

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0369**

Mehdijaffer Allyakber Mulla,
Relator,

vs.

University of Minnesota,
Respondent.

**Filed January 10, 2022
Affirmed
Halbrooks, Judge***

University of Minnesota

Sydney Tombers, Travis W. Kowitz, Kowitz Law PLLC, Lindstrom, Minnesota (for relator)

Douglas R. Peterson, General Counsel, Carrie Ryan Gallia, Senior Associate Counsel, Office of the General Counsel of the University of Minnesota, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and Halbrooks, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Relator challenges his dismissal from medical school, arguing that he was deprived of procedural and substantive due process. Because we conclude that relator was afforded both procedural and substantive due process, we affirm.

FACTS

Relator Mehdijaffer Allyakber Mulla enrolled in the University of Minnesota Medical School (Medical School) in the fall of 2016. Due to fellow students' complaints of sexual harassment, the University's Office of Equal Opportunity and Affirmative Action¹ (EOAA) conducted an investigation. The EOAA issued its decision in March 2017, concluding that Mulla had engaged in sexual harassment as defined by the University.² The EOAA determined that Mulla violated provisions of the student conduct code relating to sexual misconduct, violation of university rules, and harm to person. The University's Student Sexual Misconduct Subcommittee subsequently held a hearing and suspended Mulla from the University through August 6, 2018. Mulla appealed to the provost, who affirmed the decision.

¹ The EOAA is the University body tasked with conducting Title IX investigations and determining if students have engaged in conduct that violated University policy.

² This definition includes conduct of a sexual nature that is unwelcome and has the effect of creating a hostile environment.

The Medical School's Committee on Student Scholastic Standing (the Committee)³ conducted a separate hearing in December 2017. Mulla, his future faculty advisor, and two witnesses attended the hearing. After deliberation, the Committee voted 5-4 not to dismiss Mulla from the Medical School. But the Committee extended Mulla's suspension to August 2019 and voted unanimously to require Mulla to obtain treatment focused on physician boundaries and sexual and non-sexual violations.

In July 2019, Mulla petitioned to be reinstated to the Medical School for the fall semester. On a 5-3 vote, the Committee reinstated Mulla for the fall 2019 semester. But the Committee was unanimous in its vote to make Mulla's readmission subject to the condition that "any further professionalism concerns will result in immediate suspension and dismissal hearing."

In November 2019, Michael Kim, M.D., the Assistant Dean for Student Affairs at the Medical School, informed Mulla that several students had come forward with concerns that caused Dr. Kim to believe that Mulla had "exhibited unprofessional behavior." Dr. Kim listed these concerns as "inappropriate touching, asking inappropriate personal questions, and potential stalking." Dr. Kim placed Mulla on suspension as of November 14, 2019, citing Mulla's readmission condition that any further professionalism concerns would result in immediate suspension and dismissal hearing. Later that month, several female students and Dr. Kim reported the behavioral incidents to the EOAA, which opened

³ The Committee is a Medical School scholastic standing committee "responsible for monitoring and addressing student deficiencies in meeting academic, technical, and professional standards, and, if necessary, deciding whether dismissal is appropriate."

another investigation. Mulla received initial notice of the allegations soon after the EOAA received them in November, and Mulla was interviewed twice during the investigation regarding specific allegations.

Mulla retained legal counsel and requested a hearing in late 2019, citing due-process concerns. In response, the University indicated that it would await the results of the then-pending EOAA investigation. The EOAA issued its report on June 1, 2020, concluding that Mulla's conduct had not violated the University's sexual-misconduct policy.

But the EOAA made several findings of fact related to Mulla's use of social media: that Mulla sent unwelcome social media messages to five of the complainants; that these messages "largely related to questions about school, study techniques, and academic interests"; that he sent messages late at night; that, although none of the complainants told him to stop, they took other means of indicating the messages were unwelcome—including removing him as a "friend" on social media, blocking him, not responding, and other "social cues"; and that the complainants were uncomfortable with the "frequency and timing" of the messages and perceived the messages to be different in nature to messages they received from other students.

The EOAA also made factual findings about Mulla's in-person interactions with many of the complainants. He had several interactions with one female student—including asking her if she had a boyfriend, asking where she lived, commenting on her clothing, and asking about her off-campus activities—that led this student to stop attending lectures in order to avoid him. He spoke to another female student many times even though she had put in headphones and said that she needed to work. That student stopped attending events

on campus in order to avoid further in-person interactions with Mulla. Another female student stopped studying alone in a shared Medical School study space due to concerns about interacting with Mulla after he entered study rooms she was using without knocking. And the remaining complainants all had in-person interactions with Mulla that made them uncomfortable.

The Committee sent Mulla a letter on July 10 requesting he appear for a dismissal hearing on July 23. The letter stated its concern that the EOAA made several findings of fact that raised professionalism concerns. The purpose of the hearing was to discuss the professionalism concerns in light of Mulla's conditional reinstatement. The University's general counsel confirmed later that month that the hearing would be focused on "professionalism, not sexual misconduct," and indicated that the professionalism concerns were "not limited to the concerns raised in the 2020 EOAA report." The general counsel further indicated that Committee members were "also concerned about a potential pattern of behavior." In response to Mulla's desire to cross-examine the EOAA complainants, the general counsel advised him that the Committee could not compel individuals to appear under Committee policy.

At the dismissal hearing, the Committee chair reiterated that the dismissal hearing was for professionalism violations. Mulla did not challenge any member of the Committee for bias when provided the opportunity. Mulla appeared with counsel and read a lengthy personal statement. He called one witness, questioned both witnesses called by the Medical School's representative, and waived the opportunity to call an additional witness.

The Committee issued its decision on August 18, 2020. The Committee determined that Mulla’s “repetitive, unwelcome interactions did not reflect the professionalism that is expected of a future physician.” By a 5-2 vote, the Committee determined that his conduct constituted a professionalism violation. By a separate 5-2 vote, the Committee voted to dismiss Mulla from the Medical School. It specifically noted that it considered the dismissal to be academic, as the decision was not disciplinary but instead was “based on [Mulla’s] inability to demonstrate competencies expected and required of a physician.”⁴ The Committee advised Mulla that he could request a re-hearing in front of the Committee on the grounds of newly discovered evidence or file a student academic complaint.

⁴ These competencies consisted of the following:

Demonstrate insight and understanding about emotions and human responses to emotions that allow one to develop and manage interpersonal interactions . . .

Demonstrate compassion, integrity, and respect for others . . .

Demonstrate trustworthiness that makes colleagues feel secure when one is responsible for the care of patients . . .

Work effectively with others as a member of a health care team or other professional group, cultivating mutual respect, dignity, diversity, ethical integrity, and trust . . .

Develop the ability to use self-awareness of knowledge, skills, and emotions to engage in appropriate help-seeking behaviors

These competencies were selected from the competencies the Medical School requires for graduation posted on the Medical School website.

Instead, Mulla filed an appeal to the provost, asserting that the Committee’s decision was disciplinary in nature.⁵ The provost declined to hear the appeal, as the proper venue to challenge the Committee’s decision was through an academic complaint. Mulla filed a student academic complaint in August 2020, asserting that the Committee violated University policy by relying on a Medical School policy that was not enacted until 2020 to measure conduct that occurred in the fall of 2019 when the policy in effect at the time would not have resulted in his dismissal because it did not include a list of competency requirements for graduation.

A panel consisting of two Medical School faculty members and a student held a hearing on Mulla’s student academic complaint on November 23, 2020. The sole issue before the panel was whether the Committee had “violated the policy by applying the [Committee] policy in effect in 2020 rather than the [Committee] policy in effect in 2016.” Mulla was represented by counsel and had the opportunity to make an opening argument, closing statement, to call and question witnesses, and to provide a rebuttal at the conclusion of the hearing.

The panel found that the Committee correctly applied the 2020 Medical School policy to Mulla’s 2019 conduct and rejected as untimely additional due-process arguments raised by Mulla’s counsel at the hearing. The panel noted that the outcome would have

⁵ Mulla recalls a phone conversation with the Committee chair on the same day the Committee issued its decision wherein the chair stated an appeal to the provost was appropriate because the dismissal was disciplinary. The Committee chair testified during the hearing on Mulla’s student academic complaint that she did not recall stating the decision was disciplinary, but rather that it was based on conduct instead of academic performance.

been the same even if the 2016 policy applied because both versions of the policy incorporated the competencies upon which the Committee based its decision. Mark Rosenberg, M.D., the Vice Dean for Education and Academic Affairs at the Medical School, formally adopted the panel's recommendation in its entirety and denied Mulla's complaint on December 17, 2020. The Vice Dean also informed Mulla of his right to appeal to Jakub Tolar, M.D., Ph.D., Dean of the Medical School.

Mulla appealed the Vice Dean's decision, and the Dean issued his decision on January 22, 2021. The Dean reiterated that the sole issue on appeal was whether Mulla had been afforded due process. The Dean noted that Mulla was provided the opportunity to be represented by counsel and had a meaningful opportunity to present his case, including the ability to present live witnesses, to introduce exhibits, and to cross-examine witnesses. The Dean rejected Mulla's argument that he should have been provided the process due for a disciplinary sanction, concluding that the Committee's decision was "based on academic judgment" that Mulla had not demonstrated "the competencies expected of a physician." The Dean further rejected Mulla's contention that the panel unduly restricted the scope of his appeal because Mulla "chose to assert a narrow, single issue in his academic complaint." The Dean also noted that neither the academic nor the disciplinary processes would afford Mulla the relief he sought—a re-evaluation of the Committee's judgment. The Dean determined that Mulla had been afforded due process for an academic dismissal from the Medical School.

Mulla now appeals by writ of certiorari pursuant to Minn. Stat. § 606.01 (2020).

DECISION

Mulla contends that the University's decision deprived him of due process. As a student at a public university, he is entitled to due-process protections. *See Shuman v. Univ. of Minn. L. Sch.*, 451 N.W.2d 71, 74 (Minn. App. 1990) ("The due process clause protects a student's interest in attending a public university"), *rev. denied* (Minn. Mar. 16, 1990). We review de novo "the procedural due process afforded a party." *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *rev. denied* (Minn. July 28, 1999). Similarly, we review de novo whether "a government action violates substantive due process." *State v. Holloway*, 916 N.W.2d 338, 344 (Minn. 2018).

Here, we apply de novo review in the context of a certiorari appeal. We only review the University's "administrative and quasi-judicial decisions" by writ of certiorari. *Williams v. Smith*, 820 N.W.2d 807, 813 (Minn. 2012). This review is "both limited and deferential." *Id.* We are "limited to an inspection of the record" and confined "to questions affecting the regularity of the proceedings." *Chronopoulos v. Univ. of Minn.*, 520 N.W.2d 437, 441 (Minn. App. 1994), *rev. denied* (Minn. Oct. 27, 1994). We may intervene only if such a decision is "made under an erroneous theory of law," is "arbitrary, oppressive, unreasonable, [or] fraudulent," or is "without any evidence to support it." *Id.* Under this standard, we are not persuaded that the Medical School's decision to dismiss Mulla on academic grounds violated his procedural or substantive due-process rights.

I. Mulla was afforded the procedural due process required for an academic dismissal.

The crux of Mulla’s procedural due-process argument is based on the differences between an academic and a disciplinary dismissal. He contends that his dismissal was disciplinary in nature.

We apply “different protections for disciplinary and academic expulsions.” *Abbariao v. Hamline Univ. Sch. of L.*, 258 N.W.2d 108, 112 (Minn. 1977). “Academic judgments are afforded great discretion.” *Chronopoulos*, 520 N.W.2d at 441. We therefore defer “to the decisions of academic institutions on the academic achievements or failures of their students.” *Ross v. Univ. of Minn.*, 439 N.W.2d 28, 33 (Minn. App. 1989), *rev. denied* (Minn. July 12, 1989). Accordingly, “in the case of academic dismissal an educational institution need not provide a hearing to a student in order to fulfill procedural due-process requirements.” *Id.* at 34. Instead, a student need only “be aware of the faculty’s dissatisfaction with his performance and the decision to dismiss must have been careful and deliberate.” *Id.*

On the other hand, “[e]xpulsion for misconduct triggers a panoply of safeguards designed to ensure the fairness of fact finding by the university.” *Abbariao*, 258 N.W.2d at 112. These safeguards include “notice and some opportunity to be heard.” *Shuman*, 451 N.W.2d at 74; *see also Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 85 (1978) (stating that due process in the case of disciplinary suspensions requires “the student be given oral or written notice of the charges against him and, . . . an explanation of the evidence . . . and an opportunity to present his side of the story.”) (quotation omitted).

Mulla contends that he was not afforded these disciplinary due-process protections because the University improperly classified his dismissal as academic. We are not persuaded.

The extensive record in this case demonstrates that the Committee’s decision was academic in nature. Mulla received notice on July 10 that the dismissal hearing would be focused on “professionalism concerns” arising from the 2020 EOAA report.⁶ The University’s general counsel reiterated a few days later that the hearing would not be focused on “sexual misconduct,” but rather on the professionalism concerns arising out of a “potential pattern of behavior.” Mulla was thus aware of the Medical School’s dissatisfaction with his professional performance. And he was clearly advised when he was allowed to resume his studies in 2019 that any further professionalism concerns would result in an immediate suspension and a dismissal hearing.

The Committee’s decision letter squarely frames its decision within academic considerations, and the record supports that characterization of the dismissal. The dismissal was based on the Committee’s academic judgment that Mulla had not demonstrated the professional competencies⁷ “expected and required of a physician.” This

⁶ Mulla contends that because this notice cited “Non-Academic Reasons” for a student’s referral to the Committee, the hearing cannot be considered academic in nature. However, the Committee may apply outcomes that include purely academic sanctions for conduct falling within any “Non-Academic Reasons” for referral. Because Committee policies contemplate that academic sanctions are appropriate for referrals labeled as “Non-Academic,” Mulla’s argument to the contrary is unavailing.

⁷ These competencies are incorporated into the academic framework of the Medical School. They are provided to students at orientation and are contained on the Medical School’s website. And Dr. Kim stated that each course is designed to further each student’s progress towards developing and refining these competencies.

decision was the result of a pattern of Mulla's unprofessional conduct over the years of his enrollment in the Medical School, which demonstrated that he continued to be unable to recognize personal and professional boundaries and lacked self-awareness of this professional deficiency such that it could be corrected. The Committee made plain through its decision-making process that it did not seek to discipline Mulla for his conduct, but instead considered dismissal to be an academic outcome based on a failure to establish the basic professional competencies that are expected of all medical students. We decline the invitation to disturb the Committee's careful and deliberative exercise of its academic judgment and conclude that Mulla was afforded the due-process protections required for an academic dismissal.

Even assuming that Mulla's dismissal was disciplinary in nature, he would not be entitled to relief because he was afforded the due-process protections required for a disciplinary dismissal. As stated previously, these protections include "notice and some opportunity to be heard." *Shuman*, 451 N.W.2d at 74. Mulla was provided written notice on July 10 that the Committee found the findings of fact from the 2020 EOAA report to be concerning. The University provided him that report, as well as the 2017 EOAA report, and explained that the two reports demonstrated a pattern of unprofessional behavior. The Committee held a hearing that Mulla attended. He was represented by counsel, heard the case against him, gave a statement in his own defense, and called and questioned witnesses.⁸ Mulla was then provided another hearing on the merits of his academic

⁸ Mulla also contends that he was deprived of a meaningful opportunity to be heard at the Committee hearing because his counsel was prevented from fully questioning the

complaint. Therefore, even if his dismissal was disciplinary, Mulla was afforded the due process required for a disciplinary dismissal.⁹

II. Mulla was not deprived of substantive due process.

To establish a violation of his substantive due-process rights, Mulla must show that the University “acted arbitrarily in dismissing him or that the dismissal was such a substantial departure from accepted academic norms as to demonstrate that the . . . committee . . . did not actually exercise professional judgment.” *Ross*, 439 N.W.2d at 34 (quotation omitted). He has not done so.

Mulla’s primary argument concerning substantive due process is that the Committee was irreversibly biased against him and that this bias tainted the remaining appeals. Mulla is entitled to “a decision by an unbiased decisionmaker.” *Buchwald v. Univ. of Minn.*, 573 N.W.2d 723, 727 (Minn. App. 1998), *rev. denied* (Minn. Apr. 14, 1998). But “[t]here is a presumption of administrative regularity, and the party claiming otherwise has the burden of proving a decision was reached improperly.” *Id.* Mulla contends that the involvement

witnesses. This argument is unavailing because we have determined his dismissal was academic, for which he was not entitled to a hearing. The conduct of the hearing he was provided thus does not bear on our ultimate conclusion that he was afforded the requisite due process.

⁹ Mulla makes a final procedural due-process argument in that the University failed to follow its own prescribed procedure for professionalism violations by first recommending his matter to a professionalism subcommittee. This argument was raised for the first time in his reply brief. We therefore need not consider whether this unduly deprived him of due process. See *Wood v. Diamonds Sports Bar & Grill, Inc.*, 654 N.W.2d 704, 707 (Minn. App. 2002) (stating that “[i]f an argument is raised in a reply brief but not raised in an appellant’s main brief, and it exceeds the scope of the respondent’s brief, it is not properly before [the court of appeals]”), *rev. denied* (Minn. Feb. 26, 2003).

of a student member of the Committee in the 2020 EOAA investigation and as a witness in the dismissal hearing “negatively influenced and shaped the perspectives” of the other students involved and the members of the Committee. But that student member recused herself from the Committee’s deliberations. And Mulla was given the opportunity to challenge any member of the Committee for bias prior to the hearing. He chose not to. Moreover, Mulla has not provided evidence beyond her membership on the Committee as to why the student’s alleged bias infected the entire Committee, hearing, and subsequent proceedings. Mulla has not met his burden to overcome the presumption of administrative regularity sufficient to establish a substantive due-process violation.

Mulla’s next argument is that the decision to dismiss him from the Medical School was inherently arbitrary and a departure from academic norms because the EOAA determined that he did not violate University policies prohibiting sexual- or gender-based harassment. We disagree. The Committee’s decision reflected its professional judgment that the Medical School demands higher standards of professionalism than simply following the University’s policies that prohibit harassment.

The Committee did not dismiss Mulla because it elected to override the EOAA’s conclusions and find that Mulla committed sexual- or gender-based harassment. The Committee was concerned about the EOAA’s factual findings regarding Mulla’s interactions with fellow students as indicative of a fatal failing of the professionalism required of all medical students. The Committee exercised its professional judgment that Mulla’s conduct in 2019, combined with his previous professional failings in committing sexual harassment, constituted a pattern of unprofessional behavior that demonstrated that

he lacked several competencies required by the Medical School for graduation. This is an academic judgment which the Committee is “afforded great discretion” to make, and which was not arbitrarily made. *Chronopoulos*, 520 N.W.2d at 441.

Affirmed.