

**Farooq v Pace Univ.**

2024 NY Slip Op 34450(U)

December 18, 2024

Supreme Court, New York County

Docket Number: Index No. 155054/2024

Judge: Judy H. Kim

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

PRESENT: HON. JUDY H. KIM PART 04

*Justice*

-----X

FAIZA FAROOQ,

Petitioner,

- v -

PACE UNIVERSITY,

Respondent.

-----X

INDEX NO. 155054/2024

MOTION DATE 12/20/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

In this Article 78 proceeding, petitioner Faiza Farooq challenges her dismissal from respondent Pace University’s Clinical Psychology PhD Program. For the reasons set forth below, the petition is denied.

**FACTUAL BACKGROUND**

The following factual recitation is adapted from the petition’s allegations and the parties’ undisputed submissions: Petitioner was a student in respondent’s Doctor of Philosophy Program in Clinical Psychology beginning in the 2020-2021 academic year (NYSCEF Doc. No. 1 [Petition at ¶5]). On October 5, 2023, petitioner was notified by respondent that one of her Instagram “stories” violated the American Psychological Association (“APA”) Code of Conduct and Guidelines for Professionalism (*Id.* at ¶¶8-10). Specifically, she was one of three PhD students who had posted images and a video during a class being conducted over Zoom which displayed unprofessional behavior, including “playing games (e.g., cards, hangman) on campus at 52 ... with

a caption ‘treating our professor like background noise’” and “another image depicting a hangman game, which spelled out ‘I hate it here’ and was captioned ‘first day of 21st year of school’” (NYSCEF Doc. No. 4 [Remediation Plan]). Petitioner subsequently completed a “remediation plan” intended to “aid students in their professional growth and learning and to demonstrate their commitment to adhering to APA ethics and professional guidelines at a level that would be commensurate with their standing as doctoral candidates in a PhD program” (NYSCEF Doc. Nos. 1 [Petition at ¶11] and 4 [Remediation Plan]).

On October 23, 2023, petitioner, while taking a remote multiple-choice examination in a Psychopharmacology course, was one of six students logged into a shared Zoom video call (Id. at ¶15). Petitioner now asserts that she was not aware such “student collaboration” was prohibited (Id.). Respondent learned of this behavior and on November 14, 2023, petitioner executed a “Document of Direct Resolution” (the “Direct Resolution Form”) conceding that she “colluded with 5 other students to cheat on the final examination via Zoom Media” and that “[a]ll students were previously informed verbally that the examination would be administered remotely through the Pace Classes portal ... [and] had to take the examination alone and that they could not obtain assistance from anyone else as per ethical guidelines” (NYSCEF Doc. No. 5 [Direct Resolution Form]). Petitioner acknowledged in the Direct Resolution Form that the sanction imposed by the course’s instructor was that she would receive a C in the class and need to retake it (Id.). The Direct Resolution Form also informed petitioner, parenthetically, that “additional sanctions may be imposed by the Academic Conduct Committee” (Id.)

On December 8, 2023, respondent's Program Committee for the PhD in Clinical Psychology Program (the "Program Committee") issued the following memorandum:

A potential academic integrity violation and breach of professional ethics committed by several fourth-year students in the PhD Program in Clinical Psychology in the Fall 2023 Psychopharmacology course (PSY 849) was reported at the end of the course to the Program Committee by the instructor, Dr. Joseph Hirsch. After the incident was investigated by program faculty to understand which students were involved, the information was relayed back to Dr. Hirsch. Then, consistent with Pace University academic integrity guidelines, Dr. Hirsch gave a course grade that he felt was commensurate with the academic violation and filed an academic integrity violation report for each student, which will be filed with the university academic integrity committee. The departmental Academic Integrity Committee (AIC) was convened to make recommendations on the violation of academic integrity, and the Clinical (Health Emphasis) PhD Program Committee deliberated on the violation of professional ethics. The committees discussed any further remediation or actions needed for each student in their doctoral training to help ensure that they would exercise professional integrity and ethical conduct in the future. This memo explains the Committees' decisions for this student, Faiza Farooq. For Ms. Farooq, the Program Committee has recommended dismissal from the PhD program, based on her multiple documented ethical and academic integrity violations, a decision consistent with the criteria laid out in the Program's Policies and Procedures manual (p. 31-32)

#### Summary of Issue and Concerns

Six students in the fourth-year cohort colluded to take the final exam in the course together via Zoom, after having been instructed by Dr. Hirsch that the exam was to be taken on their own with no one else present in the room. After it was discovered that one of the students in the cohort opened a Zoom room at the time of the exam, Dr. Hirsch filed an initial academic integrity violation report to the Program Director, Dr. Shirley Wang. Dr. Wang and other members of the Program Committee then investigated the incident to determine what occurred and which students were involved. All students in the cohort were interviewed individually by two faculty members about the potential collusion and whether they were involved.

At the interview, before questioning, each student was provided the same information about the definition of collusion, its seriousness, and the range of potential consequences for the violation, which included failing the course, remediation, and dismissal from the program. Each student was asked the same set of questions, including an open-ended question about any additional information they wanted to provide to the faculty.

Six students admitted to being present in the Zoom room. This information was relayed to Dr. Hirsch, who then made the decision about the outcome of his course for those students, which was a grade of C, the lowest non-failing grade possible for doctoral students, with no option to retake the exam for the course. As a result of this grade, students do not meet the minimal level of achievement to demonstrate competency in this course material, which is a B. Thus, they must retake the course or take one that is substantially similar and demonstrate a minimal level of achievement (i.e., grade of B or higher) on a comparable assessment to fully meet the academic requirements of the PhD program and to demonstrate their readiness to apply for fulltime internship.

In addition to the course instructor's decision about the course grade, the Program Committee and departmental Academic Integrity Committee then deliberated separately about potential courses of action needed to remediate students' academic integrity and professional ethical behavior, with the explicit understanding that different remediation plans may be necessary for different students based on their prior record and any previous remediation plans.

During the interview, Ms. Farooq stated that she found the class difficult and felt significant anxiety about the exam. She also had been experiencing personal stress. She stated "the intent was to have people there to bounce things off of, not to take the exam together." She said she knew the behavior was wrong, but she justified it to herself. Ms. Farooq was placed on a remediation plan for a previous breach of professional/ethical conduct also related to PSY 849 earlier in Fall 2023. The Program Committee's policies state that multiple academic integrity and professional ethical violations may result in dismissal from the university. Thus, the Program Committee recommends the student's dismissal from the Ph.D. in Clinical Psychology (with Health Care Emphasis) Program based on the demonstrated repeated breach of professional ethics and academic integrity.

...

The actions violate both Pace University's Academic Integrity Code and the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct.

1) Violation of the Pace University's Academic Integrity Code (<https://www.pace.edu/sites/default/files/files/student-handbook/pace-universityacademic-integrity-code.pdf>), Section IIG, which states: "G. Unauthorized communication. Any form of communication (except with the instructor or proctor) during an examination, or knowingly informing another of the content of an examination not officially released by the instructor." The Program Committee finds that this student communicated with five others in a Zoom room for the duration of the final examination for PSY 849.

2) Violation of the APA Ethical Principles of Psychologists and Code of Conduct (<https://www.apa.org/ethics/code>), Principle C, Integrity, which states: “Psychologists seek to promote accuracy, honesty, and truthfulness in the science, teaching, and practice of psychology. In these activities psychologists do not steal, cheat or engage in fraud, subterfuge, or intentional misrepresentation of fact. Psychologists strive to keep their promises and to avoid unwise or unclear commitments. In situations in which deception may be ethically justifiable to maximize benefits and minimize harm, psychologists have a serious obligation to consider the need for, the possible consequences of, and their responsibility to correct any resulting mistrust or other harmful effects that arise from the use of such techniques.” The Program Committee finds that the student engaged in dishonest behavior in their PSY 849 Psychopharmacology class...

(NYSCEF Doc. No. 6 [Program Committee Memorandum]).

Petitioner subsequently met with the Program Committee and submitted a written statement to the Program Committee on December 12, 2023 (Id. at ¶¶21-22). On December 21, 2023, petitioner received a letter of dismissal, stating that

...the full faculty of the Psychology (NYC) Department voted on Friday, December 15, to support the Program Committee’s recommendation for your dismissal from the program for professional and ethical violations of the Code of Conduct and Ethical Principles of Psychologists of the American Psychological Association (APA) as well as a violation of the University’s Academic Integrity Code. Regarding the violation of the University’s Academic Integrity Code on Oct. 23, 2023, you engaged in “unauthorized communication” during a final exam (p. 2, item G in the Academic Integrity Code). You acknowledged this violation by signing the University’s Academic Integrity Violation Report issued by the course instructor

...

As discussed in our meeting of Dec. 11, and in written form in the memorandum sent to you on Dec. 8 and in the departmental policies of the graduate brochure and Program’s Policies and Procedures Manual, you have 30 days from the date of this letter to appeal this decision. If you would like to appeal, please inform Dr. Sonia Suchday, Department Chair, in writing by January 22, 2024.

(NYSCEF Doc. No. 7 [December 21, 2023 Dismissal Letter]).

Petitioner appealed her dismissal, by letter, and an appeals committee was formed, consisting of the same faculty members in the Psychology Department who voted for petitioner's dismissal (NYSCEF Doc. No. 1 [Petition at ¶26]). In a letter dated January 30, 2024, the appeals committee denied petitioner's appeal, stating, in pertinent part:

Concerning the current incident (violation of academic integrity, PSY849) and the information considered by this Appeal Committee, this is considered a documented violation of the University Academic Integrity code (page 3). The Appeals Committee agrees that the behavior described is a violation of the University Academic Integrity code which states (page 2): "G. Unauthorized communication. Any form of communication (except with the instructor or proctor) during an examination ..."

...

Concerning the second incident (violation of professional conduct, PSY849) and the information considered by this Appeal Committee, this is considered a documented violation of the APA Code of Conduct and Guidelines for Professionalism. More specifically, by pretending to attend a class while actually playing cards and taking pictures, they violate Principle B ("Fidelity and Responsibility") and Principle C ("Integrity"). Furthermore, the Committee notes that Faiza does not deny posting these photos to her social media account.

The Committee did consider the arguments put forth by Faiza in her appeals letter which indicate impaired judgement due to significant stressors related to the conflicts in the Middle East. While the Committee acknowledges that this may in fact be the case, the committee also acknowledges that this student is not alone in this respect. The PhD Program in Clinical Psychology and all other programs in the Psychology Department comprise a diverse student body, many of whom are also experiencing significant stressors related to the conflicts in the Middle East. As Faiza herself notes "I want to acknowledge that regardless of the circumstances or stressors, difficult situations do not justify this behavior." As psychologists we must come to recognize when stress may be negatively impacting our ability to functioning effectively and seek supervision/consultation in those situations.

After reviewing the two violations noted, the Appeals Committee reviewed the Ph.D. Clinical Psychology with Health Emphasis Policies and Procedures Manual. Of note, the manual states on page 3 "Each student agrees to abide by all University and Psychology Department policies and procedures.... students are expected to treat faculty, peers, and staff professionally, courteously, and respectfully" The program manual (p. 31) notes "In general, the first case for a student will result in that student being given a written warning indicating that a second offense will result in automatic dismissal from the program." While it does not seem that the

program provided “a written warning indicating that a second offense will result in automatic dismissal,” the program manual indicates in at least two places that that multiple instances of violations of professional conduct/academic integrity will result in dismissal (p. 31 & 32). In addition, the Appeals Committee finds that a possible failure of the program to provide a written warning that a second offense would result in automatic dismissal is irrelevant, for the reason that the dismissal of Ms. Faiza Farooq did not result from an automatic dismissal procedure, but from a recommendation (after deliberation) of the PhD Program Committee (followed by a deliberation from the Department of Psychology full-time faculty).

Given the expectation that students are familiar with and abide by University and Program policies and procedures and that there are two documented cases of violations (unprofessional behavior, unauthorized communication) of these policies, the Appeals Committee supports the program decision of dismissal.

(NYSCEF Doc. No. 8 [Ad Hoc Committee Recommendation] [emphasis added]).

The Department Chair accepted the committee’s recommendation, and a final dismissal decision was issued on February 2, 2024 (NYSCEF Doc. No. 3 [Dismissal Letter]).

Petitioner commenced this Article 78 proceeding on May 31, 2024, arguing that her dismissal was arbitrary and capricious because: (1) respondent’s procedures mandated that petitioner receive a hearing prior to her dismissal, yet no hearing was ever noticed or held; (2) the appeals committee’s decision was biased because its members were also on the Program Committee that had voted for petitioner’s dismissal, and two of its members were also petitioner’s professors; (3) petitioner was not aware that her prior misconduct arising out of her Instagram stories would be considered by the Program Committee when she signed the Direct Resolution Form; and (4) respondent improperly relied on petitioner’s prior violation of the APA’s Code of Conduct and Guidelines for Professionalism, which are only “aspirational goals” rather than “enforceable rules,” in determining the appropriate penalty. Petitioner also argues that her dismissal was so disproportionate to her offense as to shock the conscience because she gained, at most, a “negligible” advantage from being logged into the Zoom with other students during the examination.



Respondent interposed an Answer in which it asserted affirmative defenses, including, as relevant here, that the petition fails to state a cause of action. Respondent asserts that it followed the procedures for investigating alleged misconduct set forth in the “Doctor of Philosophy Program in Clinical Psychology with Health Care Emphasis Pace University (NYC) Policies and Procedures Manual” (the “Program Manual”) and “Pace University Academic Integrity Code” (the “Academic Integrity Code”) and submits these documents, the veracity of which petitioner does not dispute.

The Program Manual provides that where a student is found to have breached respondent’s code of conduct (unrelated to failing a course), the Program Committee will meet with the student, Program Director, and relevant faculty, and, thereafter, issue a report recommending an appropriate consequence, including dismissal (NYSCEF Doc. No. 13 [Program Manual, §V.A]). The Program Committee “may also refer the matter to the Academic Integrity Committee, if there is also a component of academic dishonesty to the violation” (Id.). A student dismissed from the program for a breach of professional ethics will receive written notification of that dismissal and may, after a meeting with the Program Director, appeal the dismissal by letter to the Psychology Department Chair (Id. at §V.B). A student’s appeal is to be considered by an appeals committee composed of three faculty members, who may interview the student and faculty who have taught the student, in addition to reviewing the student’s written appeal and issue a written recommendation to the Psychology Department Chair, who may accept or reject this recommendation (Id. at §V.C).

The Academic Integrity Code, in turn, provides two mutually exclusive avenues for resolution of alleged violations of that Code, “direct resolution” and a hearing before the Academic Conduct Committee (NYSCEF Doc. No. 14 [Academic Integrity Code at §III]).

Respondent argues that a review of these documents entirely rebut petitioner's claim that she was entitled to a hearing prior to her dismissal, as no hearing is contemplated by the Program Manual and none required under the Academic Integrity Code where, as here, a direct resolution was reached. Respondent also notes that neither the Program Manual nor Academic Integrity Code prohibits faculty from serving on the Program Committee and Appeals Committee.

Respondent contends that petitioner's dismissal was rationally based on the committees' conclusion that petitioner engaged repeatedly in unprofessional and unethical conduct and notes that the Program Manual warns that "[a]cts of academic dishonesty (e.g., plagiarism, cheating, ethical violations in research or clinical work, forging signatures)" of sufficient severity may "lead to immediate dismissal" (NYSCEF Doc. No. 13 [Program Manual at §V.A]).

### DISCUSSION

"[J]udicial review of an educational institution's disciplinary determination involving nonacademic matters is limited to whether the institution substantially adhered to its own published rules and guidelines and was not arbitrary and capricious" (Matter of Quercia v. New York University, 41 AD3d 295, 296 [1st Dept 2007] [internal citations omitted]). To satisfy this standard, respondent need establish only that its rules were "substantially observed" in reaching the determination (See Ebert v Yeshiva University, 28 AD3d 315 [1st Dept 2006]). As to the "magnitude of the sanction imposed by the university, a reviewing court can only overturn the punishment imposed if it is 'so disproportionate as to shock one's sense of fairness'" (Flores v New York Univ., 2009 NY Slip Op 32834[U] [Sup Ct, New York County 2009] [internal citations omitted], affd., 79 AD3d 502 [1st Dept 2010]).

In this case, respondent substantially complied with the procedures set out in its Program Manual and Academic Integrity Code, and its determination was "rationally based after

consideration of all the evidence before it” (Id.). Specifically, respondent precisely followed the procedures set forth in section V of the Program Manual, i.e., the Program Committee met and deliberated and “generated a report of findings” which petitioner received and was able to appeal by letter to the Appeals Committee, which duly considered petitioner’s letter and the surrounding circumstances and issued a recommendation to the Psychology Department Chair, which was accepted.

Petitioner’s arguments to the contrary are unavailing. The Program Manual does not prohibit the professors who served on the Program Committee from serving on the Appeals Committee (See Dequito v New School for Gen. Studies, 68 AD3d 559 [1st Dept 2009]). Neither does it entitle a student accused of misconduct to a hearing. Petitioner was not entitled to a hearing under the Academic Integrity Code, given her execution of the Direct Resolution Form. To the extent petitioner believes that she was, nevertheless, entitled to a hearing, she is mistaken—as a private university, respondent was not required to provide petitioner with the “full panoply” of due process rights (See Matter of W.O. v NY Univ., 226 AD3d 577 [1st Dept 2024]).

Petitioner’s argument that her violation of the APA’s Code of Conduct and Guidelines for Professionalism should not have been considered by the Program Committee or Appeals Committee is also unavailing, as the Program Manual expressly adopted the APA ethical guidelines as rules binding students in the Psychology PhD Program. Petitioner’s assertion that her execution of the Direct Resolution Form “resolved” the first disciplinary matter is belied by the language of the Direct Resolution Form, which indicates that “additional sanctions may be imposed by the Academic Conduct Committee.” Finally, the fact that petitioner was not expressly told that the first “social media” incident could be considered with her subsequent exam incident

in determining the appropriate discipline does not render her execution of the Direct Resolution Form uninformed.

As respondent fully complied with its internal procedures, the Court may not disturb the determination that resulted from this process unless the punishment imposed was so disproportionate to the offense as to shock the conscience (See Fernandez v Columbia University, 16 AD3d 227, 228 [1st Dept 2005] [upholding disciplinary sanction where private university “substantially abide by its own governing rules and regulations”]). This is not the case. The Program Manual contemplates that acts of academic dishonesty of sufficient severity can lead to immediate dismissal (See Quercia v New York Univ., 41 AD3d 295, 297 [1st Dept 2007]) and petitioner’s dismissal does not shock the court’s sense of fairness where she “failed to comply with a number of respondents’ rules and procedures, failed to conduct herself in an ethical and professional manner, and, despite being given ... opportunities to change her behavior ... failed to meet the expectations of the school” (Lipsky v Ferkauf Graduate School of Psychology, 127 AD3d 582, 583 [1st Dept 2015]; see also Dequito v New School for Gen. Studies, 68 AD3d 559 [1st Dept 2009] [“the policy of expelling a student for plagiarizing at any stage of her Master’s thesis is not arbitrary, capricious or irrational”]).

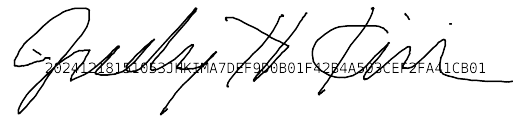
Accordingly, it is

**ORDERED** and **ADJUDGED** that the Petition is denied and this proceeding dismissed; and it is further

**ORDERED** that within ten days of the date of this decision, order, and judgment, respondent shall serve a copy of same, with notice of entry, upon petitioner as well as upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to enter judgment accordingly; and it is further

**ORDERED** that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “Efiling” page on this court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the decision, order, and judgment of the court.



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12/18/2024  
DATE

HON. JUDY H. KIM, 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