

**Matter of Capasso v Pace Univ.**

2009 NY Slip Op 32642(U)

October 23, 2009

Supreme Court, New York County

Docket Number: 113362/09

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

**HON. EILEEN A. RAKOWER**

PRESENT: \_\_\_\_\_

PART 5

Justice

Capasso

- v -

Pace University

INDEX NO.

113362/09

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1, 2, 3,

4, 5, 6,

7, 8

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

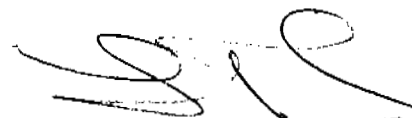
UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

Dated: \_\_\_\_\_

10/27/09



**HON. EILEEN A. RAKOWER**  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 5

-----X  
In the Matter of the Application of  
DOMINIQUE CAPASSO and BOM YI MICHELLE KIM

Index No.  
113362/09

Petitioner,

-against-

DECISION  
and ORDER

PACE UNIVERSITY; HARRIET FELDMAN, as Dean  
of the Lienhard School of Nursing of Pace University,  
KAREN HAGHENBECK, as Assistant Professor,  
Lienhard School of Nursing, Pace University; and  
DENISE POLLARD-MANIGAULT, Associate Professor,  
Lienhard School of Nursing, Pace University

Mot. Seq.  
001

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obtain entry, counsel or authorized representative must  
appear in person at the Judgment Clerk's Desk (Room  
1712).  
-----X

HON. EILEEN A. RAKOWER:

Petitioners Dominique Capasso ("Capasso") and Bom Yi Michelle Kim ("Kim") (collectively "Petitioners") bring this Article 78 Petition seeking an order annulling their dismissal from the Combined Degree Program ("CDP") Pace University's Lienhard School of Nursing ("LSN"); Directing Respondents to restore Petitioners to CDP and expunge all records of dismissal, or alternatively, to allow Petitioners to submit new dismissal appeals; and directing respondents to allow Petitioners to submit grade appeals.

CDP is an accelerated nursing program at LSN which allows students who already possess bachelors degrees to obtain a bachelors of science in nursing degree and a nursing masters degree on an accelerated basis. Pursuant to the LSN Student Handbook, CDP students who fail one nursing course are automatically dismissed from the program. In order to pass a course which contains both a "clinical" component and a "didactic" component, a student must obtain a "P" (pass) in the clinical component and a "C+" (a numerical score of 77%) or higher in the didactic component. Didactic courses are courses which utilize lecture techniques.

The present controversy arises out of Petitioners' dismissal from CDP due to their failing the didactic component of NUR 460B: Care Management Across Health Trajectories - Pediatrics ("460B") in the Spring 2009 academic semester. 460B is a 1.25 credit program, with .60 credits going toward the clinical component, and .65 credits for the didactic portion. 460B was initially part of a much larger 8 credit course known as NUR 460: Care Management Across Health Trajectories ("460"); however, after receiving complaints from students and faculty alike as to the difficulties encountered in both teaching and learning in such an expansive course, LSN decided to break 460 up into five smaller, separate courses (NUR 460A-E). This change was made effective for the Spring 2008 semester.<sup>1</sup>

Capasso received a final score of 75.25% for the didactic component of 460B, while Kim received a final score of 76.21%. On or about May 20, 2009, Petitioners were advised via e-mail from Respondent Greenberg that they were being dismissed from CDP. Both Petitioners sought to challenge their dismissals from CDP by filing academic appeals. The LSN Student Handbook contains two forms of appeal. An academic appeal is granted if and where

a student demonstrates to the satisfaction of the Appeals Committee that the student's unsatisfactory academic performance is due to (1) extraordinary and (2) non-recurring circumstances (3) and is not representative of the student's academic ability.

In addition, a student may also appeal his or her grade by following a seven-step process which entails meeting with the instructor informally to attempt to resolve the issue, and ultimately a formal written appeal to the Chair of the Department if informal attempts are unsuccessful.

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<sup>1</sup>The court rejects Petitioners' argument that 460B was not a separate course, but rather merely a component of 460. In addition to the affidavit of Respondent Feldman, which attests to LSN's decision to create five separate courses out of the former, 8 credit 460 course, Respondents include as exhibits the Spring 2009 course syllabus for 460B; a January 24, 2008 e-mail from Respondent Greenberg sent to students via LSN's "Blackboard" network apprising students of the change; and CDP Curriculum Worksheets from September 2007 and May 2008, wherein 460 is marked as a single 8 credit course in the former, while the latter contains five separate courses - 460A-E - which combine for a total of 8 credits. That Petitioners' claim to have never received notice of the changes is of no moment.

Both Petitioners made academic appeals challenging their dismissals. Petitioner Capasso argued in her appeal that recent family events adversely affected her academic performance; these included the death of a close family friend, financial difficulties experienced by her mother (a single parent), and an unexpected birth by her brother's 20 year-old girlfriend. Kim alleged in her appeal that her academic performance was hindered by immigration issues encountered by her family in California which required her assistance throughout the semester. Both appeals were denied to the extent that Petitioners' dismissals from CDP were upheld. However, Petitioners were permitted to enroll as third-year students in LSN's four-year nursing program.

