

**Matter of Boatemaa v Pace Univ.**

2017 NY Slip Op 31042(U)

May 15, 2017

Supreme Court, New York County

Docket Number: 158011/2016

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 32

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In the Matter of the Application of

YAA BOATEMAA,

Petitioner,

Index No. 158011/2016

Motion Seq: 001

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

-against-

DECISION & ORDER  
ARLENE P. BLUTH, JSC

PACE UNIVERSITY,

Respondent.

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The petition brought by petitioner for, *inter alia*, reinstatement to respondent's doctoral nursing program is denied and this proceeding is dismissed.

**Background**

Petitioner claims that she suffered disparate treatment in two courses, Nursing 830 and 840, because of her race and national origin; petitioner states she is from Ghana. Petitioner insists that the discrimination she faced made it impossible for her to be successful in these two courses. Petitioner contends that she was forced to work alone despite every other member of the class working in a group to complete certain assignments. Petitioner says she handed in all of her class assignments and disputes the failing grades she received at the end of the spring semester in 2016.

In its answer, respondent observes that students in this program must achieve a final grade of B or higher in order to pass a course and any grade below a B is considered failing.

Respondent maintains that two failed courses results in an automatic dismissal from the doctoral program. Respondent argues that petitioner failed two courses (Nursing 830 and 840) and that she failed to comply with the procedure to contest her grades.

Respondent argues that petitioner failed these courses for purely academic reasons. Respondent observes that for Nursing 840, petitioner was removed from her group because she failed to respond to her group members' efforts to contact her. The professor for Nursing 840, Dr. Keefer, tried to contact her to discuss her lack of participation but claims petitioner did not respond. The professor for Nursing 830, Dr. Sonenberg, claims that petitioner failed to turn in a major assignment and that petitioner was not participating in group assignments (apparently, petitioner was in the same group for both courses).

Respondent insists that both course instructors informed the program director about their concerns. Petitioner's group members continued to lodge complaints about her participation throughout February and March 2016. Eventually, both professors decided to remove petitioner from the groups in their respective classes. On March 2, 2016, Dr. Keefer informed petitioner that she could do an individual project in place of her group presentation and claims he offered her a two week extension (until March 11) to complete this task. Respondent contends that petitioner did not respond to Dr. Keefer's email until March 10 (the night before the assignment was due) where she stated that she would discuss the assignment with Dr. Keefer on March 11 (the day it was due). Dr. Keefer claims petitioner did not offer a presentation on March 11 and received a zero for this task.

Dr. Keefer contends that petitioner followed a similar pattern for the next assignment—she waited until the day an assignment was due to reach out to her classmates to complete an

assignment involving mentoring other students. Dr. Keefer insists he was informed by one of petitioner's classmates that contrary to petitioner's assertion, petitioner had not mentored her. Dr. Keefer notes that he gave petitioner a 43/65 (66%) for this assignment, a grade he considers lenient. Dr. Keefer details petitioner's performance on the rest of the coursework (*see* Keefer aff ¶¶ 31-33) before stating that she ultimately earned a 55 percent for the course— a failing grade.

Dr. Sonenberg contends that she met with petitioner on February 26, 2016 to discuss petitioner's lack of communication with her group members for Nursing 830. Dr. Sonenberg claims that she received further communication regarding petitioner's lack of group participation in March 2016 and eventually kicked her out of the group. Dr. Sonenberg allowed petitioner to do an individual project, which Dr. Sonenberg found was unsatisfactory. Dr. Sonenberg details the rest of petitioner's performance in Nursing 830 (*see* Sonenberg aff ¶¶ 15-18) and notes that petitioner earned a grade of 69 for the course— another failing grade. Dr. Sonenberg stresses that she did not discriminate against petitioner and observes that other students in the class, many of whom were from African countries, performed very well.

### **Discussion**

In an article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to

the facts” (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

“Courts have repeatedly declined to become involved in the evaluation of academic performance, reflecting the policy that the administrative decisions of educational institutions involve the exercise of highly specialized professional judgment that these institutions are, for the most part, better suited to make” (*Keles v Trustees of Columbia Univ. in City of New York*, 74 AD3d 435, 435, 903 NYS2d 18 [1st Dept 2010] [internal quotations and citations omitted]).

The Court finds that respondent’s decision to dismiss petitioner from the doctoral program after she failed Nursing 830 and 840 was neither arbitrary nor capricious. The record before this Court indicates that petitioner was offered every opportunity to succeed but petitioner chose not to embrace the opportunities afforded to her. The documents submitted do not evidence any basis upon which this Court can vacate respondent’s decision. In fact, on multiple occasions petitioner waited until right before an assignment was due before doing anything about it. In one instance, she told Dr. Keefer she would ‘discuss’ a upcoming presentation with him, *the day before the presentation was due*, despite the fact that the professor had already given her an extension (Keefer aff ¶ 23).

The email correspondence about this presentation, attached as exhibit 10, shows that Dr. Keefer emailed petitioner on March 8 to check-in with petitioner and noted that her assignment was due that Friday, March 11 (Keefer aff, exh 10). Dr. Keefer noted that it would be difficult for petitioner to pass the course given her lack of communication and related work (*id.*). Petitioner waited another two days before responding on March 10– the night before the presentation was due (*id.*). Petitioner then asked for another extension the day after the class (on March 12), but

Dr. Keefer refused (*id.*). The Court is unable to find arbitrary or capricious conduct where a professor gave a student an extension after she failed to work effectively with her group and then followed up with the student to check her progress. Dr. Keefer afforded petitioner multiple opportunities to pass this assignment and, instead of simply doing the presentation, petitioner asked for another extension the day after it was due.

Critically, the Court notes that both of these courses were focused on group teamwork. Achieving success in a group requires effective communication by all group members and, here, petitioner's failure to respond caused her group mates to make so many complaints that petitioner was removed from her group in *both* classes. Petitioner was not unfairly excluded from these groups; her conduct forced the professors to take action. The affidavit of one of her group mates, Mary Ashong, is particularly illustrative of petitioner's conduct. Ms. Ashong asserts that petitioner refused to communicate with the group and made it very difficult to integrate petitioner's work into the group work product (Ashong aff ¶ 5).

Ms. Ashong also observes that nearly all the students in the doctoral program for the 2015-16 year were black and nearly every student was from another country (*id.* ¶ 11). Ms. Ashong further says that she, like petitioner, is both black and from Ghana and disputes petitioner's claims of discrimination (*id.* ¶ 10). Ms. Ashong contends she received a grade of A in both Nursing 830 and 840 (*id.* ¶ 16). In fact, the professors from these courses observe that every other student, besides petitioner, passed these courses with an A or a B (Sonenberg aff ¶ 21; Keefer aff ¶ 35). Dr. Keefer adds that the two highest grades in his class were earned by students from Africa, including one student from Ghana (Keefer aff ¶ 35). There is nothing more

than speculation offered by petitioner in support of her contention that she was dismissed from the doctoral program because of her race or her national origin.

Whatever the reason for petitioner's failure to participate in her group work, respondent established that petitioner failed the two courses because she failed to meet the academic requirements. The evidence submitted demonstrates that the professors in both courses afforded petitioner an opportunity to do individual work but petitioner did not supply satisfactory work. This Court will not scrutinize the grade a student receives especially where, as here, petitioner failed to show any evidence that she was unfairly treated.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied in its entirety and this proceeding is dismissed and the clerk is directed to enter judgment for respondent.

This is the Decision and Order of the Court.

**Dated: May 15, 2017**  
**New York, New York**



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ARLENE P. BLUTH, JSC