

**St. Cyr v New York City Dept. of Educ.**

2013 NY Slip Op 30622(U)

March 27, 2013

Sup Court, New York County

Docket Number: 103563/12

Judge: Peter H. Moulton

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

**PRESENT:** HON. PETER H. MOULTON  
SUPREME COURT JUSTICE  
Justice

**PART** 40B

Index Number : 103563/2012  
ST. CYR, MICKELSON  
vs  
NYC DEPARTMENT OF EDUCATION  
Sequence Number : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is denied pro attached

**FILED**  
APR 02 2013  
COUNTY CLERK'S OFFICE  
NEW YORK

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

Dated: 3/27/13

Peter H. Moulton, J.S.C.  
HON. PETER H. MOULTON  
SUPREME COURT JUSTICE

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

Supreme Court: New York County  
Part 40B

-----X  
MICKELSON ST. CYR,

Petitioner,

-against-

Index No. 103563/12

NEW YORK CITY DEPARTMENT OF EDUCATION,

Respondent.

-----X  
Peter H. Moulton, Justice

**FILED**

APR 02 2013

COUNTY CLERK'S OFFICE  
NEW YORK

Petitioner in this Article 78 proceeding challenges the decision of respondent Department of Education ("DOE") to permanently revoke his school bus driving certificate. He seeks to be removed from the list of ineligible drivers kept by the DOE. Respondent moves to dismiss the petition.

#### BACKGROUND

The petition alleges that petitioner Mickelson St. Cyr began working as a school bus driver in 1995. Beginning in 2006 he worked for Brothers Transportation, a private bus company that contracts with the DOE. In the 2011-12 school year, St. Cyr was assigned a bus route in Queens which included driving special needs children.

On December 19, 2011, St. Cyr was driving his bus to JHS 190 when one of his passengers, a ten year old girl referred to as "Student A" in the petition to protect her privacy, began to act

[\* 3]

out. According to the petition, a school matron on the bus, Marthe Joseph, attempted without success to get Student A to behave properly. The petition alleges that despite Ms. Joseph's efforts Student A "continued to act in an aggressive and physical manner" with the other students.

The petition alleges that at one point St. Cyr stopped the bus and directed Student A to move her seat and put on her seat belt. Student A refused. St. Cyr states that he never touched Student A.

Student A allegedly called her mother from the bus, and told her that St. Cyr had grabbed her arm and left a bruise. Student A's mother reported this incident to DOE.

Soon thereafter, St. Cyr was suspended from his job on the strength of Student A's mother's complaint. DOE's Office of Pupil Transportation ("OPT") conducted an investigation. After speaking to petitioner, Student A, Student A's mother, Ms. Joseph, and several students, OPT determined that St. Cyr had grabbed Student A by the arm and forcibly dragged her to the front of the bus.

On January 12, 2012, DOE informed petitioner that it had revoked his certification to drive a school bus.

Petitioner appealed this decision. A Disciplinary Appeal Conference was held on March 14, 2012 pursuant to Chancellor's Regulation C-100. Petitioner was represented at this hearing by counsel. Two witnesses testified: petitioner and the OPT investigator who investigated the incident. OPT also introduced

[\* 4]

other witness statements and photographs of Student A's arm. Petitioner did not call any witnesses beside himself or submit any documents into evidence.

In a written Conference Report, the hearing officer who presided at the Conference sustained the revocation of petitioner's certification. Petitioner was placed on an "Ineligible List," which prevents him from becoming a bus driver for DOE in the future. The petition states that Brothers Transportation terminated his employment.

#### DISCUSSION

The petition asserts that the Hearing Officers' decision was not supported by substantial evidence. However, the First Department has held that the substantial evidence standard is not applicable to decisions made after Disciplinary Appeal Conferences held pursuant to Chancellor's Regulation C-100. (Matter of Duncan v Klein, 38 AD3d 380.) Instead, such decisions are reviewed under the arbitrary and capricious standard of review. (Id.) Under that standard, a Court's inquiry is limited to whether the agency acted rationally. (E.g. Matter of Pell v Board of Education of the Union Free School District I, 34 NY2d 222.) A court may not substitute its judgment for that of the agency, and the fact that other reasonable minds might have reached a different conclusion is not sufficient to override an agency decision. (See Ignizio v City of

[\* 5]  
New York, 85 AD3d 1171.)

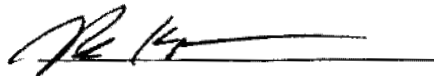
The DOE's determination is rational and must be upheld. The record before the hearing officer was sufficient to sustain his finding. The hearing officer was entitled to weigh the probative value of the evidence and the court may not second guess that evaluation unless it is irrational. (See A. Uliano & Son, Ltd. v New York State Dep't of Labor, 97 AD3d 664.) Petitioner complains that Ms. Joseph was not called as a witness, and he offers her affidavit with the instant petition to support his version of events. However, petitioner could have called Ms. Joseph as a witness. While petitioner complains that he was not afforded due process he does not state how the hearing he was afforded fell short of what he was due. He was given notice of the charges, an opportunity to be heard, and an opportunity to provide evidence.

Nor does petitioner's termination from employment shock the court's conscience. (See Webster Parking LLC v City of New York, \_\_\_ Misc3d \_\_\_, 2008 NY Misc Lexis 1229.) Once the hearing officer found that petitioner had grabbed Student A's arm with sufficient force to cause visible bruising, it was reasonable to terminate petitioner. Petitioner points to an otherwise unblemished record as a bus driver. Respondent offers nothing to the contrary. However, it is not irrational to terminate an employee charged with the welfare of children upon a finding that the employee caused a child within his care physical harm.

**CONCLUSION**

For the foregoing reasons, the motion to dismiss is granted, the petition is denied, and this proceeding is dismissed. This constitutes the decision and judgment of the court.

Date: March 27, 2013



A.J.S.C.

**FILED**  
APR 02 2013  
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