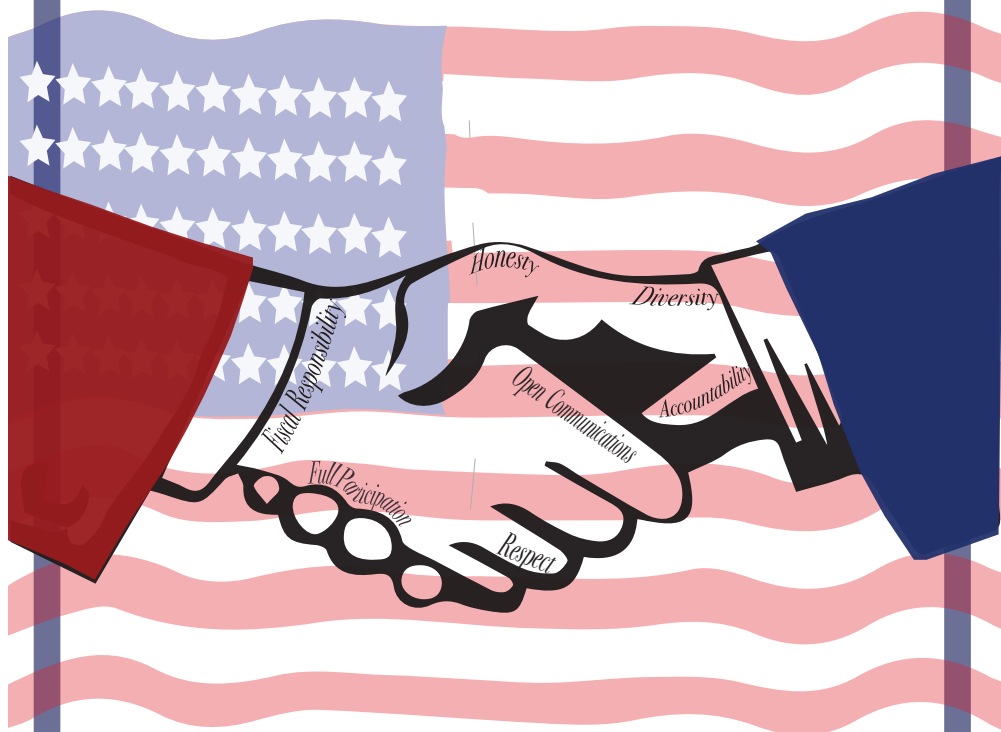


THE ADVOCATE

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CSEA
NEW YORK

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Counsel's Corner

By: Daren J. Rylewicz
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Second Circuit Court of Appeals Changes Standard on Religious Discrimination Claims



The United States Court of Appeals for the Second Circuit recently departed from its prior standard for evaluating an employer's failure to reasonably accommodate a sincerely held religious belief when the employee alleges discriminatory intent. For employees, this decision is important because it changes what they must prove to establish a Title VII religious-accommodation claim, placing greater emphasis on whether the employer's desire to avoid an accommodation motivated an adverse employment action.

In *Bergin v. New York State Unified Court System*, decided on July 15, 2026, the Second Circuit vacated a lower court decision that favored a former court officer who was denied a religious exemption from a COVID-19 mandate. The plaintiff, a court officer, requested the accommodation in September 2021, by submitting an initial written request stating her religious objections. The Unified Court System provided her with a supplemental form with additional questions about her request, which she returned without providing further information. After the Unified Court System denied her request, in January 2022, the plaintiff submitted a new form with the questions answered. The Unified Court System responded, stating the new information would not be considered and, in April 2022, terminated her employment. After the vaccine mandate ended, the Unified Court System reinstated the plaintiff's employment in June 2023.

After her termination, the plaintiff sued the Unified Court System. She alleged that the Unified Court System violated Title VII of the Civil Rights Act of 1964 by refusing to accommodate her religious exemption request. Title VII prohibits employers from terminating, disciplining or discriminating against employees because of their religious beliefs, practice or observance. It requires an employer to provide a reasonable religious accommodation, unless it would impose an undue hardship on the employer, or a substantial cost or difficulty.

The district court found in favor of the plaintiff, stating that she established a bona fide religious belief conflicting with a work requirement, that she informed her employer of that belief and was disciplined for failure to comply with the requirement. It further found that the Unified Court System did not demonstrate that granting an accommodation for the plaintiff would create an undue hardship.

