SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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SAI BONDALAPATI,

Petitioner,

- v -

COLUMBIA UNIVERSITY, COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, JAMES VALENTINI,

Respondents.

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INDEX NO. 159034/2016

MOTION DATE _____

MOTION SEQ. NO. 1, 2

DECISION, ORDER AND JUDGMENT

The following e-filed documents, listed by NYSCEF document numbers 1-31 were read on this petition CPLR article 78 and motion to dismiss.

HON. BARBARA JAFFE:

By notice of petition and verified petition, petitioner brings this "hybrid" CPLR article 78 proceeding challenging respondents' decision affirming his suspension, seeking a declaration that respondents acted arbitrarily and capriciously and abused their discretion in so doing, annulling the final decision, directing that they remove the suspension from his official student record, enjoining them from continuing to publish defamatory statements, and awarding him monetary damages, attorney fees and costs. In lieu of answering, respondents move for an order dismissing the proceeding.

I. PETITION

At the time in question, petitioner was a sophomore at Columbia College, having transferred there from the University of Virginia (UVA). He had declared his major as biophysics, and intended to go to medical school after graduation. During the spring 2016 semester, he was enrolled in a general physiology course, during which he took a test. Upset with his grade, and believing that the professor had erred, he sought a meeting with her to review it and obtain assistance in preparing for the final examination. In response to petitioner's request, the professor met with him on or about February 24, 2015, after which, pursuant to the professor's instruction, he submitted to her a written regrade request. Although the professor had increased petitioner's score upon re-grading his test, petitioner had additional questions about it, and wanted to review another test with her. (NYSCEF 1).

According to petitioner, in anticipation of his meeting with the professor, he marked his test booklet with black ink to remind himself of the topics for discussion, and while he waited to see her, he reviewed it and took a green pen from a nearby desk to further annotate it, conduct which was consonant with re-grading procedures he had followed at UVA. (NYSCEF 3). At this second meeting with the professor, petitioner reviewed only the second test with her, and left with her the first test booklet that she had regraded, and to which he added the aforesaid markings. (*Id.*).

By emailed letter dated April 18, 2016, petitioner was informed that the professor had lodged an allegation of academic dishonesty against him with respondents' Student Conduct and Community Standards Committee (Committee), and that a Dean's Discipline hearing was scheduled for April 26 at 3 pm to discuss the professor's allegation that he had forged a test booklet for regrading. In the letter, he is informed that he may submit, online or at the hearing, a

written statement encompassing his "perspective on the incident," and that a "full description of the incident is available for [his] review" upon scheduling an appointment to do so. Attached to the letter is a summary of the process (NYSCEF 5), and advice that he could contact his Advising Dean/Advisor with any questions about it. (NYSCEF 4).

Pursuant to the pertinent standards, two hearing officers from the Committee preside and the student's Advising Dean may attend in a "resource" capacity. However, "[w]itnesses may not directly participate in the disciplinary process." Rather, a witness may submit a written account "as it directly relates to the incident." (NYSCEF 5, 1).

At the hearing, petitioner read from a prepared statement (NYSCEF 30 "Corrected Record," at 000024) and answered questions posed by the hearing officers. He denied having forged the test booklet, harboring any intent to deceive the professor as to the marks he had entered into the booklet, which he claimed were consonant with the procedures he had followed at UVA, and having submitted the first test booklet for a second re-grading. He was told that the professor would be questioned after the hearing, out of his presence. (NYSCEF 1).

By letter dated May 3, 2016, petitioner was advised that upon careful consideration of all of the information available at the time of the hearing and through the investigative process, it was decided that the preponderance of the evidence, including his position that it was a "misunderstanding" and that the markings on the examination were not made with the intent to deceive the professor, weighed in favor of finding that petitioner should be held responsible for submitting a forged test booklet for re-grading, and that the hearing officers could not reconcile his explanation with his use of the green pen, the color used by the professor to grade her examinations, and the nature of the markings. The penalty therein imposed was a suspension from the College, effective May 18, 2016 until December 26, 2016, with one year of

Disciplinary Probation thereafter upon re-enrollment. (NYSCEF 6). The letter was placed in petitioner's student file with a notation indicating that the sanction was placed in his transcript. As a result of the sanction, petitioner's internship was revoked, he was banned from another professor's lab, and he lost a teaching assistant position. (NYSCEF 1).

On or about May 3, 2016, petitioner requested an appeal of the decision on the grounds of new evidence, procedural issues at the hearing, and the severity of the punishment. (NYSCEF 7). By emailed letter dated June 27, 2016, the Dean of the College upheld the determination of the Committee and rejected petitioner's contention that a review of the file and of the markings in the test booklet would demonstrate that they were "distinguishably" his, thereby proving that he had harbored no intent to deceive. Rather, the Dean reviewed the file and decision and did not consider it new evidence that would affect the outcome. Petitioner's contention that he was deprived of his rights to due process was rejected, as the Dean observed that petitioner's assertion that he had such a right had no basis. He also noted that petitioner had been provided with notice of the allegation through the Student Conduct and Community Standards website. In determining that the punishment was not unduly severe, the Dean referenced "the deliberate nature of this misconduct" which is "directly incongruent with the expectations of a Columbia College student." (*Id.*).

In his first cause of action, petitioner argues that respondents' rules and practices are arbitrary and capricious, and an abuse of discretion for failing to afford him "proper" or sufficient notice of the charges against him, an adequate opportunity to prepare a defense, and more than one meeting to discuss the allegations. In his second cause of action, he maintains that the preclusion of live witness testimony at the hearing is also arbitrary and capricious, and an abuse of discretion in that it violated his right of confrontation and deprived him of a right to

rebut the evidence against him. Petitioner asserts in his third cause of action that he was deprived of his due process right to an attorney or other representative present at the hearing, thereby also rendering the proceeding arbitrary, capricious, and an abuse of discretion. (*Id.*).

As his fourth cause of action, petitioner contends that the punishment imposed is arbitrary and capricious, irrational, and an abuse of discretion because it is based on a failure to consider his explanation of his use of green ink and his denial that he submitted the test booklet for a second re-grading. Thus, he states, the decision is "completely illogical and irrational; [and] simply ludicrous," because he harbored no intent to deceive, which is required for a finding that he forged the test booklet. Because the punishment imposed is so disproportionate to his unintentional conduct, petitioner maintains as his fifth cause of action that it is arbitrary, capricious, and an abuse of discretion, and shocking to one's sense of fairness, especially in conjunction with the collateral consequences and his mental state that resulted from an earlier unidentified trauma. (*Id.*).

In his sixth cause of action, for defamation, petitioner alleges that respondents, in placing the decision in his student file and academic transcript, acted willfully and maliciously by publishing the false statement that he had submitted a forged test booklet along with the finding of responsibility for the alleged misconduct. He seeks declaratory relief from the defamation in his seventh cause of action. (*Id.*).

II. ANALYSIS

As a matter of public policy, courts are reluctant to intervene in cases concerning a school's administrative policies or decisions, as such matters are best left to the judgment of professional educators. (*Maas v Cornell Univ.*, 94 NY2d 87, 92 [1999]; *Olsson v Bd. of Higher Ed.*, 49 NY2d 408, 413–14 [1980]; *New York Inst. of Tech. v State Div. of Human Rights*, 40

NY2d 316, 322 [1976]). Consequently, the only questions that may be raised in a CPLR article 78 proceeding, as pertinent here, are whether the determination "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion . . ." (CPLR 7803[3]), as to which petitioner bears the burden of proof (*Matter of Dempsey v New York City Dept. of Educ.*, 25 NY3d 291, 300 [2015]; *Matter of Cashin v Cassano*, 129 AD3d 953, 954 [2d Dept 2015], *lv denied* 26 NY3d 916 [2016]). In assessing whether an agency determination is arbitrary and capricious, the test is whether the determination "is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Bd. of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]), whereas, in assessing whether an agency violated its own rules, the question is whether the agency failed to comply substantially with those rules (*Matter of Fruehwald v Hofstra Univ.*, 82 AD3d 1233, 1234 [2d Dept 2011]; *Gurstein v Bard Coll., Graduate Ctr. for Studies in the Decorative Arts*, 280 AD2d 264 [1st Dept 2001]). The question of whether a school has followed its own rules does not involve any highly specialized, academic judgment, and is determined by the court. (*O'Neill v New York Univ.*, 97 AD3d 199, 213 [1st Dept 2012]).

A student subject to disciplinary action at a private university is not entitled to the "'full panoply of due process rights.'" (*Matter of Kickertz v New York Univ.*, 25 NY3d 942, 944, quoting *Matter of Ebert v Yeshiva Univ.*, 28 AD3d 315, 315 [1st Dept 2006]; *Aryeh v. St. John's Univ.*, 154 AD3d 747, 748 [2d Dept 2017]). "Such an institution need only ensure that its published rules are 'substantially observed'" (*Matter of Kickertz*, 25 NY3d at 944, quoting *Tedeschi v Wagner Coll.*, 49 NY2d 652, 660; *Aryeh*, 154 AD3d at 748).