Petitioners argue that Respondents improperly constrained their academic appeals by preventing them from challenging their dismissal on the grounds of their professor's (Respondent Pollard-Manigault) alleged deficiencies in teaching 460B. Capasso argues that she was dissuaded from complaining about Pollard-Manigault in her appeal by Respondent Greenberg, who advised that Petitioners' appeals had to be limited to "personal issues." Kim alleges that she did in fact complain about Pollard-Manigault's allegedly deficient teaching methods, but was advised by the Appeals Committee that such grounds would not be considered.

In addition, both Petitioners claim that they were improperly prevented from filing a grade appeal by Respondent Greenberg. Both Petitioners complain that Greenberg advised them that the grade appeal method is designed to apply to appeals involving an allegedly unfair grading process which favors certain students over others. Greenberg denies attempting to dissuade either Petitioner from filing grade appeals, and states that she followed her standard practice when approached by a seeking guidance about the grade appeal process, which was to (1) direct the student to the relevant portions of the LSN Student Handbook; (2) ask the student if he or she understands the grade appeal process as set forth therein; (3) tell the student to determine whether his or her circumstances fit within the applicable standard; and (4) tell the student that the grade appeal process is available if he or she believes that standard is met.

Petitioners commenced the instant Article 78 Petition on September 22, 2009 by order show cause. Petitioners submit an affirmation in support of their order to show cause and a verified petition. Annexed to the petition as exhibits are copies of Pace's printed and online course descriptions, listing 460 as a single course; a letter signed by 36 CDP students complaining about Pollard-Manigault's

teaching performance; the LSN Student Handbook; a 6/26/09 letter from Petitioners' counsel requesting reconsideration of Capasso's academic appeal and to request a grade appeal; and a 8/9/09 letter from Respondent Feldman to Capasso in response to the 6/26/09 letter.

Respondents submit a verified answer; affidavits from Respondents Greenberg, Haghenbeck, and Feldman; and a memorandum of law. These affidavits discuss the CDP program, Petitioners' appeals and conversations with faculty pertaining thereto, as well as LSN's inquiry into student complaints with respect to Professor Pollard-Manigault, which LSN ultimately concluded were without merit. Annexed as exhibits to the affidavits are the C.V.s of the three affiants; the LSN Student Handbook; 5/19/09 and 5/20/09 e-mails between Capasso and Greenberg regarding her attempts to resolve her grade issues with Pollard-Manigault; an anonymous handwritten note complaining about Pollard-Manigault; e-mails from two students expressing support for Pollard-Manigault; the Appeals Committee's 5/26/09 decision regarding Capasso's appeal; the 6/26/09 letter from Petitioner's counsel requesting reconsideration of Capasso's appeal; Respondent Feldman's 8/9/09 response; a 5/12/09 e-mail from Kim requesting to speak with Respondent Haghenbeck about her grade in 460B; documents pertaining to Kim's appeal and the Appeals Committee's 7/21/09 decision; the Spring 2009 syllabus for 460B; the 1/24/08 e-mail sent to CDP students regarding the unbundling of 460 into five distinct courses; and the CDP Curriculum Worksheets before and after the unbundling.

Petitioners submit a reply affirmation in response. Annexed thereto as exhibits are a 5/5/08 Curriculum Worksheet; reply affidavits from Petitioners; and an affidavit from a former classmate.

The standard of review in an Article 78 proceeding brought by a student challenging an educational institution's assessment of his or her academic performance is well settled.

Strong policy considerations militate against the intervention of courts in controversies relating to an educational institution's judgment of a student's academic performance.... For that reason, in the absence of demonstrated bad faith, arbitrariness, capriciousness, irrationality or constitutional or statutory violation,

challenges to a particular grade or academic determination relating to a substantive evaluation of a student's academic capabilities are beyond the scope of judicial review.

(*De Jong v. Kings County Hosp. Ctr.*, 2006 NY Slip Op 2443 [1st Dept. 2008] (citing *Susan M. v. New York Law School*, 76 N.Y.2d 241, 245-46 [1990] (internal quotations and additional citations omitted)).

Here, Petitioners have failed to make such a showing, and thus the court is bound to uphold Respondents' decision to dismiss them from the CDP program. The LSN Student Handbook is clear that failure in *any* class shall result in the automatic dismissal of a student from CDP. Moreover, Respondents' construction of the term "extraordinary circumstances" to mean personal circumstances which pertain solely to the appealing student (rather than the entire class) is a reasonable one. Further still, Respondents' thorough investigation into student complaints about Professor Pollard-Manigault's teaching performance (set forth in detail in Respondent Greenberg's affidavit) further evidence that Respondents have acted reasonably and in good faith. Finally, the record does not support Petitioners' assertions that they were prevented from filing grade appeals. At most (if Petitioners' affidavits are to be credited and Respondent Greenberg's discredited), Respondent Greenberg merely opined that the grade appeal process was not the appropriate vehicle for challenging their dismissals.

Wherefore it is hereby

ADJUDGED that the petition is denied and the proceeding is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied

Dated: October 23, 2009

  
 \_\_\_\_\_  
 EILEEN A. RAKOWER, J.S.C.

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