

<b>Matter of Olibrice v New York Univ.</b>
2023 NY Slip Op 30285(U)
January 30, 2023
Supreme Court, New York County
Docket Number: Index No. 100834/2022
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ERIKA M. EDWARDS PART 10M

Justice

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INDEX NO. 100834/2022

IN THE MATTER OF THE APPLICATION OF WITHLINE
OLIBRICE,

MOTION DATE 9/14/2022

Petitioner,

MOTION SEQ. NO. 001 and 002

- v -

NEW YORK UNIVERSITY, NYU STEINHARDT SCHOOL
OF CULTURE, EDUCATION AND HUMAN
DEVELOPMENT - DEPARTMENT OF OCCUPATIONAL
THERAPY, and KRISTIE PATTEN, in her official capacity as
VICE DEAN of ACADEMIC AFFAIRS,

DECISION + ORDER ON
MOTION

Respondents.

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Upon the foregoing documents, the court denies Petitioner Withline Olibrice's
("Petitioner") Petition to vacate, void and annul Respondents New York University's ("NYU"),
NYU Steinhardt School of Culture, Education and Human Development - Department of
Occupational Therapy's, and Kristen Patten's, in her capacity as Vice Dean of Academic Affairs
(collectively "Respondents") final determination of dismissal and reinstate Petitioner to the
Occupational Therapy Program, as well as reimbursement of tuition, other expenses and
damages. The court grants Respondents' motion to dismiss Petitioner's Petition.

In the present case, Petitioner was dismissed from NYU's Occupational Therapy
Program because her overall grade point average ("GPA") fell below the requisite minimum of
2.5 and she received less than a B in her Orthopedic Evaluation and Intervention ("Ortho") class
after she was required to retake the course. Petitioner's GPA to fell below a 2.5 after failing the
Ortho class the first time she took it. At that time, Petitioner was placed on academic probation.
To avoid dismissal from the program, Petitioner was required to retake the course, obtain at least
B in the class and raise her GPA to at least a 2.5. Upon retaking the Ortho class, Petitioner
received a C+ which was also insufficient to raise her GPA to 2.5. As such, Petitioner was
notified by the Student Progress Committee that she may either withdraw from the Occupational
Therapy Program or she will be dismissed.

Petitioner opted to appeal both her final grade and her program dismissal in two separate
appeals through NYU's appeal process. Petitioner appealed her dismissal from the program to
the Chairperson of the Department of Occupational Therapy ("Department Chairperson") and
appealed her grade to the Department of Occupational Therapy Student Appeals Committee
("Student Appeals Committee"). After Petitioner's appeal of her grade was denied by the Student
Appeals Committee, she appealed her grade to the Department Chairperson. After the
Department Chairperson denied both appeals, Petitioner elevated her appeals to the Vice Dean of

Academic Affairs who also denied both of Petitioner's appeals. Upon exhausting NYU's appeal process, Petitioner initiated this action.

Petitioner argues in substance that Respondents' final decisions not to reconsider her grade of C+ after retaking the Ortho class and not to reconsider their decision to dismiss Petitioner from the Occupational Therapy program for failing to obtain at least a B in retaking the course and failing to maintain the minimum GPA of 2.5 were arbitrary and capricious. Specifically, Petitioner contends that she had a documented history of diagnosed mental health issues that required her to take prescription medications. Additionally, during the course of her studies, she was diagnosed with dyslexia. Petitioner argues in substance that under the American Disabilities Act ("ADA"), her mental health illness and dyslexia warranted Respondents to make reasonable accommodations to assist her in their academic program. Additionally, Petitioner contends that while retaking the Ortho class and shortly prior to taking her final exam, she was diagnosed with a potentially cancerous tumor on her thyroid that required surgery. Petitioner argues in substance that, as a person with a learning disability, the increased stress caused by her medical conditions further impacted her ability to perform better on her final exam. Petitioner argues in substance that Respondents failed to take into consideration her extenuating circumstances when deciding the appeals of her final grade of C+ and her dismissal from the program.

