Kramer-Miller v Wright
2008 NY Slip Op 32545(U)
September 10, 2008
Supreme Court, Nassau County
Docket Number: 8208-08/
Judge: Daniel Martin
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

TRIAL/IAS, PART 31
NASSAU COUNTY

THOMAS KRAMER-MILLER.

Petitioner.

- against -

CRAIG J. WRIGHT, in his official capacity as the Associate Vice President of Nassau Community College.

Respondents.

Sequence No.: 001
Index No.: 008208/08
XXX

The following named papers have been read on this motion:

	Papers Numbered
Notice of Petition and Affidavits Annexed	X
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	X
Replying Affidavits	X

Petitioner's application for an order reinstating petitioner as a student at Nassau Community College is denied and the petition dismissed.

The following facts are undisputed. Petitioner herein began attending classes as a student at Nassau Community College in January, 2007. Prior to his attendance at the college, petitioner had been diagnosed with hyperactivity disorder and adjustment disorder with mixed emotional features. These conditions result in petitioner's experiencing anxiety when he is faced with new social settings and as a result, he has difficulty realizing the consequences of his actions. He will often act out in order to get attention in these situations. Petitioner has been under the care of Louis M. Najarian, M.D., a board certified psychiatrist since the age of ten.

When petitioner began attending classes at the college he did not inform the school of his condition because he wanted to see how well he could do without accommodation. After his first semester petitioner registered with the college's Center for Students with disabilities and filed a form completed by Dr. Najarian. In November, 2007 as a result of a statement made by petitioner in front of classmates that he wanted to borrow a shotgun so that he could shoot himself petitioner was directed by the College to see the school psychologist who cleared him as not being dangerous.

On December 5, 2007 petitioner was in a club room operated by the Inter-Varsity Christian Fellowship at the university. On that date petitioner grabbed a pair of scissors , ran around with them, pretended to fall on them and then pretended to draw on the face of another student with a magic marker. Petitioner then pretended to use the scissor to cut the hair of a female student. On December 12, 2007 petitioner was called in to the dean's office where he met with Jacqueline Turner, the Assistant Dean for Judicial Affairs where petitioner was informed that as a result of the incident on December 5, 2007 petitioner was temporarily suspended until a hearing which was scheduled for December 14, 2007. When Dean Turner asked petitioner if she could contact his parents petitioner refused her permission.

On the date of the hearing, December 14, 2007, petitioner changed his mind and permitted Dean Turner to contact his parents by signing a release. The hearing was held on December 14, 2007 as scheduled and petitioner was suspended for two years from the school and banned from the campus. The letter informing petitioner of the suspension further stated that he could only be re-admitted to the college after completion of psychological therapy.

Following the suspension petitioner requested an appeal which was denied by letter dated January 2, 2008 from Craig J. Wright, Associate Vice-President of the college.

Petitioner commenced the instant proceeding pursuant to CPLR Article 78 seeking an order annulling the decision to suspend petitioner on the grounds that same was 1) arbitrary and capricious; and 2) an abuse of discretion in the measure or mode of penalty imposed.

First, petitioner asserts that respondent failed to comply with its own student code of conduct which affords students a fair hearing including:

"1. To be afforded a fair and timely hearing, including the opportunity to challenge the impartiality of the hearing officer or committee members prior to the beginning of the hearing;
3. To have the opportunity to question witnesses and evidence presented;
4. To have adequate time to prepare and present a defense."

(See, Student Code of Conduct, p. 1, Fundamental Fairness Rights of Students Accused of Violating the Code of Conduct).

Specifically, petitioner asserts that holding the hearing two days after he received notice of same is insufficient time to prepare a defense, especially where petitioner suffers from the conditions set forth above, about which the college had notice. Further, asserts petitioner, the hearing should have been adjourned when he gave the school his consent to speak with his parents.

Petitioner further contends that the college failed to give petitioner an appeal of the determination. In his affidavit petitioner avers that he mailed a letter to Dean Turner requesting an appeal of the suspension on the grounds that the committee did not have the benefit of

additional information it should have had in reaching its decision including testimony from his parents and treating doctors. Petitioner's position is that this is one of the college's bases for appealing a determination by the hearing committee, the presence of new evidence which was not available at the hearing. (See, Student Code of Conduct §II(E)(1)(b).

In opposition respondent asserts that the college adhered to its own rules and guidelines in that petitioner's hearing was required to be held within five days of the interview with the Assistant or Associate Dean of Students. (See, Student Code of Conduct §II(B)(d). With regard to the issue of whether petitioner should have been granted an adjournment, the respondent points out that petitioner did not request an adjournment of the hearing. Respondent recognizes that reasonable adjournment requests should be granted. Respondent takes the position that it is not the college's obligation under the notions of due process to surmise that petitioner was incapable of requesting an adjournment of the hearing.

Respondent also asserts that petitioner's appeal was properly rejected. Pursuant to section II E(1)(b) of the code of conduct an appeal of the hearing committee's determination must be based upon, *inter alia*, "the presence of new evidence that was not available during the original hearing." Petitioner's request for an appeal indicates that the "committee did not have enough information about [petitioner] to make an informed decision." Nowhere does petitioner explain how the information was not available to him at the time of the hearing. Thus, respondent contends that the appeal was sought on an improper basis and therefore properly denied.

Lastly, on a procedural basis, petitioner asserts that it is not clear exactly for what he was suspended. The notices informing petitioner of his suspension and denying him his appeal both reference violations of sections I D(1) and (2) of the Code of Conduct, which are for stalking and physical assault. The notice of suspension, however, states that these sections prohibit verbal abuse and disorderly, lewd, indecent or obscene conduct which offenses are actually contained in sections I D(3) and (8) of the Code.

"It is well settled that judicial review of an educational institution's disciplinary determination involving nonacademic matters is limited to whether the institution substantially adhered to its own published rules and guidelines and was not arbitrary and capricious (citations omitted)." Quercia v. New York University, 41 A.D.3d 295, 296 (1st Dep't 2007). Where the college demonstrates that it adhered to its published rules and guidelines in holding the hearing, the court will find that petitioner was afforded adequate notice of the hearing. See,; Trahms v. Trustees of Columbia University, 245 A.D.2d 124 (1st Dep't 1997). In Trahms, supra., the Appellate Division found proper the notice provided to a student accused of plagiarism wherein the notice was provided four days prior to the hearing and afforded the student the opportunity to call witnesses on his behalf. The notice in the instant matter provided two days notice of the hearing which was required to be held within five days and afforded petitioner the opportunity to "present witnesses or supply documentation that you feel will support your case." See, also, Galiani v. Hofstra University, 118 A.D.2d 572 (2nd Dep't 1986)

Further, nothing in the record appears to indicate that petitioner made a request for an adjournment, reasonable or otherwise, which was denied. In the absence of such a request, the

court does not view respondent as obligated to provide petitioner with one. In seeking to annul an administrative determination pursuant to CPLR Article 78 petitioner may not raise issues that were not raised at the administrative hearing. See, Hughes v. Suffolk County Department of Civil Service, 74 N.Y.2d 833 (1989). Where petitioner fails to raise due process issues at the administrative level such are deemed to be waived upon judicial review. See, Rauer v. State University of New York, 159 A.D.2d 835 (3rd Dep't 1990).

The court therefore finds the amount of time given to petitioner as notice of the hearing to be sufficient and in keeping with the college's published rules and further finds that petitioner was not improperly denied an adjournment.

Neither does the court find that petitioner was improperly denied an appeal of the determination. As set forth above, in reviewing an educational institution's disciplinary determinations, the court is limited to reviewing whether respondent complied with its own published rules and was not arbitrary and capricious. Respondent's Code of Conduct requires petitioner to set forth the basis for his appeal in writing. (See, Code of Conduct, §II E(2). It is undisputed that petitioner sought an appeal on the grounds that the college did not have "enough information [about him]" to mount an adequate defense. Such is not one of the grounds for an appeal set forth in the Code, II E(1). Thus, the court finds that respondent's denial of an appeal was not inappropriate.

Lastly on procedural grounds, the court finds unavailing petitioner's claim that he was not properly informed of the Code sections for which he was suspended. Nowhere in his request for an appeal does petitioner raise this issue. As set forth above, petitioner waives such grounds for judicial review of the administrative determination where he fails to raise same at the administrative level. Hughes v. Suffolk County Department of Civil Service, supra.; Rauer v. State University of New York, supra.

Petitioner next asserts that the determination should be annulled on the basis that the penalty imposed, the two year suspension was so disproportionate to the offense that it shocks the conscience. In support of this position petitioner asserts that he never verbally threatened nor touched the other students nor intended to cause them harm. Further, petitioner's behavior was in keeping with his diagnosis. Further, contends petitioner, a week intervened between the incident and his interview with the dean's office, during which time none of the students present complained to the university, but one of their parents did. Petitioner also claims that respondent may not claim that petitioner's punishment was based partially on the prior incident in which petitioner made inquiries about obtaining a shotgun because that incident was resolved in a summary manner in which it should be viewed that the school viewed petitioner as a student adjusting to a different environment.

In opposition respondent asserts that the suspension is not shocking to the conscience and that the committee made its determination based upon the evidence of petitioner's behavior presented at the hearing. The court, concludes respondent, should therefore not disturb the committee's findings.

Generally, the court will not overturn the imposed sanction unless it finds that same is so disproportionate that it "shock's one's sense of fairness." Pell v. Board of Education, 34 N.Y.2d 222, 223 (1974). Where, as here, the sanction imposed 'was based upon the exercise of honest discretion after a full review of the operative facts, it was neither arbitrary nor capricious so as to warrant judicial intervention (citations omitted)." Coleman v. Hackley School, 251 A.D.2d 328, 328-329 (2nd Dep't 1998). See, also, Mitchell v. New York Medical College, 208 A.D.2d 929 (2nd Dep't 1994); Galiani v. Hofstra University, supra. Nothing in the record herein shocks the court's conscience given the evidence presented to the committee.

Accordingly, based upon the foregoing, the court hereby denies petitioner's application for the relief set forth in the petition and directs that the petition is dismissed.

So Ordered.

A.J.S.C.

Dated: September 10, 2008

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