

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

D35447  
W/ct

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - May 18, 2012

RUTH C. BALKIN, J.P.  
RANDALL T. ENG  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS, JJ.

2011-09030  
2012-06123

DECISION & ORDER

In the Matter of Omoike Idahosa, respondent,  
v Farmingdale State College, appellant.

(Index No. 23118/10)

Eric T. Schneiderman, Attorney General, New York, N.Y. (Michael S. Belohlavek and David Lawrence III of counsel), for appellant.

Omoike Idahosa, Bronx, N.Y., respondent pro se.

In a proceeding pursuant to CPLR article 78 to review a determination of Farmingdale State College dated May 12, 2010, which, upon a finding that the petitioner engaged in academic dishonesty, dismissed him from the Nursing Program at Farmingdale State College, Farmingdale State College appeals, (1) from a decision of the Supreme Court, Nassau County (Lally, J.), dated July 1, 2011, and (2), as limited by its brief, from so much of a judgment of the same court entered August 4, 2011, as, upon the decision, granted the petition to the extent of annulling the determination dismissing the petitioner from the Nursing Program at Farmingdale State College, and remitted the matter to Farmingdale State College for the imposition of a lesser penalty.

ORDERED that the appeal from the decision is dismissed, as no appeal lies from a decision (*see Schicchi v J. A. Green Constr. Corp.*, 100 AD2d 509); and it is further,

ORDERED that the judgment is reversed insofar as appealed from, on the law, with costs, that branch of the petition which was to review the determination dismissing the petitioner from the Nursing Program at Farmingdale State College is denied, and that portion of the proceeding is dismissed.

July 5, 2012

Page 1.

MATTER OF IDAHOSA v FARMINGDALE STATE COLLEGE

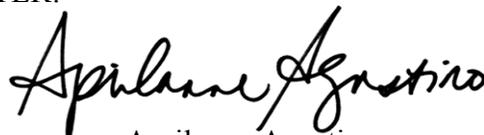
In April 2010, the petitioner, a student at Farmingdale State College (hereinafter the College), was pursuing an associate's degree in nursing. As part of a nursing seminar class, which included an ethics component, the petitioner was required to submit a position paper, which constituted 25% of his grade. After the petitioner submitted his paper, his professor determined that it had been plagiarized from another student at the College who had submitted the same paper the previous spring. Disciplinary proceedings were instituted, which resulted in the petitioner's dismissal from the College's Nursing Program. The petitioner commenced the instant CPLR article 78 proceeding challenging, inter alia, the penalty imposed. The Supreme Court granted the petition to the extent of annulling so much of the College's determination as dismissed the petitioner from the Nursing Program, and remitted the matter to the College for the imposition of a lesser penalty.

An administrative penalty must be upheld unless it is so disproportionate to the offense as to be shocking to one's sense of fairness, thus constituting an abuse of discretion as a matter of law (*see Matter of Ellis v Mahon*, 11 NY3d 754, 755; *Matter of Torrance v Stout*, 9 NY3d 1022, 1023). In other words, both the Supreme Court and this Court "lack[ ] any discretionary authority or interest of justice jurisdiction in reviewing the penalty imposed" (*Matter of Featherstone v Franco*, 95 NY2d 550, 554). "[A] result is shocking to one's sense of fairness if the sanction imposed is so grave in its impact on the individual subjected to it that it is disproportionate to the misconduct, incompetence, failure or turpitude of the individual, or to the harm or risk of harm to the agency or institution, or to the public generally visited or threatened by the derelictions of the individuals" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 234).

Contrary to the Supreme Court's determination, it cannot be concluded, as a matter of law, that the penalty of dismissal is so disproportionate to the petitioner's misconduct as to be shocking to one's sense of fairness, particularly in light of the facts that he was put on notice of that possible disciplinary measure, that he continued to deny his plagiarism, and that he provided an implausible explanation for the similarity between his paper and that of the other student (*see Matter of Flores v New York Univ.*, 79 AD3d 502; *see also Matter of Dequito v New School for Gen. Studies*, 68 AD3d 559; *Matter of Harper*, 223 AD2d 200, 201). Accordingly, the petition should have been denied and the proceeding dismissed.

BALKIN, J.P., ENG, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court