

STATE OF NEW YORK
SUPREME COURT

COUNTY OF RENSSELAER

In the Matter of the Application of Jane Doe,

Petitioner,

-against-

RENSSELAER Polytechnic Institute and Travis Apgar,
as Assistant Vice President and Dean of Students,

Respondents.

All Purpose Term

Hon. Henry F. Zwack, Acting Supreme Court Justice Presiding
Index No. 2019-262286

Appearances:

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DECISION/ORDER

Zwack, J.:

The petitioner Jane Doe moved by Notice of Motion to vacate a determination by the respondent Rensselaer Polytechnic Institute (“RPI”) dated October 17, 2018 — which placed her on an Involuntary Withdrawal. The determination also concluded that the petitioner was addicted to illegal drugs and therefore posed a danger to the RPI community. The respondents oppose and have filed a Verified Answer with Objections in Point of Law.

For the reasons that follow the Court dismisses the petition in its entirety.

According to the petition, the petitioner was in the middle of her Fall semester, enrolled as a full-time student, when she suffered a psychological breakdown and which resulted in her hospitalization. On October 16, 2018, the respondent Apgar, on behalf of RPI, determined that the petitioner should take a temporary leave of absence from school, a determination he made without consulting the petitioner. His October 16, 2018 letter, in part, stated “after careful consideration of relevant factors concerning your health and behavior this semester and on the recommendation of the Counseling Center, it has been determined that you will be placed on an Involuntary

Leave of Absence effective October 15, 2018.”

Also, according to the petition, on October 17, 2018, Apgar changed the determination to an “involuntary withdrawal,” alleging that petitioner was addicted to drugs and a danger to the RPI community. The petitioner argues that an involuntary withdrawal is the functional equivalent of expulsion. She also contends that between October 16, 2018 and October 17, 2018 nothing transpired, and no excuse is offered, as to why the determination changed from an “involuntary leave of absence” to an “involuntary withdrawal” — essentially making the October 17, 2018 determination arbitrary and capricious, and thus that the determination should be annulled.

In opposition, RPI has offered a Verified Answer with Objections in Point of Law of Travis Apgar, Assistance Vice President and Dean of Students at RPI, Kristine Guzman, Assistant Dean of Students, and Leslie Lawrence, MD, Board Certified Medical Doctor and Executive Director for Health and Wellness. Dean Guzman states he was contacted by the petitioner’s friends regarding their concerns about the petitioner’s methamphetamine addiction. Guzman met with the petitioner, who admitted methamphetamine use, and Guzman accompanied her to the RPI Counseling Center. At the Counseling Center the petitioner was assessed

and it was determined that she immediately be escorted to Samaritan Hospital for Intake. The petitioner ultimately agreed to be voluntarily admitted overnight. Dean Guzman was provided with additional information from the petitioner's friends which was disturbing and supported the assessment that the petitioner was using methamphetamine, which she purchased off the dark web, and not taking her prescribed medications. Text messages to her friends revealed she was suffering from delusions and paranoia.

In her affidavit Dr. Lawrence states that she reviewed the petitioner's medical records and concluded that the petitioner was using methamphetamine, and she describes the dangers associated with the same, including lowered inhibitions and an increase in risky behaviors and suicidal behaviors.

Dean Apgar further explains the series of events that led up to the October 17, 2018 determination. After the petitioner's evaluation at the counseling center, Dean Apgar consulted with the Director of the RPI Counseling Center, Benjamin Marte, who advised him that the petitioner needed a separation from the university to address her admitted drug use and signs and symptoms of addiction. Dean Apgar met with the petitioner and her parents on October 16, 2018 — at which time she admitted to him

that she had a methamphetamine addiction and she was going to get help. As more information was revealed and the seriousness of the petitioner's situation became known to him , he states that he felt it prudent to reconsider the determination he had made to place her on an involuntary ;leave of absence. In his judgment, he felt it was more appropriate that she be placed on an involuntary withdrawal on account of her drug use and the dangers it posed to the RPI community. Dean Apgar also considered the petitioner's past history, which he viewed to be significant. In her Freshman year the petitioner had three serious alcohol-related events, two requiring hospitalizations, the last hospitalization almost resulted in the loss of her life (she was intubated and placed in critical care unit when she stopped breathing due to acute alcohol intoxication). This incident in February, 2017 resulted in petitioner taking a leave of absence, as the ER doctor recommended that she go into a rehabilitation center.

The respondents assert that the petition must be dismissed because the petitioner failed to exhaust her administrative remedies. While acknowledging that there was no administrative appeal from an involuntary withdrawal of this type, the respondents did give the petitioner the alternative to submit information to the Interim President for Student Life that the determination was not merited — which the petitioner did not do.

The respondents also argue that the petition fails to state a cause of action, and that the petitioner has offered no facts to support her main contention “that she had a psychological breakdown which resulted in her hospitalization.”

Here, the Court is mindful that it has a “restricted role” in reviewing determinations of colleges and universities (*Maas v Cornell Univ.*, 94 NY2d 87, 92 [1999]). “A determination will not be disturbed unless a school acts arbitrarily and not in the exercise of its honest discretion, or it fails to abide by its own rules, or imposes a penalty so excessive it shocks one’s sense of fairness” (*Matter of Powers v St. John’s Univ. Sch. of Law*, 25 NY3d 210, 216 [2015], internal citations omitted). “Moreover, a student subject to disciplinary action at a private university is not entitled to the full panoply of due process rights...(and the) institution need only ensure that its published rules are substantially observed” (*Matter of Aryeh v St. John’s Univ.*, 154 AD3d 74, 7487 [2d Dept 2017], internal quotations and citations omitted).

The respondent’s policy on Involuntary Leaves and Withdrawals provides that the “Medical Director, the Director of the Counseling Center, or the Dean of Students may determine that a leave or withdrawal may be granted...if it would be in the best interests of the student or the

institute...This action may be taken if, in the opinion of either Director or Dean, a student exhibits behavior which creates, continues, or presents a risk to the physical or mental health of the student concerned or others...” There is also a section pertaining specifically to Involuntary Withdrawal for Drug Addiction, which provides in relevant part: “When a...current student is discovered to have an addiction to illegal drugs that person shall be placed on involuntary withdrawal effective immediately...This action shall be taken when, in the sole and exclusive judgment of the institute, the continued presence of such a person compromises the safety and welfare of the Rensselaer Community.” Further, the institute’s written policy on drug use is clear, that is a student may not use, possess, sell, manufacture or transfer any illegal drug or controlled substance...and for students it is a violation of the disciplinary code.

In the Court’s view RPI exercised its authority in a careful and thoughtful manner and consistent with its written policies. That RPI, over a course of a day, changed its initial determination from “involuntary absence” to “involuntary withdrawal” does not compel a different conclusion. After making his initial determination, Dean Apgar was privy to additional information and additional input from Dean Guzman and the university community, including the Counseling Center, which essentially

mandated that the petitioner be placed on involuntary withdrawal. The petitioner admitted that she was regularly buying methamphetamine and using it; text messages brought to the university's attention showed that she had studied the effects and knew the consequences and willingly chose to use methamphetamine instead of her prescribed medications. These text messages also demonstrate that she was becoming delusional. Dean Guzman stayed with the petitioner when she was at the RPI Counseling Center, and also when she was referred to Samaritan Hospital for Intake. Her recounted conversations with the petitioner also belie the petitioner's claim that the hospitalization was for a mental breakdown.

By October 2018, the petitioner already had a history of problematic and risky behaviors at RPI, and more importantly, her behavior was a source of disruption in the lives of her friends at the university, who were the ones that went to administration to get her the help she would not take upon herself to get. Her friends described how they were affected by drug's usage and worn out from their attempts to persuade her to get help. The record clearly substantiates that RPI had ample corroborating proof of the petitioner's drug use — including her admissions to Dean Guzman, and a day later to Dean Apgar and her parents.

The record also establishes that the petitioner did not exhaust her

administrative remedies. While there was no formal appeal process, she was offered the opportunity to bring the involved claims to the Dean of Students, the same as she now brings, that she needed mental health assistance, and which she simply failed to do. Nor does the petition state a cause of action — the petitioner offers no substantive proof that she suffered “from a mental illness” or that she was not in fact using methamphetamine. It was also not incumbent upon the respondents to determine the reason why the petitioner decided not to use the medications she had been prescribed but instead chose to medicate with methamphetamine. She had researched the side effects, and she admitted that she had been using it since November 17, 2017... and it kept her “alert and focused” as she stated.

Considering the petitioner had access to mental health services at RPI’s counseling center and that she knew about Al-Anon, the Court is not persuaded by her argument that she did not receive treatment because of her family’s objections. Nor is the Court persuaded by her argument that Dean Apgar acted with unbridled discretion when he abruptly terminated the petitioner without an examination into whether she was actually suffering from a mental illness beside the point. The bottom line that the petitioner simply chooses to miss is that her admitted methamphetamine

use, together with her overall record, gave RPI good cause to exercise the discretion afforded by its own rules to terminate her attendance at the university and place her on involuntary withdrawal (*Matter of Aryeh* at 748) — whether she was an addict or not.

Accordingly, it is

ORDERED, that the petition is dismissed.

This constitutes the Decision and Order of the Court. This original Decision and Order is returned to the attorneys for the respondents. All other papers are delivered to the Supreme Court Clerk for transmission to the County Clerk. The signing of this Decision and Order shall not constitute entry or filing under CLR 2220. Counsel is not relieved from the applicable provisions of this rule with regard to filing, entry and Notice of Entry.

Dated: August 27, 2019
Troy, New York


Henry F. Zwack
Acting Supreme Court Justice