects petitioner's argument that he was not examined in accordance with \_\_\_\_\_  
made attempts to contact petitioner, he would not respond.

the by-laws of the Board of Education of the City of New York, or the rules and regulations governing the conduct of such review. Based on the record, it appears that the respondents sufficiently complied with the by-law provisions governing the conduct of review proceedings. Matter of Peckham v Calogero, 12 NY3d 424, 431 [2009]. Finally the Court finds that the u-rating was not arbitrary or capricious, or otherwise made in bad faith and that the decision to deny the appeal was rationally based.

Award upheld, petition denied and dismissed.

**Decision Order and Judgment**

It is hereby,

**Ordered, Declared and Adjudged** that the petition of Terrence Hill for an order annulling respondents determination to uphold his u-rating is denied; and it is further

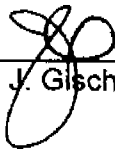
**Ordered** that the cross motion by respondents Joel I. Klein, as Chancellor of the New York City Department of Education, and The New York City Department of Education, to dismiss the petition of Terrence Hill is hereby denied as moot; and it is further

**Ordered**, that any relief requested not specifically addressed is hereby denied; and it is further

**Ordered**, that this constitutes the decision, order and Judgment of the court.

Dated: New York, New York  
June 25, 2012

So Ordered:

  
\_\_\_\_\_  
Hon. Judith J. Gische, J.S.C.

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).