

**Sanduby v City Univ. of N.Y.**

2022 NY Slip Op 32545(U)

July 28, 2022

Supreme Court, New York County

Docket Number: Index No. 100981/2021

Judge: Laurence Love

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. LAURENCE LOVE PART 63M**

*Justice*

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LILAH SANDUBY,

Petitioner,

- v -

CITY UNIVERSITY OF NEW YORK,  
CITY COLLEGE OF NEW YORK,  
CITY COLLEGE OF NEW YORK CUNY SCHOOL OF  
MEDICINE

Respondents.

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**INDEX NO. 100981/2021**  
**MOTION DATE 10/12/2021**  
**MOTION SEQ. NO. 001**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the Petition is resolved as follows:

Petitioner, Lilah Sanduby (“Sanduby”), commenced the instant Article 78 proceeding by filing same on August 18, 2021, challenging Respondent's decision to issue a failing grade in Petitioner’s obstetrics and gynecology clerkship as an academic sanction based upon her alleged plagiarism. Respondent, the City University of New York (“CUNY”), which comprises the public university system of New York City, including the City College of New York CUNY School of Medicine (“CSOM”), cross-moves seeking an Order dismissing the Petition pursuant to CPLR §§ 3211(a)(7), 7804(f), 404(a), and 406. As a threshold matter, this matter must be dismissed as against all Respondents other than CUNY as City College of New York and CUNY School of Medicine are not individual suitable entities, *See*, N.Y. Educ. Law §§ 6202(2) and (5), 6203; *Clissuras v. City Univ. of N.Y.*, 359 F.3d 79, 81 n.2 (2d Cir. 2004) (per curiam).

In an Article 78 proceeding for judicial review of a determination of an educational institution, the standard to be applied is whether the action taken by the institution is arbitrary or capricious, or without rational basis or whether the institution has acted in good faith, *See, Tedeschi v. Wagner College*, 49 N.Y.2d 652 (1980); *Pell v. Board of Educ. Union Free Sch. Dist. No. 1*, 34 N.Y.2d 222 (1974). The arbitrary or capricious test has been said to chiefly relate to whether a particular action should have been taken, is justified or is without a foundation in fact or without a sound basis of reason. It is Petitioner's burden to prove that the challenged determination was arbitrary or capricious, made in bad faith or for an impermissible reason. *See Matter of Hendessi*, 36 Misc.3d 1241(A) (Sup. Ct. N.Y. Cty. 2012) (citing *Matter of Che Lin Tsao v. Kelly*, 28 A.D.3d 320, 321 [1<sup>st</sup> Dept. 2006]).

Academic grade determinations need only provide students with "minimal due process rights." *Hall v. Johnstone*, 209 A.D.2d 982 (4<sup>th</sup> Dept. 1994) (citing *Board of Curators of the Univ. of Missouri v. Horowitz*, 435 U.S. 78, 98 (1978)); *Matter of Sofair*, 44 N.Y.2d 475 (1978). Accordingly, the relevant inquiry in such cases is whether the academic institution substantially complied with its internal procedures. *See, Isenalume v. The City University of New York*, No. 103277/2012, 2013 N.Y. Slip Op. 33167(U) (Sup. Ct. N.Y. Cty Dec. 8, 2013).

However, "[s]trong policy considerations militate against the intervention of courts in controversies relating to an educational institution's judgment of a student's academic performance." *Matter of Susan M. v. New York Law School*, 76 N.Y.2d 241, 245 (1990).

As described in the Petition, in 2013, Sanduby enrolled in the accelerated BS/MD program of CSOM and began attending CSOM in Fall 2017. In February 2021, Sanduby enrolled in an obstetrics and gynecology clerkship at Saint Barnabas Hospital Health System, under director Dr. Olga Argeros. In March 2021, Sanduby submitted a paper to Dr. Argeros as part of the clerkship.

Dr. Argeros was concerned that the paper had been plagiarized because it did not contain endnotes. In April 2021, Sanduby and Dr. Argeros discussed the paper and Sanduby apologized and expressed regret for her sloppiness. On May 3, 2021, Dr. Argeros submitted a Faculty Report Form regarding the incident of plagiarism to City College's Academic Integrity Officer. Despite Dr. Argeros acknowledging that Sanduby's performance was at a high pass level prior to the incident of plagiarism, she recommended that Sanduby receive a failing grade for the clerkship due to the academic integrity issue. City College's Office of Academic Integrity reviewed the allegation, as required by CUNY's Academic Integrity Policy, and determined that Sanduby admitted the academic integrity violation, and would therefore receive a failing grade for the clerkship. On July 9, 2021, as part of the appeal process, Sanduby emailed Dr. Rosa Lee, CSOM's Associate Dean for Curriculum and Assessment and the Deputy Dean's designee for the Clerkship Grade Appeal Procedure, requesting to begin the appeal procedure in connection with her failing grade for the clerkship. This process required a grade clarification meeting, per CSOM's Clerkship Grade Appeal Procedure, which was satisfied by Sanduby and Dr. Argeros' April 2021 meeting. On July 15, 2021, Dr. Lee informed Sanduby via email that she had completed her review of the grade appeal and had decided to uphold the failing grade. Dr. Lee explained that her decision to uphold the failing grade was based on CSOM's Academic Integrity Policy, and that failure was a possible penalty for academic dishonesty.


Petitioner does not seek to challenge CUNY's determination that she committed plagiarism, rather she contends that CUNY's grade determination was arbitrary and capricious, and violated due process. Petitioner asserts that CSOM "failed to follow its own established policies and procedures by short-circuiting the appeal process" and that the final determination for the failing grade was not supported by the substantial evidence. In addition, Petitioner claims that

the school failed to provide her with the opportunity to fully defend herself with regard to the grade, and that she was therefore precluded from fully participating in step one of the appeal process.

Petitioner’s argument that CUNY’s decision to uphold the failing grade was arbitrary, capricious, made in bad faith or otherwise wrongful is not supported by the evidence. CUNY’s determination was rational, and therefore entitled to substantial deference. See, Matter of Susan M. v. New York Law School, 76 N.Y.2d 241, 245 (1990). Moreover, as the determination complied with both the Clerkship Grade Appeal Procedure and CUNY’s Academic Integrity Policy, it met minimal due process standards. CUNY’s Academic Integrity Policy also provides that failure is a possible sanction for academic dishonesty. Since the decision to fail Petitioner was made pursuant to that policy, it was therefore not arbitrary and capricious. The issues related to Petitioner’s Family Medicine Clerkship are not at issue in this proceeding. As such, Petitioner’s claims must fail.

ORDERED that Respondent’s cross-motion is GRANTED and the instant Petition is DENIED and DISMISSED in its entirety.

7/28/2022  
DATE

  
LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE