State of New York
Court of Appeals

Decided and Entered on the twenty-seventh day of March, 2018

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2018-18
In the Matter of Maurice Daniel,
Appellant,
v.
Brooklyn Law School,
Respondent.

Appellant having moved for leave to appeal to the Court of Appeals and for ancillary relief in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion for leave to appeal is denied; and it is further

ORDERED, that the motion for ancillary relief is dismissed upon the ground that this Court does not have jurisdiction to entertain it (see NY Const, art VI, §3).

John P. Asiello
Clerk of the Court

State of New York
Court of Appeals

John P. Asiello
Chief Clerk and
Legal Counsel to the Court

Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

Decided March 27, 2018

Mo. No. 2018-18

In the Matter of Maurice Daniel,
Appellant,
v.
Brooklyn Law School,
Respondent.

Motion for leave to appeal denied.
Motion for ancillary relief dismissed upon the ground that this Court does not have jurisdiction to entertain it (see NY Const, art VI, §3).

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M241036
E/ct

REINALDO E. RIVERA, J.P.
L. PRISCILLA HALL
BETSY BARROS
VALERIE BRATHWAITE NELSON, JJ.

2015-08005 DECISION & ORDER ON MOTION

In the Matter of Maurice Daniel, appellant,
v Brooklyn Law School, respondent.

(Index No. 15714/14)

Motion by the appellant, inter alia, for leave to reargue an appeal from a judgment of the Supreme Court, Kings County, dated June 8, 2015, which was determined by decision and order of this Court dated August 16, 2017, or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, with $100 costs.

RIVERA, J.P., HALL, BARROS and BRATHWAITE NELSON, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court

November 21, 2017

MATTER OF DANIEL v BROOKLYN LAW SCHOOL

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D53179
M/afa

_____AD3d_____

Submitted - May 26, 2017

REINALDO E. RIVERA, J.P.
L. PRISCILLA HALL
BETSY BARROS
VALERIE BRATHWAITE NELSON, JJ.

2015-08005

DECISION & ORDER

In the Matter of Maurice Daniel, appellant,
v Brooklyn Law School, respondent.

(Index No. 15714/14)

Maurice Daniel, Ridgefield Park, New Jersey, appellant pro se.

Stephanie Vullo, Brooklyn, NY, for respondent.

In a proceeding pursuant to CPLR article 78, inter alia, in effect, to review a determination of Brooklyn Law School denying the petitioner's request, inter alia, to change two grades, the petitioner appeals from a judgment of the Supreme Court, Kings County (Solomon, J.), dated June 8, 2015, which denied the petition and, in effect, dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

The petitioner, a former student at the respondent, Brooklyn Law School (hereinafter BLS), commenced this CPLR article 78 proceeding, inter alia, in effect, to review BLS's determination denying his request to change grades he received in two courses from "F" to "W" and to issue a letter stating that his dismissal from the law school was the result of missing two final exams due to illness rather than a lack of capacity to complete a course of legal study. In the judgment appealed from, the Supreme Court denied the petition and, in effect, dismissed the proceeding.

Unlike disciplinary measures taken against a student, institutional assessments of a student's academic performance, whether in the form of particular grades received or measures taken

because a student has been judged to be scholastically deficient, necessarily involve academic determinations requiring the special expertise of educators (*see Matter of Susan M. v New York Law School,* 76 NY2d 241, 245; *Matter of Rizvi v New York Coll. of Osteopathic Medicine of N.Y. Inst. of Tech.,* 98 AD3d 1049, 1052). Thus, to preserve the integrity of the credentials conferred by educational institutions, courts have long been reluctant to intervene in controversies involving purely academic determinations (*see Matter of Susan M. v New York Law School,* 76 NY2d at 245-246; *Matter of Zanelli v Rich,* 127 AD3d 774, 775). Although determinations made by educational institutions as to the academic performance of their students are not completely beyond the scope of judicial review, that review is limited to the question of whether the challenged determination was arbitrary and capricious, irrational, made in bad faith, or contrary to constitution or statute (*see Matter of Susan M. v New York Law School,* 76 NY2d at 246; *Matter of Gilbert v State Univ. of N.Y. at Stony Brook,* 73 AD3d 774, 774; *Matter of Sage v CUNY Law School,* 208 AD2d 751, 751-752).

Here, the petitioner did not submit any evidence establishing that he complied with BLS's policy for missing an exam due to illness. Pursuant to BLS's policy, since the petitioner failed to take two final exams, failed to promptly notify the Registrar that he was unable to take those exams due to illness, and failed to submit medical documentation of his illness necessary to schedule make-up exams, he received a failing grade in each course. BLS's determination to let the petitioner's failing grades stand and to refuse to allow him to withdraw from those courses so as to avoid the failing grades was not arbitrary and capricious, irrational, made in bad faith, or contrary to constitution or statute (*see Matter of Zanelli v Rich,* 127 AD3d at 775; *Matter of Gilbert v State Univ. of N.Y. at Stony Brook,* 73 AD3d at 775; *Matter of Williams v State Univ. of N.Y.—Health Science Ctr. at Brooklyn,* 251 AD2d 508; *Matter of Sage v CUNY Law School,* 208 AD2d at 751-752).

The petitioner's remaining contentions are without merit.

Accordingly, the Supreme Court properly denied the petition and, in effect, dismissed the proceeding.

RIVERA, J.P., HALL, BARROS and BRATHWAITE NELSON, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

IN THE MATTER OF THE APPLICATION OF MAURICE DANIEL,

Decision/Order

Petitioner,

- against -

Index No. 15714/2014

BROOKLYN LAW SCHOOL,

Respondent.

----------X

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED ON THE REVIEW OF THIS ARTICLE 78 PETITION.

PAPERS	NUMBERED
Petition, Notice of Petition and Affidavits Annexed	**1**
Reply Affirmations and Affidavits Annexed	**2, 3**

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER ON THIS PETITION IS AS FOLLOWS:

Petitioner brings this Special Proceeding, seeking an order to compel Respondent to change two of petitioner's grades from "F" to "W" and to compel respondent to compose a letter under Section 505 of the American Bar Association's Standards and Rules of Procedure for Approval of Law Schools stating that petitioner was dismissed as a result of missing exams due to illness, rather than lack of capacity.

Petitioner's petition alleges that on May 8, 2014, petitioner was sick and missed an exam. This allegation is corroborated by the affidavit of petitioner's mother, Lucia Daniel, which is annexed to petitioner's reply affirmation and alleges that she was present in petitioner's home on May 8, that she observed that he was ill, and that she suggested he stay home and inform respondent that he would have to take a make up exam. Petitioner alleges that he made "several unsuccessful attempts to contact the associate dean." The phone call record annexed to petitioner's reply affirmation shows that an eight-second call was placed from petitioner's phone to Professor Linda Feldman's phone number at 4:40PM on May 8, and that a 101-second call was placed from petitioner's phone to respondent's main number at 4:46PM on May 8.

Petitioner further alleges, and provides documentation annexed to his reply affirmation, that respondent called the Ridgefield Park Police Department in Ridgefield, New Jersey on May 12, 2014, and asked that they conduct a welfare check on petitioner. Petitioner also annexes to his petition letters addressed to Dean Nick Allard and other members of respondent's administration,

claiming that Assistant Dean of Student Affairs Jennifer Lang visited petitioner's place of employment on May 12, 2014 to check on petitioner's welfare.

Petitioner further alleges, in his reply affirmation, that on May 23, 2014, petitioner decided to visit Dean Lang's office. However, when petitioner was halfway between his home and the school, he called respondent from a pay phone, spoke to an unnamed staff member, who advised petitioner than Dean Lang was out of the office until Monday, and petitioner returned home.

The above-mentioned phone records also show that a 91-second call was placed from petitioner's phone on June 13, 2014 to Dean Lang's phone number.

Petitioner also annexes a letter addressed to him from Vice Dean Dana Brakman Reiser dated July 10, 2014, which states, among other things, that petitioner met with Dean Lang and Dean Reiser on June 24, 2014. This letter also formally dismisses petitioner from Brooklyn Law School.

Petitioner alleges, and annexes the above-mentioned letters to Dean Allard and other members of the administration are dated July 29, 2014. In these letters, petitioner asks respondent for a letter under Standard 505 of the American Bar Association's Standards and Rules of Procedure for Approval of Law Schools, and asking respondent to change his grades for the classes where he missed exams from "F" to "W."

Petitioner further alleges that he received no response to this communication and sent a follow up letter on August 14, 2014. The annexed letter, addressed to Dean Allard and former President Joan Wexler, again asks respondent to provide petitioner with a letter under Standard 505, and to change his grades.

Petitioner also annexes a letter from Dean Brakman Reiser dated August 20, 2014, denying petitioner's request for a letter under Standard 505.

Also annexed to petitioner's reply affirmation is a portion of respondent's Student Handbook.

Petitioner requests that this court compels respondent to provide him with a letter under Standard 505 of the American Bar Association's Standards and Rules of Procedure for Approval of Law Schools.

The ABA Standards and Rules of Procedure for Approval of Law Schools contains "the requirements a law school must meet to obtain and retain ABA approval." American Bar Association, *ABA Standards and Rules of Procedure for Approval of Law Schools 2014-2015* ix (2014), *available at* http://www.americanbar.org/groups/legal_education/resources/standards.html[1] (Hereafter, "Standards"). The most recent version of the Standards "became effective on August 12,

[1]Both of the ABA publications referenced in this paragraph can be found at this URL.

2014." *Id.* at v. Under the revised standards, Standard 505 was rewritten, and now exists as Standard 501(c). *See*, American Bar Association, *Revised Standards for Approval of Law Schools August 2014*, 51-52 (2014). The revised Standard states,

> A law school shall not admit or readmit a student who has been disqualified previously for academic reasons without an affirmative showing that the prior disqualification does not indicate a lack of capacity to complete its program of legal education and be admitted to the bar. For every admission or readmission of a previously disqualified individual, a statement of the considerations that led to the decision shall be placed in the admittee's file. Standard 501(c), Standards at 32.

Under the circumstances presented here, the revised Standard was in effect when Petitioner wrote his second letter, and was in effect when respondent responded to petitioner. Under the revised Standard, it is up to any law school that wishes to admit petitioner to show that the whole of his record, which "may include consideration of admission test scores, undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome," Interpretation 501-2, *Id.*, demonstrates petitioner's ability to complete law school.

The revised standard does not compel action by law schools formerly attended by petitioner, and petitioner is free to submit completed applications to any law school he wishes in an effort to finish his legal education. Petitioner's petition was therefore moot from its inception and must be denied.

Petitioner also requests that this court compel respondent to change the aforementioned grades from "F" to "W."

> Strong policy considerations militate against the intervention of courts in controversies relating to an educational institution's judgment of a student's academic performance. Unlike disciplinary actions taken against a student, institutional assessments of a student's academic performance, whether in the form of particular grades received or actions taken because a student has been judged to be scholastically deficient, necessarily involve academic determinations requiring the special expertise of educators. These determinations play a legitimate and important role in the academic setting since it is by determining that a student's academic performance satisfies the standards set by the institution, and ultimately, by conferring a diploma upon a student who satisfies the institution's course of study, that the institution, in effect, certifies to society that the student possesses the knowledge and skills required by the chosen discipline. Thus, to preserve the integrity of the credentials conferred by educational institutions, the courts have long been reluctant to intervene in controversies involving purely academic determinations.

> Accordingly, although we have emphasized that the determinations of educational institutions as to the academic performance of their students are not completely beyond the scope of judicial review, that review is limited to the question of whether the challenged determination was arbitrary and capricious, irrational, made in bad faith or contrary to Constitution or statute. This standard has rarely been satisfied in the context of challenges to academic determinations because the courts have repeatedly refused to become involved in the pedagogical evaluation of academic performance. Thus, we have declined, in the absence of bad faith, to compel a university to award a diploma where a student alleged that he had failed a final comprehensive exam because of his reliance on the professor's misstatement as to how the exam would be graded, or to compel a medical school to permit a student who had failed a number of courses to repeat a year, and we have concluded that a college did not act arbitrarily in refusing to "round off" a senior's grade so that she might graduate.
>
> As a general rule, judicial review of grading disputes would inappropriately involve the courts in the very core of academic and educational decision making. Moreover, to so involve the courts in assessing the propriety of particular grades would promote litigation by countless unsuccessful students and thus undermine the credibility of the academic determinations of educational institutions. We conclude, therefore, that, in the absence of demonstrated bad faith, arbitrariness, capriciousness, irrationality or a constitutional or statutory violation, a student's challenge to a particular grade or other academic determination relating to a genuine substantive evaluation of the student's academic capabilities, is beyond the scope of judicial review. *Susan M. v. New York Law Sch.*, 76 N.Y.2d 241, 245-47, 556 N.E.2d 1104, 1106-07 (1990) (internal citations omitted).

Furthermore, the "relationship between [a student] and [a] university is contractual in nature. The rights and obligations of the parties, as contained in the university's bulletins, [become] a part of the parties' contract." *Prusack v. State*, 117 A.D.2d 729, 730 (2d Dep't 1986) (internal citations omitted).

> While the terms of the contract are set forth, for the most part, in the institution's catalogue and other publications, there are certain reciprocal obligations that are implicit in the relationship itself. Among those are the implied obligation of the institution to confer upon the student the degree he or she seeks upon the student's completion of all of the stated requirements therefor, and the implied obligation of the student to act in good faith in pursuing his or her studies. *Downey v. Schneider*, 23 A.D.3d 514, 516 (2d Dep't 2005) (internal citations omitted).

Under the circumstances presented here, the annexed Student Handbook establishes the circumstances under which a student who misses an exam can avoid receiving a final grade of F in a course: Students must obtain written permission from the Registrar to miss an exam. Students who

do not obtain this permission receive a grade of F(ABS), which indicates that the student was absent from the final exam and is calculated as an F for the purposes of the student's GPA. Students who do not take the next regularly scheduled exam or a special re-examination will have their F(ABS) grades converted to Fs. In order to take the next regularly scheduled exam, a student must receive permission from the Associate Dean for Student Affairs.

Although petitioner presents evidence that phone calls were made from his phone number to phone numbers at Brooklyn Law on May 8, petitioner presents no evidence that he, or someone acting on his behalf, made contact with Dean Lang to inform her that he was ill and to request a make-up exam. Rather, he presents evidence that he placed an eight-second call to a professor, and a nearly two-minute call to respondent's main number. Petitioner has failed to show he made reasonable efforts calculated to reach Dean Lang prior to the examination.

With respect to May 12, it is unclear whether petitioner met with Dean Lang on that day. Petitioner does not claim he met with her on this day, and the annexed police report states that the police found him at home. However, the annexed letter states that Dean Lang visited petitioner's place of employment.

Petitioner further alleges that he did not complete a trip to Dean Lang's office from his home after calling respondent from a pay phone, speaking to an unnamed person, and learning that Dean Lang would not be in the office for the rest of that day.

Petitioner fails to assert there was any further communication between petitioner and respondent until a call was placed from petitioner's number to Dean Lang's number on June 13, however, there is nothing to show and petitioner does not assert that he made actual contact with Dean Lang on that date. Both petitioner's reply affidavit and Dean Brakman Reiser's letter of July 10 notes a meeting between petitioner, Dean Brakman Reiser, and Dean Lang on June 24.

Petitioner presents no evidence that he made contact with Dean Lang prior to June 24, or that he requested to re-take his exams prior to this meeting. Petitioner should have been aware of the obligations outlined in the student handbook, and should have made every effort to contact the Registrar and Dean Lang, or have someone contact them on his behalf. The evidence provided does not show that petitioner made such an effort.

Furthermore, it is noted that educational institutions typically allow students to withdraw from classes and receive a grade of W only during the first few weeks of a semester. Petitioner presents no evidence that respondent's policy is different, and would allow him to withdraw from classes during finals.

Petitioner has failed to show that respondent acted in bad faith, or acted arbitrarily, capriciously, irrationally or a committed a constitutional or statutory violation in refusing to change petitioner's grades or allowing him to take a make-up exam. Therefore, petitioner's claim must be denied.

Respondent withdrew a previous Cross-Motion to dismiss petitioner's Order to Show Cause. The Cross-Motion will not be considered here.

For the foregoing reasons, petitioner's petition is denied.

Dated:
June 8, 2015

Martin Solomon, J.S.C.