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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

SAMANTHA SMILEY,

Plaintiff and Appellant,

v.

CALIFORNIA INSTITUTE OF
TECHNOLOGY,

Defendant and Respondent.

B232060

(Los Angeles County
Super. Ct. No. BS124944)

APPEAL from a judgment of the Superior Court of Los Angeles County. Ann I.
Jones, Judge. Affirmed.

Law offices of David S. Lin and David S. Lin for Plaintiff and Appellant.

Ogletree, Deakins, Nash, Smoak & Stewart, Stuart D. Tochner and Dennis C.
Depalma for Defendant and Respondent.

Appellant Samantha Smiley (petitioner) appeals the denial of her petition for writ of administrative mandamus challenging the decision of respondent California Institute of Technology (Caltech) to expel her for violations of the school's honor system. Petitioner contends the trial court erred by denying her petition because Caltech denied her sufficient notice and opportunity to be heard and because its investigation of the allegations against her was procedurally and substantively flawed. Petitioner further contends the trial court improperly refused to consider a declaration she submitted in support of her writ petition.

The trial court did not err by disregarding petitioner's declaration, and substantial evidence supports the court's decision to deny the writ petition. We therefore affirm the judgment.

BACKGROUND

1. Caltech's honor system

Students at Caltech agree to abide by an honor system. Stealing from another student is a violation of the honor system, as is cheating on an examination.

Under the honor system, the vast majority of quizzes, midterm, and final examinations are take-home exams, with printed instructions indicating the specific conditions under which the test must be taken, including the time limit, reference materials allowed, and the due date. A student working on a take-home exam may not consult other students or sources other than those permitted by the instructor. Failure to abide by an instructor's examination policy is a violation of the honor system.

Homework assignments at Caltech may allow for collaboration among students. Instructors state their homework collaboration policies at the beginning of each academic term, and it is the student's responsibility to obtain this information. Failure to abide by an instructor's policy on homework collaboration is also a violation of the honor system.

A. Investigation and adjudication of honor system violations

Violations of the honor system are investigated and adjudicated by a Board of Control (BOC), a committee of undergraduate students chaired by the Vice President of the Associated Students of the California Institute of Technology, Inc. When a suspected

honor system violation is reported, the BOC chair and the BOC secretary conduct a preliminary investigation by interviewing the persons involved in the reported matter. After concluding the preliminary investigation, the chair and secretary decide whether the case should be dismissed or considered by the entire BOC.

If the BOC chair and secretary decide the alleged violation merits consideration by the full board, the secretary schedules a hearing at a time that minimizes conflict for the board members, defendants, and witnesses. Board members must recuse themselves if they feel unable to render an unbiased judgment, and individuals appearing before the BOC have the right to ask the chair to remove any member they believe cannot be unbiased.

The BOC first considers the case “in abstract,” with no information to identify the defendant. Based on the abstract, the BOC decides whether or not to proceed with the case. If the BOC decides to proceed, it conducts a hearing at which the defendant and any witnesses appear. After considering the evidence, the BOC can either dismiss the case or convict the defendant.

If the BOC convicts a student of an honor system violation, it must then determine what measures would best nullify any unfair advantage the student received from the violation. Possible measures may include grade changes, monetary reimbursement, or letters of apology. The BOC then considers whether additional measures should be taken to protect the Caltech community from further violations. It is only at this point only in the proceedings that the BOC learns whether the defendant has previously been convicted of any honor system violations. Expulsion is the most drastic protection measure the BOC can take and the BOC resorts to this action only when it believes the defendant will not ever be able to live within the honor system.

B. Appeal of BOC decisions

After the BOC convicts a student of an honor system violation, it informs the Dean of Students (Dean) of its decision. The Dean meets with the defendant to discuss the BOC’s decisions and to allow the defendant to voice any objections about the case. At the end of the meeting, the Dean decides whether or not to uphold the BOC’s decision.

The Dean's decision is automatically reviewed by the Vice President of Student Affairs in cases resulting in suspension or expulsion.

2. Petitioner's first honor system violations

Petitioner was enrolled as an undergraduate student at Caltech in February 2008 when she turned in her "Bi8 Problem Set #3" homework assignment and her "Bi8 Midterm" examination. The instructions for the Bi8 Midterm prohibited working with other people on the exam. The head teaching assistant in petitioner's Bi8 class reported petitioner's homework assignment and midterm to the BOC because petitioner's work exhibited similarities to the work of two other students.

During a preliminary investigation meeting with the BOC chair, petitioner denied using any other student's work to complete her problem set or her midterm. The BOC chair decided it would be more fair to petitioner to present the two potential violations separately to the BOC. The BOC considered petitioner's Bi8 problem set assignment first and did not learn of petitioner's Bi8 midterm until it after had made its decision regarding the Bi8 problem set.

A. The first BOC hearing

The BOC met to discuss petitioner's Bi8 problem set on March 12, 2008. Petitioner was present at the meeting and told the BOC that she does all of her problem sets by herself. When asked to explain how she did the work on the Bi8 problem set, however, petitioner could not comment much on the problems. The BOC examined petitioner's Bi8 problem set and compared it to the problem set done by student A and found the following evidence indicating petitioner had used student A's work to complete her own problem set: in problem 1(B), petitioner had written down an equation, but switched two of the quantities in the equation, making her equation inconsistent with her written answer. Student A's answer to problem 1(B) was both correct and consistent. When asked about problem 1(B) petitioner could not remember either the problem or the equation.

In problem 3(B), petitioner had used the wrong equation but had the correct answer, and petitioner could not explain the discrepancy. In every question that required

a significant written portion to the answer, petitioner's answers differed from student A's answers "by either a reordering of sentences or phrases, or by a few minor words, such as articles."

Based on this evidence, the BOC voted to convict petitioner of an honor system violation for using student A's work to complete her Bi8 problem set and for deliberately misleading the BOC. The BOC decided to nullify the unfair advantage by removing credit from six problems on petitioner's problem set. In order to protect the Caltech community, the BOC recommended that petitioner be placed on a two-term suspension, and that she would be eligible to reapply for admission in the 2009 winter term.

After the BOC reached its decision regarding petitioner's Bi8 problem set, the chair informed the BOC about petitioner's Bi8 midterm. The BOC met to discuss petitioner's Bi8 midterm on March 14, 2008. One member of the BOC recused himself from this session and was replaced.

During the meeting, petitioner was unable to answer several questions posited by the BOC about the closed book section of the exam. Petitioner could not provide a satisfactory explanation as to why she had written a symbol for "micromolar" in a manner that was strikingly similar to that used by student B and was unable to answer specific questions concerning problems in the open book section of the exam. Petitioner's entire exam was very similar to student B's, in some cases using identical unusual language choices or wording, differing only in the addition or deletion of minor terms or the rearranging of sentences.

The BOC adjourned its March 14, 2008 meeting before adjudicating petitioner's Bi8 midterm. Before the BOC reconvened, petitioner met privately with the BOC chair and secretary and admitted copying problem 4 of the Bi8 midterm from student B. When the BOC reconvened, petitioner reiterated her admission, again stating she had only copied one problem.¹

¹ In her appellate brief, petitioner contends the BOC appointed a student "advocate" to represent and assist her in the BOC proceedings, that this advocate advised her to "lie and admit" to the cheating allegations, and that she followed this advice against her better

The BOC voted to remove the unfair advantage gained by petitioner's cheating by removing credit for the entire exam. In deciding how to protect the Caltech community, the BOC noted that petitioner had been dishonest throughout the entire case. Petitioner's confession, the BOC believed, was a calculated attempt to retain as many points on the examination as she felt was possible. The BOC recommended that petitioner be suspended for an additional term until spring of 2009.

B. Petitioner's first appeal

On March 21, 2008, petitioner and her father met with Dean John F. Hall, the Dean of Students, and with Dean Barbara C. Green. During this meeting, petitioner admitted that in addition to problem 4 on the Bi8 midterm, she had copied "parts of other problems." Petitioner continued to deny, however, that she had copied any part of the Bi8 problem set.

After the BOC had made its decision, petitioner and her father again contacted Deans Hall and Green and accused a BOC member of harassing petitioner. Petitioner's father admitted, however, that petitioner and the BOC member did not know one another and had never met prior to the BOC's investigation of petitioner's case.

Petitioner and her father again met with Deans Hall and Green on April 3, 2008. At that meeting, petitioner admitted she had copied both the Bi8 problem set and the Bi8 midterm. The Deans informed petitioner that they would uphold the BOC's recommendation of suspension. Dean Hall further advised petitioner that her case would automatically be reviewed by the Vice President of Student Affairs, Dr. Anneila Sargent.

On April 10, 2008, Dean Hall sent petitioner an email advising her to contact Dr. Sargent as part of the appeal process. After repeated unsuccessful efforts to schedule a meeting with petitioner, Dr. Sargent ultimately upheld the BOC's decision to suspend

judgment and to her detriment. There is no evidence in the record to support these factual contentions and we accordingly disregard them. (*Oldenkott v. American Electric, Inc.* (1971) 14 Cal.App.3d 198, 207 [an appellate court "will not consider facts having no support in the record[] and will disregard statements of such facts set forth in a brief"].)

petitioner but allowed petitioner to return to campus after one term rather than the three terms recommended by the BOC.

3. Petitioner's subsequent honor system violations

Petitioner returned to Caltech in the fall of 2008. In October, she submitted a quiz for her Physics 2a class. At about the same time, another student, student C, the roommate of petitioner's former boyfriend, submitted his solution for the Physics 2a quiz but subsequently learned that his quiz solution had not been received by the teaching assistant. Student C thereafter attempted to recreate his missing quiz solution.

Petitioner's ex-boyfriend reported to the BOC that student C's quiz solution was missing and that he suspected petitioner of taking it, as she had access to their room. Petitioner's ex-boyfriend also voiced his suspicions that petitioner may have copied his work on several homework assignments. After a preliminary investigation and consultation with Dean Hall, the BOC chair decided to submit the matter to the BOC.

Upon learning of the BOC's decision to proceed with a hearing on petitioner's homework assignments and the Physics 2a quiz, Dean Hall expressed concern that petitioner might be cheating in other classes. Dean Hall decided to compare petitioner's final exams to the final exams of her classmates, and found disturbing similarities on three of petitioner's final exams. He found tentative matches between petitioner's work and the work of other students in three classes: ACM 95a, ChE 64, and Ch 41a. These concerns were added to the allegations regarding the Physics 2a quiz and homework assignments.

A. The second BOC hearing

On November 15, 2008, the BOC chair notified petitioner that she was a potential defendant in an investigation concerning possible honor system violations. The BOC chair met with petitioner on November 16, 2008, and informed her of the specific matters under investigation.

On January 2, 2009, the BOC chair notified petitioner by e-mail that the BOC would proceed with a hearing regarding two Physics 2a homework assignments, her Physics 2a quiz, her ACM 95a final exam, her Ch 41a final exam, and her ChE 64 final

exam. The BOC chair asked for petitioner's schedule during the first two weeks of the term so that a hearing date could be set.

Petitioner again met with the BOC chair on January 22, 2009, for a further preliminary investigation. After that meeting, the BOC chair met with petitioner's father, who voiced complaints about the hearing process.

During the course of the BOC's investigation, petitioner accused her former boyfriend of harassment. Petitioner also claimed her ex-boyfriend had threatened to make false allegations of honor system violations against her.

On January 24, 2009, the BOC chair e-mailed petitioner asking for her schedule. On January 28, 2009, the BOC chair again asked for petitioner's schedule so that the BOC hearing could be set. On February 5, 2009, the BOC chair again contacted petitioner to ask for her schedule. Petitioner did not respond to any of these requests until February 18, 2009, at which time she indicated her availability for a single date on February 19, 2009. The February 19, 2009 meeting was the only meeting of the BOC that petitioner attended throughout the hearing process.

Between February 8, 2009 and March 8, 2009, the BOC met seven times. Petitioner was informed of all seven meetings but attended only the February 19, 2009 meeting. On March 4, 2009, the BOC chair e-mailed petitioner to ask if she was available to meet with the BOC that night, and if so, to provide a phone number where she could be reached. Petitioner responded by e-mail after 10:00 p.m. that night, stating she had not been able to attend the meeting because she had too much work. She asked when she could next meet with the BOC and what subjects would be covered at the meeting. The BOC chair responded by e-mail stating that the BOC would meet that Friday between 4:00 and 7:00 p.m. and again on Sunday in the afternoon and evening and that petitioner's ChE 64 exam and her ACM 95a exam would be discussed at those meetings. Petitioner responded by e-mail on March 5 stating she could attend the Sunday (March 8, 2009) meeting and asking for a specific meeting time. The BOC chair responded by e-mail on March 7, 2009, stating that the BOC would be meeting from noon until 9:00 p.m. on March 8, 2009, and that it wished to interview petitioner for most

of that time, starting at 1:00 p.m. The BOC chair emphasized that March 8 meeting would be petitioner's last opportunity to present her case. The BOC chair requested a telephone number where petitioner could be reached that day. Petitioner did not respond to this e-mail.

On March 8, 2009, the BOC chair e-mailed petitioner advising her that the final meeting had begun and that the BOC was ready to meet with her. When petitioner did not respond to the e-mail, the BOC chair attempted to contact petitioner by telephone. The BOC chair then asked the resident assistants at two different residence halls to look for petitioner. These efforts to contact or locate petitioner were unsuccessful.

After petitioner failed to appear, the BOC voted to convict her of honor system violations for copying other students' work on the Physics 2a quiz, the ChE 64 final exam, the ACM 95a final exam, and the Ch 41a final exam. The BOC also convicted petitioner of falsifying certain evidence she submitted to the BOC. This evidence included scratch work petitioner allegedly produced while taking the exams in question.

The BOC delayed issuing its decision on how best to protect the Caltech community from further honor code violations until 11:00 p.m. on March 8, 2009, to allow petitioner the opportunity to respond. When petitioner did not respond, the BOC concluded that expulsion was the appropriate protection. The BOC chair e-mailed the BOC's decision to petitioner and advised her of her right to appeal.

B. Petitioner's second appeal

Petitioner notified Dean Hall on March 20, 2009, that she wished to appeal the BOC's decision. Because Dean Hall had been involved in investigating petitioner's most recent honor system violations, Dean Hall recommended that Dr. Sargent appoint someone else to conduct the appeal. Dr. Sargent appointed Professor Melany Hunt and Professor Bradley Filippone to conduct the appeal.

After reviewing the evidence and speaking with petitioner, Professors Hunt and Filippone upheld the BOC's decision to expel petitioner from Caltech. They informed petitioner of their decision in a letter dated April 17, 2009. The letter stated that their decision would be subject to automatic review by the Vice President of Student Affairs.

On April 20, 2009, Dr. Sargent informed petitioner that she was conducting an automatic review of the case. She met with petitioner on April 23, 2009. On May 13, 2009, Dr. Sargent informed petitioner that she would uphold the BOC's decision. Dr. Sargent met again with petitioner and her father on May 20, 2009, to listen to their concerns. At the conclusion of that meeting, Dr. Sargent again stated she would uphold the BOC's to expel petitioner.

4. Writ petition

Petitioner filed the instant action seeking a peremptory writ of administrative mandamus against Caltech. After reviewing the administrative record, and following a hearing on February 8, 2011, the trial court denied the petition and entered judgment in Caltech's favor. This appeal followed.

DISCUSSION

I. Standard of review

On appeal from a trial court's ruling on a petition for writ of administrative mandamus, an appellate court reviews the administrative record to determine whether there is substantial evidence to support the trial court's decision. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 824.)

II. Substantial evidence supports the trial court's decision

Petitioner contends she was denied a fair administrative hearing because the BOC failed to inform her of the specific charges against her; Caltech failed to provide her with timely and sufficient notice of the final BOC hearing that led to her expulsion; and Caltech denied her the opportunity to present her case.² Substantial evidence in the record controverts these claims.

² Petitioner framed the issues as impacting "her constitutional procedural as well as substantive due process rights under the law." A due process violation requires state action (*Kruger v. Wells Fargo Bank* (1974) 11 Cal.3d 352, 366-367), and such action was absent here. Caltech, a private university enforcing its own honor system, was not a state actor acting under color of state law. (See *Grafton v. Brooklyn Law School* (2d Cir. 1973) 478 F.2d 1137, 1140-1143 [private law school not state actor for purposes of due process for expelled students].)

Petitioner was informed of the specific charges that resulted in her expulsion at a November 26, 2008 meeting with the BOC chair. She was again notified of the charges against her in a January 2, 2009 communication from the BOC chair asking for petitioner's schedule so that a hearing date could be set.

There is substantial evidence that petitioner knew the dates, times, and locations of the BOC's meetings on her case, as well as the specific subjects to be addressed at those meetings. Although petitioner was urged to attend these meetings in order to present her case, she elected not to do so. Petitioner was given multiple opportunities to attend the final BOC meeting on March 8, 2009, at which the BOC found her guilty of honor system violations and voted to expel her, but she failed to appear.

Petitioner's claims that she was denied a fair hearing because she was denied notice and the opportunity to be heard are unsupported by the record. Substantial evidence supports the trial court's denial of her petition.

III. No error in disregarding petitioner's declaration

Petitioner contends the trial court erred by disregarding a declaration she submitted to in support of her petition for writ of mandate. That declaration apparently contradicted evidence in the administrative record that the BOC had notified her of the various hearing dates on her case. Neither the declaration petitioner claims was improperly disregarded, nor the trial court's ruling on the declaration and writ petition was included in the record on appeal. Those omissions alone are a sufficient ground for disregarding petitioner's challenge to the trial court's ruling. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 [appellant has the burden of providing an adequate appellate record demonstrating the alleged error].)

The trial court did not err, in any event, by disregarding petitioner's declaration. When a quasi-judicial determination, such as the one at issue here, is reviewed by administrative mandamus, judicial review is limited to the administrative record. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576.) Petitioner's declaration was not part of the administrative record. The trial court's refusal to consider the declaration was not an abuse of discretion.

DISPOSITION

The judgment is affirmed. Caltech is awarded its costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST