

**Matter of Principe v New York State Educ. Dept.**

2013 NY Slip Op 33063(U)

December 10, 2013

Sup Ct, Albany County

Docket Number: 3512-13

Judge: Joseph C. Teresi

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of

PETER PRINCIPE,

Petitioner,

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

-against-

**DECISION and ORDER**  
**INDEX NO. 3512-13**  
**RJI NO. 01-13-ST4793**

NEW YORK STATE EDUCATION DEPARTMENT  
and JOHN B. KING, JR., as Commissioner of Education,

Respondents.

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Supreme Court Albany County All Purpose Term, November 14, 2013  
Assigned to Justice Joseph C. Teresi

**APPEARANCES:**

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*Attorney for the Respondents*  
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**TERESI, J.:**

The context and background of this proceeding was fully explained in this Court's  
September 30, 2013 Decision and Order, which is incorporated by reference, and need not be

repeated again.

Briefly, in April 2007 Petitioner had the necessary accreditation<sup>1</sup> to hold the Dean of Disciple position in a Brooklyn, New York public middle school. Due to Petitioner's two corporal punishment acts, occurring on April 20 and 23, 2007, Petitioner's employment was terminated after an Education Law §3020-a hearing was held. Petitioner's challenge to such termination, which included decisions from Supreme Court - New York County, the Appellate Division - First Department, and the Court of Appeals, was eventually successful. In January 2013, Petitioner's penalty was reduced down to an eighteen month suspension. However, Petitioner was not reinstated to his prior position because, according to Respondents, his accreditation was invalid. By letter dated March 8, 2013 (hereinafter Denial Letter"), Respondents informed Petitioner that his Provisional Certificate had expired.

Petitioner commenced this CPLR Article 78 proceeding to challenge Respondents' Denial Letter. Respondents have now properly answered the petition. Because Petitioner failed to demonstrate his entitlement to the relief he seeks, his petition is denied.<sup>2</sup>

It is axiomatic that this Court cannot disturb Respondents' determination unless "it has no rational basis... or the action complained of is arbitrary and capricious." (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]). Moreover, "courts must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise." (Meyers v. New York State

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<sup>1</sup> A Provisional Certificate in Business and Distributive Education effective February 1, 2004 (hereinafter "Provisional Certificate").

<sup>2</sup> This Court's September 30, 2013 Decision and Order does not require a different result, as its procedural context required presumptions and burdens not applicable here.

Div. of Housing and Community Renewal, 68 AD3d 1518, 1519 [3d Dept. 2009], quoting Matter of Peckham v. Calogero, 12 NY3d 424 [2009]; O'Connor v Ginsberg, 106 AD3d 1207 [3d Dept 2013] lv to appeal denied, 21 NY3d 864 [2013]; Calise Beauty School Inc. v New York State Higher Educ. Services Corp., 245 AD2d 922 [3d Dept 1997]).

Here, Petitioner failed to demonstrate that Respondents' regulatory interpretation has no rational basis. According to Ann Janski, Respondents' employee in charge of teaching certificates, the Denial Letter is based upon Respondents' interpretation of its own regulations. Janski confirmed that Petitioner's Provisional Certificate was "valid for five years from date of issuance." (8 NYCRR §2.14[a][3]). Janski further specified the regulation (8 NYCRR §80-1.6) that governs provisional certificate time extensions. Such regulation specifically allowed Petitioner's Provisional Certificate to be extended "for a period not to exceed two years from the expiration date of such certificate," followed by a hardship extension "not to exceed one additional year." (8 NYCRR §80-1.6 [a and c]). Just as the Third Department recognized that these "regulations place a strict time limit during which an individual can teach with a provisional certificate" (In re New York State Off. of Children and Family Services (Lanterman), 62 AD3d 1109, 1114 [3d Dept 2009] affd sub nom. New York State Off. of Children and Family Services v Lanterman, 14 NY3d 275 [2010]), Respondents too interpreted them strictly. Because the regulations include no provision to extend a provisional certificate past 8 NYCRR §80-1.6 (a and c)'s three total years, Respondents interpreted such absence as a prohibition. As Janski explained, Respondents have "no legal authority" to extend a provisional certificate beyond three years from its expiration. Contrary to Petitioner's argument that seeks to effectively toll his Provisional Certificate's "time validity," Respondents correctly note that the regulations provide



for no such extension. While Respondents' construction of the regulations is premised on a strict reading of the text, it is not irrational.

Deferring to Respondents' interpretation of 8 NYCRR §80-2.14 and 8 NYCRR §80-1.6 (a and c) as applied to the Provisional Certificate, Petitioner failed to demonstrate that the Denial Letter is arbitrary and capricious. It is uncontested that the Provisional Certificate expired five years after its effective date, pursuant to 8 NYCRR §80-2.14, on January 31, 2009. The Denial Letter implicitly recognized such expiration. It then applied 8 NYCRR §80-1.6 (a and c), in accord with the above interpretation, to prevent Petitioner's Provisional Certificate from extending beyond three years from its expiration. The Denial Letter informed Petitioner that his Provisional Certificate's maximum extension had past on January 31, 2012. While this refusal to extend now prohibits Petitioner from returning to his prior teaching position with his Provisional Certificate, despite his successful challenge to his termination, neither Respondents' interpretation of the regulations nor their Denial Letter are irrational, arbitrary, or capricious.

Despite Respondents' refusal to extend the Provisional Certificate, Petitioner was not without recourse in acquiring the certification necessary to hold his prior position. As Janski explained, Petitioner could have completed all applicable requirements for obtaining a "permanent certificate" prior to his Provisional Certificate's expiration on January 31, 2012. Petitioner's conclusory and unsubstantiated statement that Respondents' "disciplinary hold" prevented him from completing such requirements is of limited valued, and does not demonstrate that Respondents' determination was arbitrary and capricious. Janski also noted that Petitioner can apply for and obtain an "initial certificate," with which he could again work in his prior position. While the "permanent" and "initial" certificates do require additional credentials,

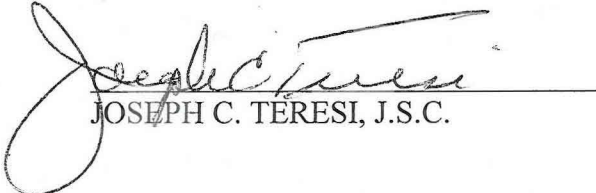
Petitioner failed to demonstrate that the Denial Letter completely prohibits him from reacquiring his prior position.

Accordingly, Petitioner failed to demonstrate that Respondents' Denial Letter was irrational, arbitrary, or capricious and the petition is denied.

This Decision and Order is being returned to the attorney for the Respondents. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: December 10, 2013  
Albany, New York



JOSEPH C. TERESI, J.S.C.

**PAPERS CONSIDERED:**

1. Notice of Petition, dated June 17, 2013; Verified Petition, dated June 14, 2013, with attached Exhibits A-C.
2. Notice of Motion, dated September 16, 2013.
3. Affirmation of Stuart Lichten, dated September 17, 2013, with attached Exhibit A.
4. Verified Answer, dated October 21, 2013; Affirmation of Ann Jasinski, dated October 21, 2013.
5. Affirmation of Stuart Lichten, dated October 21, 2013.
6. Affirmation of Ann Jasinski, dated November 14, 2013, with attached Exhibits A-D.