Here, to the extent that petitioner raises an issue as to whether respondents substantially complied with its own rules, he fails to sustain his burden on that issue. Rather, he takes issue with those rules as not comporting with due process. Absent any authority for the proposition that a privately funded college must provide its students with the due process rights asserted by petitioner, any decisions concerning public school policies and procedures are immaterial.

In any event, petitioner received notice consonant with respondents' rules and sufficient to permit him an opportunity to prepare a lengthy and detailed written statement, and he offers no basis for determining otherwise. That a trial and appellate court upheld a disciplinary decision against a student who had received two disciplinary meetings and 20 days' notice of a second hearing (*Zartoshti v Columbia Univ.*, 2009 NY Slip Op 0031830 [Sup Ct, New York County 2009], *affd* 79 AD3d 470 [1st Dept 2010]), is immaterial absent a holding that such procedures are minimum requirements.

There is also no factual issue that petitioner's explanation of his conduct was duly considered by the hearing officers and by the Dean, as it was addressed in both decisions. Petitioner's explanation of his conduct does not constitute a sufficient basis for finding that the decision was arbitrary and capricious or an abuse of discretion because even crediting the claim that his use of a green pen was strictly fortuitous, his previous use of a black pen to add a sentence to the end of his answer and then, while waiting for his professor, the green pen to underline it and add other markings, renders his explanation of that conduct unworthy of belief, which cannot be addressed in this proceeding. (*See Flores v New York Univ.*, 79 AD3d 502, 503 [1st Dept 2010] [credibility issues immaterial in article 78 proceeding]). While petitioner contends that his innocent intent is evidenced by his conformity with UVA's re-grading procedures, his alleged compliance with UVA's procedures does not prove that he lacked the

intent to deceive the Columbia professor, and again, poses an immaterial credibility issue. Certainly, the hearing officers and Dean were presented with a rational basis on which to find against him. There is also no basis for finding the punishment disproportionate to the conduct.

Given this result, I need not address the causes of action relating to defamation. In any event, placing the decision in petitioner's file and transcript does not constitute publication to a third party, but is protected as a statement made among those who share a common interest, and petitioner's disagreement with the decision against him does not establish its falsity, which is an element of defamation.

Petitioner asserts that respondents submitted a record that does not contain the black and white copy of the test booklet first submitted to the professor for re-grading and a written statement of his UVA chemistry professor describing that school's procedures for re-grading. (NYSCEF 20). In a reply affidavit, respondents' Associate Director of Student Conduct and Community Standards states that the omission of the black and white copy of the booklet was inadvertent and immaterial, as a comparison of his answers to question seven alone, adjacent to which he made the undisputed markings, supports the outcome. He also denies that petitioner submitted the professor's statement at the hearing. (NYSCEF 29).

Even though the record as originally filed contains no copy of the black and white test booklet that was first submitted to the professor for re-grading, that inadvertent omission has been corrected and is of no moment absent any argument that it disproves the outcome reached by the Committee and Dean. I also observe that petitioner's papers contain no indication that he submitted the UVA professor's (undated) statement to the Committee. Consequently, petitioner's allegation that the record is incomplete because of its omission based solely on respondents' reference to it in a memorandum of law is at best, disingenuous.

For these reasons, there is no basis on which to find that there is anything missing from the record, and I therefore, need not address respondents' motion to dismiss or require an answer as the "*facts are so fully presented* in the papers of the respective parties that it is clear that no dispute as to the facts exists and no prejudice will result from the failure to require an answer." (*Matter of Kickertz*, 25 NY3d 942, 944, quoting *Matter of Nassau BOCES Cent. Council of Teachers v Board of Coop. Educ. Servs. of Nassau County,* 63 NY2d 100, 102 [1984] [emphasis added]).

Accordingly, it is hereby

ORDERED, that the petition is denied and the proceeding is dismissed; and it is further

ORDERED, that the motion to dismiss is denied as academic.

2/7/2018
DATE

BARBARA JAFFE, J.S.C.
HON. BARBARA JAFFE

CHECK ONE:	[X]	CASE DISPOSED			[ ]	NON-FINAL DISPOSITION	
	[ ]	GRANTED	[X]	DENIED	[ ]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER			[ ]	SUBMIT ORDER	
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