The Second Circuit's decision vacated the district court's ruling and remanded the case for further proceedings, stating that the district court applied the wrong test for the failure to accommodate religion claim. For a claim under Title VII, the Second Circuit stated that, to sue for failure to accommodate a religious belief or practice, plaintiffs must demonstrate that they required an accommodation of their religious practice and that the employer's desire to avoid the required accommodation "was a motivating factor" in the employer's adverse employment decision. The Second Circuit relied on the U.S. Supreme Court's decision in *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, decided in 2015.

This decision clarifies that the key question when a religion accommodation is being sought is the employer's motive for the adverse employment action, not whether the employee informed the employer of the need for a religious accommodation. Employees must now prove the need for a religious accommodation and that the employer's desire to avoid that accommodation motivated the adverse employment action against them. While this decision is a federal Title VII ruling, New York State employees may still rely on the New York State Human Rights Law, which provides a somewhat broader protection than the now federal standard.

DISCIPLINARIES



State Disciplinaries:

**Office for People with Developmental Disabilities
(Arbitrator Hyland)
Matter No. 26-0210**

OPWDD sought to terminate a 10-year Direct Support Assistant who refused to accept the transfer of medication keys at shift change from a coworker who was trying to leave work, which ultimately resulted in a physical altercation. The DSA had blocked the exit door of the residence to prevent her coworker from leaving and made physical contact with a closed fist such that the coworker sustained a concussion. The Arbitrator found the coworker's testimony more credible than the DSA's, that the coworker was not the aggressor, and that the DSA escalated the situation. Although the Arbitrator found the Grievant guilty of all charges and that termination was appropriate, he further found that the State did not have probable cause to suspend the Grievant and thus awarded back pay.

**DOCCS
(Arbitrator Cassidy)
Matter Nos. 25-0638 & 25-0920**

A Trades Specialist Plumber and Steamfitter at Green Haven Correctional Facility was suspended and served with two Notices of Discipline seeking termination, one alleging insubordination and the other alleging that he used homophobic slurs and made other derogatory remarks toward a coworker. The Arbitrator found the Grievant guilty of all charges and, citing his prior disciplinary record, including a previous suspension for insubordination, counseling memoranda, and a cease-and-desist order concerning workplace misconduct, upheld the termination and found that DOCCS had probable cause to suspend the Grievant without pay. However, the Arbitrator found that the loss of accrued annual leave was not appropriate.

**Office of Mental Health
(Arbitrator Trela)
Matter No. 25-0291**

A Facility Operations Assistant I, with fourteen and a half years of service, was suspended and issued a NOD seeking termination for allegedly damaging a tractor after becoming angry following an interaction with his supervisor, and for insubordination by failing to sign out when directed to do so. The Arbitrator found that the Grievant was not guilty of the tractor damage but did find the Grievant guilty of insubordination. Furthermore, based on the Grievant's overall work "record of not responding to corrective action, in progressive discipline, a previous arbitrator's reprimand, and his outright continued insubordination," the Arbitrator concluded that there was just cause for termination.

**New York State Department of Health (Veterans Home at Oxford)
(Arbitrator Rinaldo)
Matter No. 25-1093**

The Department of Health ("DOH") suspended and sought to terminate a Certified Nursing Assistant who was arrested for breaking into an apartment where she damaged property and assaulted the tenant. Grievant admitted to law enforcement that she assaulted the tenant. The State argued that there was a "direct nexus" between the off-duty misconduct and Grievant's employment because it reflects a person who displayed violent behavior of a kind that cannot be tolerated at the Veterans Home. The Arbitrator decided that DOH was not unreasonable in concluding that the Grievant could not be trusted to perform her duties, DOH had no duty to engage in progressive discipline given the severity of the Grievant's misconduct, and DOH had ample probable cause to suspend Grievant without pay. The Arbitrator thus found the Grievant guilty, that termination was appropriate, and that the suspension was for probable cause.

**Unified Court System
(Presiding Justice Renwick)
Matter No. 26-0368**

After reviewing the Report and Recommendation issued by Judge Richter, which sustained the charges regarding time and attendance violations and recommended termination as the appropriate penalty, Presiding Justice Renwick agreed and directed that the member be immediately terminated from his employment. Importantly, the member did not testify or call any witnesses on his behalf, so the record contained no excuse for nor any mitigating information regarding the time and attendance violations.

Local Disciplinaries:

**Nassau University Medical Center
(Arbitrator Walko)
Matter No. 26-0414**

Rather than proceed to a hearing in order to challenge the member's proposed termination, the parties entered into a Consent Award which converted the termination into a suspension without pay for the period subject to the Nassau University Medical Center's Human Resources intake process. The member also agreed that, if he violated any time and attendance obligations within six months of his reinstatement, he would be subject to termination, and his only recourse would be challenging whether the underlying violation actually took place.

**City of Saratoga Springs
(Arbitrator Klein)
Matter No. 26-0040**

A Laborer and Seasonal Mechanical Equipment Operator was charged with striking his supervisor during a workplace argument. The arbitrator found the member guilty, but reduced the penalty sought from a fifteen-day suspension to five considering the supervisor's equal culpability in the incident.

**Schoharie County
(Arbitrator Lawson)
Matter No. 25-0958**

A Paramedic was suspended and served with a NOD seeking termination after being charged with possessing and promoting a sexual performance by a child. The Arbitrator found that the County proved the specifications in the NOD only to the extent that the Grievant had been arrested and charged but failed to establish proof of the Grievant's guilt or that he engaged in misconduct sufficient to constitute just cause for termination. Additionally, the Arbitrator determined that the County had cause to suspend the Grievant pending "a determination of his guilt to the crimes charged," but ordered reinstatement with back pay and benefits from the date of his termination.

**Westchester County
(Hearing Officer Ponzini)
Matter No. 26-0079**

An Intermediate Nursing Aide was charged with taking personal phone calls while assigned to a constant observation one to one. The member admitted guilt, and the Hearing Officer found termination appropriate.

**Westchester County
(Hearing Officer Korn)
Matter No. 26-0186**

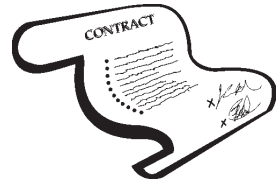
A Senior Maintenance Mechanic I was charged with using a County vehicle for personal business 234 times in a four-month period. The Hearing Officer found the GPS evidence and testimony of the member's work partner credible, and recommended termination.

SECTION 75

**City of Long Beach
(Hearing Officer McAndrews)
Matter No. 25-0995**

A Cleaner working in the Department of Public Works' Beach Maintenance subdivision was issued disciplinary charges seeking termination for allegedly making numerous false statements during an official investigation, repeatedly leaving work early and accepting pay for time not worked, receiving overtime and double-time compensation for hours not worked, and repeatedly failing to wear the required uniform. The Hearing Officer denied all of the Respondent's preliminary motions, found her guilty of all the charges, except those specifications which were withdrawn, and recommended termination.

CONTRACT GRIEVANCES



Local Grievances:

**City of Lockport
(Arbitrator Crangle)
Matter No. 26-0025**

CSEA filed a grievance alleging that the City violated the terms of a Settlement regarding filling a vacant position. The Arbitrator found that the City violated the Settlement and as a remedy, the Arbitrator ordered the City to comply with the posting requirements in the Settlement and to provide CSEA with written status reports detailing its recruitment efforts within 10 days of receipt of the award and every thirty days thereafter until the position is filled and the City's use of contractors to perform CSEA bargaining unit work has ceased.

**Yonkers City School District
(Arbitrator Weinstock)
Matter No. 25-0436**

CSEA filed a grievance alleging a Clerk II had been made to work as a Clerk III without appropriate compensation. The arbitrator found that the member engaged in several higher-level activities, including scheduling the work of the other Clerks and organizing student education plans. Ultimately, the Arbitrator sustained the grievance.

**Yonkers City School District
(Arbitrator Drucker)
Matter No. 25-0960**

CSEA alleged that the District violated the parties' CBA when it failed to appropriately compensate members employed as essential workers who were required to remain on duty or report for duty following the declaration of a State of Emergency. The Arbitrator determined that, while there was no dispute that a State of Emergency had been declared, additional compensation was required to be paid to essential workers only if the District's schools and central office were closed during the State of Emergency. Since the central office was not closed during the State of Emergency, there was no obligation to pay additional compensation to essential workers. Therefore, the grievance was dismissed.

