

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 23, 2026

CV-25-1977

In the Matter of JOHN SMITH,
Appellant,

v

MEMORANDUM AND ORDER

NEW YORK STATE EDUCATION
DEPARTMENT et al.,
Respondents.

Calendar Date: June 1, 2026

Before: Clark, J.P., Fisher, Powers, Mackey and Corcoran, JJ.

John Smith, Brooklyn, appellant pro se.

Letitia James, Attorney General, Albany (*Alexandria Twinem* of counsel), for New York State Education Department and another, respondents.

Steven Banks, Corporation Counsel, New York City (*Geoffrey E. Curfman* of counsel), for City of New York and another, respondents.

Mackey, J.

Appeal, by permission, from an order of the Supreme Court (Andra Ackerman, J.), entered May 23, 2025 in Albany County, which, in a proceeding pursuant to CPLR article 78, among other things, denied petitioner's application to proceed under a pseudonym and seal the record.

In the winter of 2022, while petitioner was working as a substitute teacher at a public school in Manhattan, the Office of the Special Commissioner of Investigation for

the New York City School District (hereinafter SCI) began investigating a complaint alleging that he had engaged in several instances of inappropriate behavior with students. Petitioner thereafter failed to cooperate with SCI in relation to the investigation. Upon completion of its investigation, SCI substantiated the report finding that petitioner had acted inappropriately toward two female students and, on this basis, recommended that petitioner remain on respondent New York City Department of Education's (hereinafter DOE) "Do Not Call" list, with a problem code attached to his personnel file as a permanent bar on future employment with DOE or its vendors. Separate from SCI's investigation, DOE's Office of Personnel Investigation also discovered that petitioner had failed to obtain the required security clearance prior to beginning his substitute teaching position, in violation of the conditions of employment (*see* NYC Department of Education, Chancellor's Regulation C-105).

Thereafter, petitioner applied for a position with a DOE vendor and, in connection with that application, DOE was tasked with investigating whether to grant petitioner a security clearance. DOE ultimately denied petitioner's application for a security clearance based upon SCI's substantiated report, as well as petitioner's prior failure to obtain a security clearance prior to working as a substitute teacher in 2022. Petitioner appealed that denial to respondent New York State Education Department (hereinafter SED) (*see* Education Law § 310). Respondent Commissioner of Education in turn upheld DOE's decision and dismissed the appeal, and subsequently denied petitioner's application to reopen the appeal.

Petitioner commenced this CPLR article 78 proceeding against DOE and the City of New York (hereinafter collectively referred to as the city respondents) and SED and the Commissioner (hereinafter collectively referred to as the state respondents) to annul the Commissioner's determination and DOE's denial of petitioner's application for security clearance. Petitioner signed the verification for the petition and notice of petition using a pseudonym and, in the petition, requested that the proceeding be sealed, that he be permitted to use the pseudonym and that the city respondents and state respondents be enjoined from disclosing his identity and any information related to the proceeding. Supreme Court denied petitioner's requests and instructed him to file an amended verified pleading within 30 days using his legal name in the caption and verification, but granted petitioner's motion to file this interlocutory appeal (*see* CPLR 5701 [c]).

"In determining whether to grant a [petitioner's] request to proceed anonymously, the court must use its discretion in balancing [the petitioner's] privacy interest against the presumption in favor of open trials and against any potential prejudice to [the

respondent]" (*PB-7 Doe v Amherst Cent. Sch. Dist.*, 196 AD3d 9, 12 [4th Dept 2021] [internal quotation marks and citation omitted]; *accord Doe v Eliyas*, 241 AD3d 1271, 1274 [2d Dept 2025]; *see Anonymous v Lerner*, 124 AD3d 487, 487 [1st Dept 2015]). "Among the factors the court should consider are 1) whether the [petitioner] is challenging governmental activity or an individual's actions, 2) whether the [proceeding] requires disclosure of information of the utmost intimacy, 3) whether identification would put the [petitioner] or innocent third-parties at risk of suffering physical or mental injury, 4) whether the [respondent] would be prejudiced by allowing the [petitioner] to proceed anonymously, and 5) the public interest in guaranteeing open access to proceedings without denying litigants access to the justice system" (*Doe v Eliyas*, 241 AD3d at 1274 [internal quotation marks, brackets and citations omitted]). Permission to use a pseudonym is not to be granted automatically; instead, "the motion court should exercise its discretion to limit the public nature of judicial proceedings sparingly and then, only when unusual circumstances necessitate it," and a petitioner seeking such permission "must provide facts specific to the [petitioner] that will allow the motion court to exercise its discretion in an informed manner" (*Twersky v Yeshiva Univ.*, 201 AD3d 559, 559-560 [1st Dept 2022] [internal quotation marks and citations omitted]).

In seeking to proceed pseudonymously, petitioner emphasized that the underlying allegations were "highly damaging and stigmatizing, especially to an educator." Even so, general claims of public humiliation and embarrassment, without more, are insufficient to establish entitlement to such relief (*see id.*; *PB-7 Doe v Amherst Cent. Sch. Dist.*, 196 AD3d at 12; *Anonymous v Lerner*, 124 AD3d at 488). Moreover, our review of the record reveals that the proceeding did not require disclosure of information of the utmost intimacy and that the allegations of misconduct, while perhaps embarrassing, were not highly sensitive or intimate in nature. Petitioner further failed to demonstrate that he was at risk of suffering physical or mental injury if required to proceed under his legal name, and there is no question that petitioner is challenging governmental activity, which implicates a public interest. Accordingly, we agree with Supreme Court that petitioner's stated privacy interests did "not present the type of unusual circumstances that warrant the use of an anonymous caption" and, thus, we discern no abuse of discretion in the denial of his application (*see Twersky v Yeshiva Univ.*, 201 AD3d at 560; *compare Doe v KIPP N.Y., Inc.*, 238 AD3d 447, 448 [1st Dept 2025]). To the extent that petitioner challenges the denial of his request to proceed under a pseudonym upon constitutional grounds, he failed to advance such arguments in his petition and, thus, these arguments are unpreserved for our review (*see Matter of Vaughan v New York State Dept. of Transp.*, 223 AD3d 1010, 1012 [3d Dept 2024], *lv dismissed & denied* 42 NY3d 945 [2024]).

We likewise reject petitioner's challenge to Supreme Court's denial of his request to seal the record. "It is well established that there is a presumption that the public has a right of access to the courts to ensure the actual and perceived fairness of the judicial system, as the bright light cast upon the judicial process by public observation diminishes the possibilities for injustice, incompetence, perjury, and fraud" (*Matter of Cyprium Therapeutics, Inc. [Curia Global, Inc.]*, 223 AD3d 1042, 1044 [3d Dept 2024] [internal quotation marks and citations omitted]; see *Maxim Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016]). "Given that confidentiality is therefore the exception and not the rule, a party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access" (*Matter of Cyprium Therapeutics, Inc. [Curia Global, Inc.]*, 223 AD3d at 1044 [internal quotation marks, brackets and citations omitted]; see *O'Reilly v Klar*, 167 AD3d 919, 920 [2d Dept 2018]; *Manufacturers & Traders Trust Co. v Client Server Direct, Inc.*, 156 AD3d 1364, 1366 [4th Dept 2017]). To this end, the Uniform Rules for the Trial Courts provide that, "[e]xcept where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties" (Uniform Rules for Trial Cts [22 NYCRR] § 216.1 [a]).

Petitioner argues that sealing of the record is necessary as "the way to best preserve [his] reputation, employability, and the protections of CPL [article] 160."¹ Upon these grounds he requested, at a minimum, that his personally identifying information be redacted. We agree, however, that petitioner's general concerns about his reputation and employability – though perhaps valid – are insufficient to demonstrate "compelling circumstances" to overcome the presumption of public access (*Matter of Cyprium Therapeutics, Inc. [Curia Global, Inc.]*, 223 AD3d at 1044 [internal quotation marks and citations omitted]; compare *O'Reilly v Klar*, 167 AD3d at 920). We thus find that Supreme Court prudently exercised its discretion in denying petitioner's request to seal the record upon this basis (see Uniform Rules for Trial Cts [22 NYCRR] § 216.1 [a]; *Matter of Cyprium Therapeutics, Inc. [Curia Global, Inc.]*, 223 AD3d at 1045).

Petitioner's remaining arguments, to the extent properly before us, have been considered and found to be without merit.

¹ Contrary to petitioner's contentions, there is no indication in the record that the expungement and/or record sealing provisions of CPL 160.50 are applicable to the circumstances presented here (see CPL 160.50; see also CPL 160.60).

Clark, J.P., Fisher, Powers and Corcoran, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial "R" and a distinct "D" for the middle name.

Robert D. Mayberger
Clerk of the Court