

**Matter of Brown v Board of Educ. of City School  
Dist. of City of N.Y. Dennis Walcott**

2014 NY Slip Op 33390(U)

December 31, 2014

Supreme Court, County of New York

Docket Number: 154728/13

Judge: James H. Ferreira

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

In the Matter of the Application of

STEPHANIE BROWN,

Index No: 154728/13

Petitioner,

**Decision**

-against-

BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK  
DENNIS WALCOTT, as Chancellor of the City School  
District of the City of New York,

Respondents,

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

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The petitioner Stephanie Brown (“Brown”) moves pursuant to Article 78 of the *New York City Civil Practice Law and Rules* (“CPLR”) to annul the January 9, 2013 determination of respondents BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK (“Board”) and DENNIS WALCOTT, as Chancellor of the City School District of the City of New York (“collectively Respondents”) to reaffirm a June 25, 2012 Annual Professional Performance Review which resulted in an unsatisfactory (U) rating for the 2011-2012 school year. The respondents oppose this motion.

Brown began her employment with respondents as a probationary Common branches teacher on or about September 2000, at Community School 134. Brown thereafter became a tenured teacher on or about 2003. On or about 2006, Brown transferred to Intermediate School 98 (“IS98”) where she was promoted to the position of Lead Teacher of English Language Arts (“ELA”). Brown then became a certified administrator and, first being promoted to Lead Teacher of both ELA and Social Studies, was again promoted--- this time to the position of Assistant

Principal (“AP”).

Brown then left IS98 for Accion Academy (“Accion”) on or about January 2008, where she retained her AP position, and where Adrian Manuel (“Manuel”) was the Principal. While at Accion Brown was often extolled by Manuel. Brown alleges she received Satisfactory (“S”) ratings every year until the 2011 – 2012 school year and received nothing less than S ratings throughout her entire teaching career up to 2011-12. Nikole Booker (“Booker”) became the principal of Accion after Manuel left Accion.

On or about June 2012 Brown was rated unsatisfactory (“U”) by Booker and her services as an AP were recommended for discontinuance. Brown alleges such U rating was based on a vague “failure to supervise” and “professional misconduct.” Specifically, Respondents allege excessive absences, failure to supervise the completion of annual reports with compliance deadlines, failure to observe teachers, failure to attend mandatory/after school meetings, shirking duties in dealing with a student who displayed signs of suicidal ideation, and leaving exams in a sealed envelope unattended. Browns states these allegations are arbitrary, capricious, unreasonable abuse of discretion, lacking rational basis, lack substantial evidence and in bad faith.

Brown further alleges Booker agreed to withdraw the U rating if Brown could demonstrate that she could obtain a supervisory position at another school. Brown alleges she secured such a position by Principal Yvette Allen (“Allen”), of In-Tech Academy, conditioned upon Booker’s withdrawal of the U rating. Brown states she is supported by several letters of recommendation penned by Brown’s Peers and/or charges. Brown alleges Booker repudiated her agreement with Brown and refused to amend the U rating. Allen’s offer of employment to Brown was subsequently withdrawn. Brown then commenced an appeal of the U rating.

Brown was advised in a letter dated August 3, 2012 that the Superintendent would “review and consider whether” her services as a probationary AP be discontinued. In a letter dated September 4, 2012, the Superintendent reaffirmed Brown’s discontinuance. Brown appeared for her hearing on her appeal, which she described as being beyond the competency of both her and her union representative. In a letter dated January 9, 2013 and received by Brown on or about January 23, 2013, Brown was advised that the Superintendent had “reaffirmed” the U rating.

The respondents allege Brown was unprofessional for missing certain after school meetings organized by Booker. Prior to this, Brown informed Booker that she could not attend after school meetings. Booker consented to Brown not being able to attend the after school meetings because of temporary childcare problems. The respondents do not contest this. Specifically, Respondents allege Brown failed to attend a Datacation/SQR preparation session on January 18, the monthly PTA meetings in September, October, November, December, and January, the annual Parent/Staff, Harvest Dinner, the weekly State and City School Quality Review Prep Session on December 7, December 14, December 21, January 4, January 11, and January 18, and several instructional improvement sessions after Booker consented to Brown not being able to attend the after school meetings.

In addition, the respondents allege Brown failed to observe teachers as instructed. The respondents allege Booker had a meeting with Brown where Booker had to modify Brown’s observation schedule and her roles and responsibilities list. Brown states she has a plethora of observation reports recorded by her. The respondents further allege Brown failed to supervise Special Education instruction and compliance for three students. Brown alleges she was not trained in the subject of Special Education. The respondents also allege Brown had excessive

absences. Brown states her absences were directly attributable to Booker's conduct and Brown made multiple attempts to go to work despite her ill health. Furthermore, Brown states each absence was authorized and school protocol was followed.

Respondents further allege Brown left tests in a sealed envelope unattended. Brown states she was not aware of the contents of the sealed envelope and she was advised to leave the envelopes on the table of the recipient by the recipient's coworker. The respondents further allege Brown of shirking her duties in dealing with a student who displayed signs of suicidal ideation. Brown alleges Booker failed to establish a Crisis Team and failed to display a list of the Crisis Team Members. Furthermore, Brown alleges she could not communicate to the Crisis Team because there was no Crisis Team. Brown states she communicated the event to the Guidance Counselor and referred the parent to the Guidance Counselor. The respondents further alleged Brown of not calling 911. Brown states Booker had a policy of not calling 911 without approval.

In Article 78 proceedings, judicial review of a Board of Education determination is extremely limited. The court reviewing a determination cannot disturb same unless it finds it is "arbitrary and capricious or based on misconduct or bias." See *Duncan v. Klein*, 38 A.D.3d 380 (1st Dept. 2007); CPLR § 7803 (3); see also *Hegarty v. Bd. of Educ.*, 5 A.D.3d 771. (2d. Dept. 2004). It is also well settled that "a court may not substitute its judgment for that of a board or body unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion." See *Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 232 (1974) (citation omitted) (emphasis in original); *Wagschal v. Bd. of Examiners*, 69 N.Y.2d 672, 674 (1986). The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified and whether the administrative action is without foundation in fact. *Pell v. Bd. of Ed. of Union Free*

*Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester Cnty.*, 34 N.Y.2d 222 (1974). Arbitrary and capricious treatment is explicitly disallowed by law. *See Matter of Deutsch*, 41 Misc 3d 1228 (A), 1228A; *Matter of Hazeltine*, 89 A.D.3d 613 (2011). In the context of an article 78 proceeding, it is established that judicial review is limited to a determination of whether the administrative decision is arbitrary and capricious, or lacks a rational basis *Slesinger v. Dep't of Hous. Pres. & Dev. of City of New York*, 39 A.D.3d 246, 834 (N.Y. App. Div. 2007). It is Petitioner's burden to show that her rating was "in bad faith, for a constitutionally impermissible purpose or in violation of law." *Leiva v. Dept. of Educ. of the City of N.Y.*, 2011 N.Y. Misc. LEXIS 3923, at \* 9 (Super. Ct. NY Co. July 20, 2011) (citing *Smith v. New City Dept. of Corr.*, 292 A.D.2d 198,199 (1st Dept. 2002)). To establish bad faith, "the burden falls squarely on the petitioner to demonstrate, by competent proof, that a substantial issue of bad faith exists..., and mere speculation, or bald, conclusory allegations are insufficient to shoulder this burden." *Che Lin Tsao v. Kelly*, 28 A.D.3d 320, 321 (1st Dept. 2006).

The determination of the Chancellor that petitioner merited a U-rating lacked rational basis and was arbitrary and capricious. First, Respondents state Brown's absences are irrefutable proof of Brown's misconduct singularly warranting the U-rating. But Brown's absences were allegedly directly attributable to Booker's conduct. Brown made multiple attempts to go to work despite her ill health, but such ill health thwarted such attempts time and again. Each and every absence was authorized and Brown followed school protocol. Brown contritely explained why she was compelled to be absent and prior to Booker's stewardship, Brown's attendance was flawless. Respondents' complaint was taken without regard to the facts. (*See, eg., Matter of Deutsch v. New York City Dept of Educ.*, 41 Misc. 3d 1228(A), 1228 A [NY Sup Ct 2013] (reversing U-rating in part based on the fact that "... the determination that petitioner failed to

follow school protocol was taken without regard to the facts.”));(See *Hazeltine v. City of New York*, 89 A.D.3d 613 (2011) (Chancellor's determination that probationary teacher merited unsatisfactory rating lacked a rational basis and was arbitrary and capricious)). Respondents thus cannot create the environment leading to absences as a pretext to Brown’s U-rating.

Second, Respondents claim there is extensive evidence on Brown’s failure to supervise the completion of annual reports within compliance deadlines, failure to complete all necessary formal observation of teachers, and failure to attend mandatory meetings. The respondents allegation that Brown failed to observe teachers is contradicted. Brown has a plethora of observation reports recorded contemporaneously by Brown during the performance of such observations. The same is true for Respondents’ disingenuous accusation that Brown failed to have all files in compliance despite personally handicapping Brown in her ability to oversee such compliance, by refusing to have Brown trained in that subject, despite Brown’s request to be so trained.

Third, the respondents alleged Brown missed certain additional meeting/events. However, Brown had informed Booker that she had prior short-term childcare commitments which temporarily precluded any afterschool activities on Tuesdays and Wednesdays, and Booker had assented to such limitations. Booker thereafter disregarded the initial consent. Furthermore, Booker gave no credit to Brown for occasionally staying late at work or consistently arriving very early.

Fourth, Booker accused Brown of shirking her duties in dealing with a student who displayed signs of suicidal ideation. Despite designating Brown as Accion’s School Suicide Prevention Liaison, Booker failed to follow through on many aspects of the Chancellor’s Regulations by failing to create a Crisis Team and failing to display a list of the Crisis Team

Members. Brown followed all of the required Chancellor's Procedures with regard to proper Intervention Procedures.

Chancellor's Regulations ("CR") A-755 states:

#### **Administration**

The principal of each elementary, intermediate, junior high school, high school, and citywide Special Education Program shall:

- A. Designate a staff member to serve as the school's School Suicide Prevention Liaison... He/she also serves as a member of the school's "Crisis Team"...
- B. Establish a school crisis response/prevention education/intervention team ("Crisis Team") ...
- C. Ensure that the school's suicide prevention/intervention plan is fully implemented.
- D. Ensure that the Suicide Reference Guide-Warning signs of Suicide Risk and Procedure for Action and the "Mental Health and Social Services for NYC Youth" are distributed to all school staff.
- E. Ensure that the Suicide Reference Guide, the list of Crisis Team members and intervention procedures are prominently posted.
- F. Identify a service provider(s) from the New York State of Mental Health.

....

#### **Intervention Procedures**

##### **C. Suicidal Ideation**

##### **1. Intervention Measures:**

When a student expresses general thoughts or feelings about suicide and exhibits some of the warning signs or indicators listed on the Suicide Reference Guide- Warning Signs of Suicide Risk, the following steps must be taken:

- a. The situation must be assessed by the crisis team to determine appropriate interventions and services.
- b. Any Staff member becoming aware of such behavior must notify the principal/designee immediately.
- c. The principal/designee must make the student's parent aware of the potentially dangerous nature of the situation.

Brown could not communicate the event to the Crisis Team because there was no Crisis Team implemented by Booker. Brown met with the student's mother and made her aware of the

potentially dangerous nature of the situation. Brown then communicated the event to the Guidance Counselor and referred the parent to the Guidance Counselor. Booker then accused Brown of not calling 911. However, Booker had a policy of not calling 911 without approval. In this matter, Booker was contacted and 911 was called with Booker's approval. Booker then claimed Brown delayed in calling 911. However, Booker never revealed that she had this policy. Brown acted as she should have. Respondents first created the environment, and then seek to punish Brown for being a victim of such environment.

Finally, long after a purported investigation was conducted and concluded without Brown's input or knowledge, Brown discovered she was accused of leaving tests in a sealed envelope unattended. However according to Brown, not only was she unaware of the contents of the sealed envelope that she was asked to transport, but she had been advised to leave the envelope on the table of the recipient by the recipient's coworker. It is fundamentally unfair to attempt to use this incident against Brown, especially given her lack of input in any investigation of the incident which may have occurred or being made aware of the contents of the envelope or something to put the importance of the envelope in context.

Stephanie Brown is a tenured teacher with numerous accomplishments. As a Common Branches Teacher at Community School 134 Brown sufficiently impressed her superiors, and became tenured. At Intermediate school 98 she was promoted to the position of Lead Teacher of English Language Arts. Brown then became a certified administrator and promoted to Lead Teacher of both ELA and Social Studies. Brown was then promoted to Assistant Principal. At Accion Academy under Manuel, Brown's work was often extolled. In addition, Brown received satisfactory ratings every year until the 2011-2012 school year. Brown had received nothing less