**Village of Tarrytown
(Arbitrator Siegel)
Matter No. 26-0027**

CSEA alleged that the Village violated the parties' CBA when it failed to promote Grievant, a more senior job applicant to the position of Assistant Parks Foreman because he and the chosen employee possessed equal qualifications, which meant that seniority should have controlled who received the promotion. The Arbitrator dismissed the grievance because the Village objectively assessed the qualifications of the job applicants and

differentiated the chosen employee from the Grievant because he had strong experience that was relevant to the role and had no disciplinary record. Ultimately, since the applicants were not equal in qualifications within the meaning of the CBA, seniority never became the controlling factor.

Town of Goshen
(Arbitrator Selchick)

Matter Nos. 25-0293 & 25-0294

CSEA alleged that the Town violated the parties' CBA when it failed to promote a more senior job applicant (either of the Grievants) to the position of Working Leader because all of the applicants possessed equal qualifications, which meant that seniority should have controlled who received the promotion. The Arbitrator dismissed the grievances because the Town evaluated all of the applicants under substantially similar conditions and considered the qualifications expressly required by the CBA before concluding that the chosen employee possessed superior qualifications for the Working Leader position. Ultimately, since the applicants were not equal in qualifications within the meaning of the CBA, seniority never became the controlling factor.

North Rockland School District
(Arbitrator Siegel)

Matter No. 24-0898

CSEA filed a grievance after a Night Custodian title was filled by a non-member in violation of a provision in the CBA providing a preference for promoting existing bargaining unit members. The Arbitrator found the grieved provision of the CBA had been superseded by a retroactive MOA on the issue and dismissed the grievance.

Niagara County
(Arbitrator Kash)
Matter No. 25-0725

CSEA filed a class action grievance alleging that the County violated the CBA by compensating Grievants only for actual time spent handling after-hours telephone calls related to public health emergencies, instead of providing the two-hour minimum guarantee for employees “called into work.” The Arbitrator denied the grievance, finding that “called into work” was ambiguous but that past practice and bargaining history limited the guarantee to in-person reporting, and that the Grievants’ remote work was therefore properly compensated as actual time worked.

Erie County
(Arbitrator Reden)
Matter No. 24-0093

A Probation Supervisor alleged that she was not being paid at the proper step and that, according to the CBA, she should have received two longevity increases in 2022 prior to her promotion from Probation Officer to Probation Supervisor. Grievant alleged that a change in the 2017-2022 CBA made all promotions step to step, meaning that for purposes of longevity step calculation the employees’ original date of County service would be used, and employees would not drop down to Step 1 in the higher category when promoted. The Arbitrator determined that for him to decide for CSEA, he would have to add language to the CBA applying longevity payments retroactively. He found the Union’s interpretation would effectively nullify another section of the CBA. While the County’s position, that the new language was meant to apply prospectively, gave effect to all relevant parts of the CBA, the Arbitrator concluded that the County properly applied the increment structure and dismissed the grievance.

JUSTICE CENTER

Office of Children and Family Services

(ALJ Golish Blum)

Matter No. 25-0719



A Youth Support Specialist was charged with Category 2 neglect following an incident in which he and another subject were accused of removing two service recipients from the secure facility and allowing them to fight in a vacant lot nearby. The subject prevailed in a parallel disciplinary arbitration, and the Justice Center was estopped from pursuing their theory of the case. The subject was unsubstantiated.

Office of Children and Family Services

(ALJ Golish Blum)

Matter Nos. 25-0692 & 25-0719

Two OCFS Youth Support Specialists received substantiated reports of Category 2 neglect, with one Subject's findings elevated to Category 1 based on a prior substantiated finding, for allegedly failing to properly de-escalate two service recipients. Before the hearing, the ALJ granted the Subjects' collateral estoppel motion in part, precluding the Justice Center from attributing a service recipient's facial injury to the Subjects. The ALJ found that although the Subjects may have violated facility policies, the Justice Center failed to prove that either service recipient was escalated or required de-escalation. Accordingly, the ALJ determined that the Justice Center did not meet its burden of proof, and the substantiated reports were amended to unsubstantiated and sealed.

Office for People with Developmental Disabilities

(ALJ Devane)

Matter No. 25-0935

A Developmental Assistant 2 ("DA2") was charged with Category 3 Neglect for failing to provide timely and/or adequate medical care to a service recipient by ignoring a cough which resulted in delayed

care. The ALJ found that the Justice Center failed to prove that the DA2 failed to follow policy and/or failed to provide adequate and/or timely medical care. Therefore, the substantiated report was amended and sealed.

