

**Romero v Board of Educ. of the City Sch. Dist. of the
City of N.Y.**

2022 NY Slip Op 34807(U)

January 21, 2022

Supreme Court, New York County

Docket Number: Index No. 160353/2021

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

INGRID ROMERO,

Petitioner,

- v -

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, COMMUNITY SCHOOL DISTRICT 24 OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK

Respondent.

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INDEX NO. 160353/2021
MOTION DATE N/A
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION



The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Petitioner brings the instant petition pursuant to Article 75 and Article 78 of the CPLR primarily disputing her placement on leave without pay status without a hearing regarding the change in status. Respondents oppose the petition and cross move to dismiss the petition on the grounds that petitioner was not entitled to a hearing on the matter and her placement on leave without pay status is lawful. For the reasons set forth below the petition is denied.

Petitioner is a tenured teacher employed by the New York City Department of Education. This petition, like others brought under the same or very similar factual scenarios, attempts to dispute the requirement that teachers get a Covid-19 vaccine or seek an accommodation from respondents. Although petitioner does not explicitly challenge the vaccine mandate, she seeks to return to work in contravention of the directives of the underlying arbitrator's decision. Moreover, petitioner contends that the arbitrator exceeded its jurisdiction.

The vaccine requirement and the process by which to seek exemption was implemented by the arbitration decision of Arbitrator Martin F. Scheinman, dated September 10, 2021. See NYSCEF Doc. 4. The decision delineated specific requirements on the members of United Federation of Teachers (UFT) to become vaccinated by a date certain or seek an exemption as is outlined in the decision. Moreover, the decision specifically states

“Any unvaccinated employee who has not requested an exemption pursuant to Section 1, or who has requested an exemption which has been denied, may be placed by the DOE on leave without pay effective September 28, 2021, or upon denial of appeal, whichever is later, through November 30, 2021. Such leave may be unilaterally imposed by the DOE and may be extended at the request of the employee [...].”

See NYCEF Doc. 4 at page13.

Based upon the reading of the decision in question, petitioner is not entitled to a hearing on her placement to leave without pay status, as it is not a disciplinary consequence. Further, the Court agrees with the arguments of the respondents that petitioner lacks standing to challenge the arbitrator’s decision as she was not a party to the underlying arbitration. The Court finds that petitioner has not established that she was wrongfully placed on leave without pay as the record is devoid of any evidence of compliance or attempted compliance with the rules and procedures enumerated in the decision. Accordingly, it is hereby

ADJUDGED that the petition is denied.

1/21/2022
DATE


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LYLE E. FRANK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE