SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NICHOLAS W. MOYNE** **PART** **41M**

Justice

----------X

COLUMBIA STUDENTS FOR JUSTICE IN PALESTINE, COLUMBIA-BARNARD JEWISH VOICE FOR PEACE, MARYAM ALWAN, CAMERON JONES

Petitioner,

- v -

TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, MINOUCHE SHAFIK, GERALD ROSBERG,

Respondent.

----------X

INDEX NO. 152220/2024

MOTION DATE 03/11/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 58, 59, 63 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, it is

After reviewing the record, the Court finds that Columbia University's decision to temporarily suspend the petitioners from their status as recognized student groups was neither arbitrary or capricious, irrational or in violation of clearly established University policies. Accordingly, the petition is denied and the cross-motion to dismiss the petition is granted.

All students and student groups at Columbia are subject to and required to comply with Columbia's Special Events Policies which govern, *inter alia*, when, where and how events on campus, including protests and demonstrations, may be held and what notice needs to be given to university officials prior to the commencement of any student group events, demonstrations or protests. Following the horrific events of October 7 and the intense divisions and controversies that occurred in their aftermath, Colombia University amended its policies because, in its words, the "University has an obligation to ensure that all members of our community can participate in their academic pursuits without fear for their safety."

The Special Events Policies has previously required that only recognized student groups can organize events and that they must work with administrators in advance to reserve space and secure approval for campus events. After October 7, changes were made to the policies concerning the consequences of non-compliance. For example, a new provision was added to the University Event Policy on October 24, 2023 to provide that "University groups . . . who proceed with Special Events, Vigils or Demonstrations

that have not been approved . . . will be subject to discipline and sanctions," expressly warning that "[s]tudent groups proceeding without approval may lose the right to sponsor events and/or become ineligible for University recognition or funding." Tenzer Aff. Ex. 2 at 4.

Similar language was added to the Student Group Event Policy and Procedure, cautioning that: If a recognized student organization fails to follow the event approval process, proceeds with an unauthorized event, promotes or markets an event on social media that has not yet been approved, promotes or markets an approved event in a manner otherwise inconsistent with University policies, or does not follow the designated parameters (e.g., location, time, etc.) of an approved event, the organization may be subject to sanctions . . . . Id. at Ex. 3 at 5. The updated Student Group Event Policy and Procedure explicitly stated that "[i]t is within the University administration's *sole discretion* to determine whether there has been a violation of the Event Policy and Procedure and what the appropriate sanctions shall be and the duration of such sanction. Sanctions made under this policy are final and not appealable." Id. (emphasis added).

These updated policies are clear and under the circumstances more than reasonable in their attempt to strike a balance between public safety and protecting students right to express their views while on campus. There is little if any dispute that the petitioners violated these policies. This Court does not have the power to conduct a full-scale review of the subject policies. Private universities, such as Colombia, are entitled to great deference from the judicial branch in reviewing their determinations, particularly those involving public safety and the safety and well-being of their students (*see Matter of Storino v New York* , 193 AD3d 436, 438 [1st Dept 2021]. A disciplinary determination will only be disturbed when the university acts arbitrarily and not in the exercise of its honest discretion, when it fails to substantially comply with its own rules, or when the penalty is so excessive that one's sense of fairness is shocked [*id* at 439]. Perfect adherence to every procedural requirement is not required to demonstrate substantial compliance (*see Matter of Doe v Skidmore College*, 152 AD3d 932. 935 [3d Dept 2017]). Students at private universities are not afforded a full panoply of due process rights absent state action (*Matter of Bondalapati v Columbia Univ.*, 170 AD3d 489, 490 [1st Dept 2019]; *see Cavanagh v Cathedral Preparatory Seminary*, 284 AD2d 360, 361 [2d Dept 2001]). This restricted review applies no matter what stage of the disciplinary process is being challenged.[1]

As stated above, there can be little dispute that the student groups were aware of the Special Events Policies and that they violated those policies on at least one and perhaps multiple occasions. This is not disputed in the record. The petitioners also have failed to show that Colombia deviated from these policies in any substantial or meaningful way. While the petitioners claim that they were singled out for punishment

[1] Additionally, private universities such as Colombia are not subject to constitutional claims, such as claims that a student's First Amendment rights to free speech and expression have been violated, since a private university and its employees are not considered state actors for the purpose of constitutional claims (*see Mitchell v New York University*, 129 AD3d 542, 544 [1st Dept 2015]).

because of their pro-Palestinian views and/or their expressions of opinion concerning the conflict in the Middle East, they have not provided any evidence in support of that claim. Colombia maintains, and the petitioners have not disputed the fact, that other student groups with similar viewpoints were able to protest and/or hold events on campus without serious incident, and while remaining in compliance with the university policies. Finally, the record shows that the University gave them numerous warnings about their failure to comply with the Special Events Policies and the potential sanctions and consequences that could arise because of their lack of compliance.

As such the Court cannot find that the University deviated from its stated policies in any significant way. The Court has no discretion to set aside these policies, regardless of whether the Court thinks they are appropriate or sound. