

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

D65214
Y/htr

_____AD3d_____

Argued - March 27, 2020

WILLIAM F. MASTRO, A.P.J.
ROBERT J. MILLER
COLLEEN D. DUFFY
VALERIE BRATHWAITE NELSON, JJ.

2019-03675

DECISION & ORDER

In the Matter of Diana Marie Van Vleet, appellant, v
Drew Bogner, etc., et al., respondents.

(Index No. 616545/18)

Schaefer Law Group, P.C., Smithtown, NY (Wayne J. Schaefer of counsel), for
appellant.

Biederman Hoenig Semprevivo, P.C., New York, NY (Elaine Chou of counsel), for
respondents.

In a proceeding pursuant to CPLR article 78, inter alia, to review a determination of the respondents, which dismissed the petitioner from the R.N. Dual Degree Program at Molloy College, the petitioner appeals from an order and judgment (one paper) of the Supreme Court, Queens County (R. Bruce Cozzens, Jr., J.), dated January 17, 2019. The order and judgment denied the petitioner's motion for a preliminary injunction, denied the petition, and, in effect, dismissed the proceeding.

ORDERED that the order and judgment is affirmed, with costs.

After failing two clinical courses, the petitioner was dismissed from the R.N. Dual Degree Program at Molloy College (hereinafter the Program). The petitioner commenced this proceeding pursuant to CPLR article 78, seeking, inter alia, reinstatement to the Program, contending, among other things, that the determination to dismiss her from the Program was arbitrary and capricious because the respondents did not follow certain procedures of Molloy College governing non-academic discipline. The petitioner simultaneously moved for a preliminary injunction enjoining the respondents from dismissing the petitioner from the Program during the pendency of the proceeding. In an order and judgment dated January 17, 2019, the Supreme Court

denied the petitioner's motion for a preliminary injunction, denied the petition, and, in effect, dismissed the proceeding. The petitioner appeals, and we affirm.

Contrary to the petitioner's contentions, her dismissal from the Program was based upon her academic performance, such that Molloy College's procedures for non-academic discipline are irrelevant. Unlike disciplinary actions taken against a student, institutional assessments of a student's academic performance necessarily involve academic determinations requiring the special expertise of educators, and strong policy considerations militate against the intervention of courts in controversies relating to an educational institution's judgment of a student's academic performance (*see Matter of Susan M. v New York Law School*, 76 NY2d 241, 245). While the academic determinations of an educational institution are not entirely 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 law, a standard that "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" (*id.* at 246).

Here, the petitioner failed to establish that her dismissal from the Program for failing two clinical courses was arbitrary and capricious, irrational, made in bad faith, or contrary to law (*see Matter of Garcia v Dominican Coll.*, 164 AD3d 1239, 1241).

The petitioner's remaining contentions either are without merit or need not be reached in light of our determination.

Accordingly, we affirm the order and judgment.

MASTRO, A.P.J., MILLER, DUFFY and BRATHWAITE NELSON, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court