Office for People with Developmental Disabilities

(ALJ Rocco)

Matter No. 25-0950

A Direct Support Assistant (“DSA”) was charged with Category 3 Neglect for failing to follow agency policy when she did not report and/or record a bruise on the Service Recipient’s face. The DSA and other house staff testified that they saw no marks on the Service Recipient’s cheek. In the hours between the DSA leaving work and the discovery of the marks, no other staff reported or recorded any facial marks. The ALJ found that the Justice Center has not met its burden of proof and the substantiated report was amended and sealed.

Office for People with Developmental Disabilities

(ALJ Golish Blum)

Matter No. 25-1100

A Direct Support Assistant was charged with Category 2 neglect following an incident in which they left a self-injurious service recipient unattended while assigned to a 1:1 supervision. The Judge found the subject’s testimony unavailing and substantiated the charge.

Office for People with Developmental Disabilities

(ALJ Golish Blum)

Matter No. 25-0978

A Direct Support Assistant (“DSA”) was charged with Category 2 Neglect for falling asleep while on duty and allowing the Service Recipient to fall out of a hospital bed. Based on testimony from the RN that witnessed the DSA sleeping and the DSA’s own statement that she was tired before the shift started and she may have dozed

off, the ALJ concluded that the Justice Center proved that the DSA committed neglect and the allegation was properly categorized at Category 2.

OCFS

**Office of Children and Family Services
(ALJ Agostinelli)
Matter No. 26-0282**

A member was indicated for child abuse/maltreatment by the Monroe County Department of Human Services and placed on the Central Register. The member requested a hearing to amend and seal the indicated report. Monroe County declined to present evidence, and the hearing was cancelled resulting in the report being amended and sealed.

**Office of Children and Family Services
(ALJ Spencer)
Matter No. 25-0322**

The State Central Register (“Register”) maintained an indicated report regarding the Appellant. The Onondaga County Children and Family Services (“OCCFS”) investigated and found the report indicated for child maltreatment. The Appellant appealed. OCCFS advised the ALJ that it was not presenting any evidence in support of the indicated report. Therefore, the ALJ found that OCCFS did not prove, by a “fair preponderance of the evidence,” that the Appellant committed the alleged maltreatment. As a result, the ALJ ordered OCCFS and the Register to amend the indicated report to unfounded and seal it.

**Office of Children and Family Services
(ALJ Chambers-Yunusov)
Matter No. 25-0907**

Prior to the hearing which was scheduled in order for the member to contest the determination to revoke her group family daycare license, she surrendered her license. As such, the member's license was revoked, and she will be subject to the prohibitions against licensing and registration for two years after the date she surrendered her license.

**Office of Children and Family Services
(ALJ Simonetti)
Matter No. 25-0860**

After a hearing which was held in order for the member to contest the determination to revoke her group family daycare license, the ALJ upheld the revocation of the member's license. Specifically, the record demonstrated that the member left nine children in the care of two employees only, who failed to provide competent supervision as evidenced by the fact that a 23-month-old was able to leave the daycare unbeknownst to either of them.

PERB DECISIONS



Staff Decisions:

**Schoharie County
(ALJ Muller)
Matter No. 26-0333**

CSEA filed an improper practice charge alleging the County violated the Taylor Law when it unilaterally implemented a new policy related to weather conditions and mandatory overtime. The County filed an answer asserting that the dispute raised in the charge should be decided through a contract grievance. The parties agreed to defer the charge to their negotiated grievance procedure,

with the understanding that the County waives any jurisdictional or arbitral defenses to such grievance. Therefore, the ALJ conditionally dismissed this matter, subject to CSEA being able to reopen the case under certain circumstances.

**Orange County
(ALJ Muller)
Matter No. 24-1027**

CSEA filed an improper practice charge alleging that the County violated the Taylor Law when it rescinded an offer to demote a bargaining unit member and then terminated her probationary employment in retaliation for engaging in protected union activity. The ALJ dismissed the charge because the County demonstrated that its decision to rescind the offer was not a response to the member's engagement in protected activity and was not improperly motivated. Additionally, the ALJ noted that "timing alone" was insufficient for CSEA to establish that the rescission of the demotion offer would not have occurred but for the member's engagement in protected activity.

