

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

PRESENT: GEOFFREY D.S. WRIGHT Justice

PART 62

MEREDITH ROTHSTEIN,

INDEX NO. 107474/11

Plaintiff/Petitioner(s)

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF EDUCATION, DENNIS WALCOTT, Chancellor Of The New York City Department of Education,

Defendant/Respondent(s)

For An Order And Judgment Pursuant To Article 78 Of The Civil Practice Law And Rules


The following papers, numbered 1 to 2 were read on this motion/petition to annul a department decision

	PAPERS NUMBERED
Notice of Motion/Petition Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits _____	
Replying Affidavits _____	
Other _____	

Cross-Motion: X Yes No 2

Upon the foregoing papers, it is ordered that this motion/petition by the Petitioner to annul her unsatisfactory rating for the school year 2009-2010 is granted to the extent of remanded the matter for further proceedings a/p/o.

Nov. 28, 2011



GEOFFREY D. WRIGHT
J.S.C.
AJSC

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST

FILED
DEC 16 2011
NEW YORK
COUNTY CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 62

-----X
MEREDITH ROTHSTEIN,

Plaintiff/Petitioner

-against-

CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF EDUCATION,
DENNIS WALCOTT, Chancellor Of The
New York City Department Of Education,

Defendant/Respondent(s).

For An Order And Judgment Pursuant To Article 78
Of The Civil Practice Law and Rules

Index #107474/11

Motion Cal. #

Motion Seq. #

DECISION/ORDER

Present:

Hon. Geoffrey Wrig

Judge, Supreme Court

-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of
this Motion to: annul departmental decision; cross-motion to dismiss the petition

PAPERS
Notice of Motion, Affidavits & Exhibits Annexed
Order to Show Cause, Affidavits & Exhibits
Answering Affidavits & Exhibits Annex
Replying Affidavits & Exhibits Annexed
Cross-motion & Exhibits Annexed
Other

NUMBERED

FILED

DEC 16 2011
2

NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

The Petitioner, a first grade teacher, brings this proceeding to contest the unsatisfactory rating that she received for the 2009-2010 school year. The unsatisfactory rating is based on the principal overhearing the Petitioner yell at her first grade class on one occasion during the 2009-2010 school year, that the Petitioner did not invite parents of her students to attend a regular writing celebration, and the alleged insufficiency of the Petitioner's alternative to an observation project.

Taking the alleged deficiencies in the Petitioner's job performance in order of appearance, the transcript of the hearing in this matter shows that none of the witnesses can remember anything that was said by the Petitioner other than a direction to the students to open their books. Nothing in the transcript or in the opposing papers even suggests what the Respondents would deem an appropriate manner, or the appropriate language to use with an unruly class of seven

year olds. I am curious about the unexplained designation of the words "go read your book" as abusive language. Even if I accept the record that the Petitioner has two or three other similar complaints in her record, a school class is not a static situation. The members of the class change every year, and seven years are seven year olds, and behave appropriately. This means a certain lack of personal control on the part of the students, as well as the lack of any standard for addressing those situations that are almost certain to occur at some point in any given year.

Turning the hearing that was held, once again there is no standard elucidated for weighing the behavior of the Petitioner. In addition, I am shocked at the lack of knowledge of English grammar evinced by the Principal/Accuser here, who uses the word who when whom would be proper English usage, and assays to make a point to using the nonexistent word irregardless. On the issue of inappropriate behavior in front of a class, I find in favor of the Petitioner. The Respondents' recourse to similar conduct years in the past I find unavailing. I am also suspicious of the language chosen for the February 2010 letter from principal Monroe, which refers alleged "outbursts" from the Petitioner, when it is clear from the record that one outburst is under discussion from the then current school year, the previous outburst had been four years in the past, and the 2010 outburst involved an entire class, where the principal, in her February letter, makes reference to and dotes on one particular student, whose behavior necessitated his removal from the class.

The next issue is the alleged failure to invite parents of the Petitioner's students to the writing celebration. This too, is not well explained in the record. What is the usual attendance for these celebrations? How many students have working parents who cannot attend even if invited? The Petitioner, at oral argument, stated that inviting parents to the celebrations was routinely overlooked until the current charges were brought against the Petitioner. This issue needs further exploration.

I also hold in favor of the Petitioner on the issue of her unobserved alternative performance project. What I can glean from the record, is that the Petitioner decided that her project would take the form of additional one on one work with her students. The record is bare on whether pre-project clearance is needed, and if so, who has the responsibility of approving the teacher's choice. Since the project seems to require the spending of additional time with students, why was it the principal's decision that the project was no more than a recapitulation of the Petitioner's quotidian tasks and thus unacceptable?

After a review of all of the submissions, and after hearing oral argument, the petition is granted to the extent of remanding it for further proceedings and the development of a more complete record. On this record, as it stands, I would grant the petition.

This constitutes the decision and judgment of the court.

Dated: November 28, 2011



GEOFFREY D. WRIGHT
FILED AJSC

DEC 16 2011

NEW YORK
COUNTY CLERK'S OFFICE