

Matter of Dixon v New York Univ.

2013 NY Slip Op 30881(U)

April 22, 2013

Supreme Court, New York County

Docket Number: 103914/12

Judge: Alexander W. Hunter Jr

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: ALEXANDER W. HUNTER ID
Justice

PART 33

Index Number : 103914/2012
DIXON, KAMEELAH
vs.
NEW YORK UNIVERSITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1-19

Answering Affidavits — Exhibits _____ No(s). 20

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

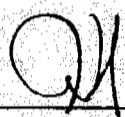
*decided in accordance with annexed memorandum
decision and judgment*

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

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).

Dated: 4/22/13



ALEXANDER W. HUNTER ID, J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33**

-----X
In the Matter of the Application of
Kameelah Dixon,

Index No.: 103914/12

Petitioner,

Decision and Judgment

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

-against-

New York University,

Respondent.
-----X

UNFILED JUDGMENT

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HON. ALEXANDER W. HUNTER, JR.

Two motions were submitted in the instant proceeding and both are decided herein.

The application by petitioner for an order, pursuant to Article 78 of the CPLR, declaring that the actions taken by respondent against petitioner were arbitrary and capricious, expunging petitioner's records, and reinstating petitioner in the New York University Steinhardt School of Culture, Education, and Human Development ("Steinhardt") Educational Leadership doctoral program, is denied. The application by respondent for an order, pursuant to CPLR 3211 (a) (5) and 7804 (f), dismissing the instant proceeding as barred by the applicable statute of limitations, or in the alternative, for an order, pursuant to CPLR 3212, granting summary judgment against petitioner, is granted, and the proceeding is dismissed as time-barred.

In 2009, petitioner was admitted to the Steinhardt Educational Leadership doctoral program and began her studies in the fall semester of that year. Steinhardt requires students to demonstrate that they have met criteria for advancement to doctoral candidacy by successfully completing an analytic memo, also known as a candidacy paper, due at the beginning of the fall semester of the second year of the doctoral program. (Astuto aff, exhibits 1, 10). Petitioner was assigned Professor Driscoll as an advisor.

Steinhardt's degree requirements are set forth in the "Steinhardt's Student Guide" and the "Doctoral Policies." (Astuto aff, exhibits 1, 6, 10, 11). Under the section titled "Student Complaint Procedure," it states that students "who seek a review of their complaints should follow the procedures outlined below within six months from the time the action occurred..." (Astuto aff, exhibit 11). The procedure provides that students may seek review of their complaints by: A) resolution at the departmental level; then B) bringing the complaint to the attention of the Associate Dean for Student Affairs and, as a final level of appeal, requesting a review of the complaint by the Associate Dean for Academic Affairs, who may then refer it to the Steinhardt Dean. (*Id.*). Under the section titled "Termination of Matriculation/Degree

Candidacy,” it states that “[m]atriculation is automatically terminated under the following circumstances... Two outcomes of fail on the departmental candidacy examination...” (Id.).

During the course of the 2010-2011 school year, petitioner attempted three times to submit an adequate candidacy paper but each time the Educational Leadership faculty committee determined that petitioner’s candidacy paper was insufficient to recommend her for advancement to doctoral candidacy. (Astuto aff, exhibits 2-4, 10). In a letter dated July 18, 2011, the Educational Leadership Program Director, Professor Terry Astuto (the “Program Director”), informed petitioner that the faculty committee was “unable to recommend advancement to candidacy and continued matriculation in the Educational Leadership Doctoral Program.” (Astuto aff, exhibit 4).

On August 4, 2011, petitioner submitted a memorandum to the Program Director asking to be readmitted to the Educational Leadership Doctoral Program. Petitioner argued, inter alia, that her failures relating to her candidacy papers were due in large part to “inadequate and/or insufficient” advisement and “lack of feedback” from her advisor, Professor Driscoll. (Astuto aff, exhibits 5, 10); (Dixon aff, exhibits K, M).

In a letter dated August 31, 2011, the Program Director reaffirmed the faculty committee’s decision to not recommend petitioner’s advancement to candidacy and continued matriculation on the basis of their review of petitioner’s candidacy paper. He advised petitioner that she could request review of this academic decision pursuant to Steinhardt’s degree requirements as set forth in the “Steinhardt’s Student Guide.” Petitioner could move directly to request review by Associate Dean Patricia Carey (the “Associate Dean”) as the Program Director and Department Chair were members of the Educational Leadership faculty committee involved in her candidacy decision. (Astuto aff, exhibits 6, 10).

On September 5, 2011, petitioner submitted materials for an appeal to the Associate Dean. In a letter dated September 7, 2011, the Steinhardt Coordinator, Nancy Hall, informed petitioner that she was “not recommended for admission to degree candidacy in [Steinhardt] and that a result of fail was recorded effective August 31, 2011” (the “final determination”). (Astuto aff, exhibits 7, 10). Petitioner’s matriculation in the doctoral program was “terminated effective immediately” as she had exhausted her two opportunities to complete the candidacy requirements pursuant to the Doctoral Policies. (Id.).

In a letter dated September 27, 2011, the Associate Dean stated that the documentation provided by petitioner was insufficient to overturn the final determination. In addition, if petitioner believed that the decisions of the Associate Dean and the Educational Leadership faculty were “unfair,” then Vice Dean Beth Weitzman (the “Vice Dean”) would be petitioner’s “next level for appeal with appropriate documentation.” (Astuto aff, exhibits 8, 10).

On October 24, 2011, petitioner met with the Associate Dean to discuss the final determination. In a letter dated November 1, 2011, the Associate Dean stated again that petitioner could appeal to the Vice Dean and, in the alternative, petitioner could apply to the master’s degree program and that her completed credit would be evaluated to determine if she had met the requirements for conferral of that degree. (Astuto aff, exhibits 9-10). Petitioner emailed the Vice Dean on November 14, 2011 to ask what she needed to do in order to proceed

with the appeal. The Vice Dean emailed petitioner back on the same day but petitioner never responded with the necessary materials to move forward with her appeal. (Astuto aff, exhibits 1, 10).

Petitioner had a six-month period within which to complete her internal appeal of the determination pursuant to Steinhardt's policies. The six-month period commenced when Steinhardt formally advised petitioner that it had terminated her matriculation as a doctoral student in the September 7, 2011 letter. In a letter dated April 30, 2012, more than two months after the close of the six-month period, petitioner's attorney contacted the Vice Dean seeking an appeal of the final determination and a transfer for petitioner to the Steinhardt Department of Teaching and Learning Urban Education doctoral program. (Chamberlin aff, exhibit 1). Subsequently, on October 1, 2012, petitioner commenced the instant proceeding by filing a verified petition.

A party must commence a special proceeding under Article 78 of the CPLR by filing a petition within four months after the administrative determination to be reviewed becomes final and binding on the aggrieved party. **See CPLR 217 (1) & 304; Matter of Best Payphones, Inc. v. Department of Info. Tech. & Telecom. of City of N.Y., 5 NY3d 30, 2005 NY Slip Op 04616 (2005); Matter of De Milio v. Borghard, 55 NY2d 216 (1982).** "A determination generally becomes binding when the aggrieved party is notified." **Matter of Village of Westbury v. Department of Transp. of State of N.Y., 75 NY2d 62, 72 (1989); see Gary v. New York Univ., 48 AD3d 235, 2008 NY Slip Op 01024 (1st Dept 2008).** Seeking reconsideration of the final determination through an administrative grievance proceeding does not toll the four-month statute of limitations. **See Matter of Lubin v. Board of Educ. of City of N.Y., 60 NY2d 974 (1983); Goonewardena v. Hunter Coll., 40 AD3d 443, 2007 NY Slip Op 04356 (1st Dept 2007).**

Steinhardt clearly communicated its policies regarding degree requirements to petitioner yet she declined to complete Steinhardt's internal appeal process within the six-month period. Regardless, the four-month statute of limitations was not tolled by petitioner's request for reconsideration of the final determination. Petitioner was informed as early as August 2011 that Steinhardt was terminating her matriculation as a doctoral student. Petitioner received notice of the final determination on or about September 7, 2011, but did not commence the instant proceeding until over a year later. Accordingly, the instant proceeding is time barred.

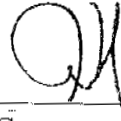
Accordingly, it is hereby,

ADJUDGED that the application by petitioner for an order, pursuant to Article 78 of the CPLR, declaring that the actions taken by respondent against petitioner were arbitrary and capricious, expunging petitioner's records, and reinstating petitioner in the Steinhardt Educational Leadership doctoral program, is denied; and it is further

ADJUDGED that the application by respondent for an order, pursuant to CPLR 3211 (a) (5) and 7804 (f), dismissing the instant proceeding as barred by the applicable statute of limitations, or in the alternative, for an order, pursuant to CPLR 3212, granting summary judgment as against petitioner, is granted, and the proceeding is dismissed as time-barred, with costs and disbursements to respondent.

Dated: April 22, 2013

ENTER:



J.S.C.

ALEXANDER W. HUNTER JR

UNFILED JUDGMENT

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