Respondents oppose the Verified Petition and move to dismiss Petitioner's Verified Petition. Respondents argue in substance that their decisions to deny Petitioner's appeals of her grade and her dismissal from the Occupational Therapy Program were neither arbitrary nor capricious. Respondents argue in substance that they made multiple resources available to Petitioner to assist with her academic career based on her learning disability and mental health condition. Additionally, Respondents argue in substance that upon initially failing the Ortho class, Respondents placed Petitioner on academic probation and advised her that she must retake the class, achieve a minimum grade of a B in the class and maintain a minimum GPA of 2.5 to remain in the program. Respondents contend that Petitioner failed to meet the requirements because she received a final grade of C+ after retaking the course and maintained a GPA of 2.463. Respondents further contend that they advised Petitioner of the methods in which she could appeal her grade in Ortho and appeal her dismissal from the program. Upon review of Petitioner's full appeals, Respondents' final determinations confirmed Petitioner's grade of C+ and her dismissal. Respondents argue in substance that in Article 78 proceedings against universities, courts defer to the institution's academic judgment as to student performance and qualifications. Respondents further argue in substance that they took all necessary steps to ensure that their decisions to not reconsider Petitioner's grade in Ortho and ultimately dismiss her from the program followed the appropriate process and was based on the controlling academic policy.

There are strong policy considerations 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 NY2d 241, 245 [1990]). Although the decisions of academic institutions are not immune from judicial scrutiny, reviews should be restricted to special proceedings under CPLR Article 78, and only to determine whether the decision was arbitrary, capricious, irrational or in bad faith (*see Maas v Cornell Univ.*, 94 NY2d 87, 92 [1992]). In the absence of 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 (*Susan M.*, 76 NY2d at 246; *see also Matter of Olsson v Board of Higher Educ. of City of N.Y.*, 49 NY2d 408, 413-414 [1980]).

Courts typically decline to become involved in the evaluation of academic performance finding that the policy that the administrative decisions of educational institutions involve the exercise of the professional judgment that the institutions are better suited to make (*Maas*, 94 NY2d at 92; *see also Olsson*, 49 NY2d at 413). Since these academic determinations rely on the subjective professional judgment of trained educators, the courts properly exercise restraint in applying traditional legal rules to disputes within the academic community (*see Olson*, 49 NY2d at 413).

In the present case, the court finds that Respondents' process in conducting their appeals and their ultimate determinations to not reconsider Petitioner's grade of C+ in her Ortho class and their decision to dismiss Petitioner from the Occupational Therapy Program fell within the scope of their policies and procedures. Additionally, the court finds that Respondents' actions were neither arbitrary nor capricious as Respondent failed to meet the mandatory requirements to remain in the program.

Therefore, the court denies Petitioner's Verified Petition seeking to vacate, void and annul Respondents' final determination of dismissal, to reinstate her in their Occupational Therapy Program, and to reimburse her tuition, expenses, and damages. Additionally, the court grants Respondents' motion to dismiss the Petition.

To the extent not addressed herein, the court considered all arguments and nonetheless grants Respondents' motion to dismiss Petitioner's Petition.

As such, it is hereby

ORDERED that the court grants Respondents New York University's, NYU Steinhardt School of Culture, Education and Human Development - Department of Occupational Therapy's, and Kristen Patten's, in her capacity as Vice Dean of Academic Affairs motion to dismiss the Verified Petition; and it is further

ADJUDGED that the court denies Petitioner Withline Olibrice's Verified Petition and dismisses it without costs to any party.

This constitutes the decision and order of the court.

1/30/2023  
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

APPLICATION:

CHECK IF APPROPRIATE:

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

*Erika M. Edwards*  
 ERIKA M. EDWARDS, J.S.C.  
 HON. ERIKA M. EDWARDS  
 J.S.C.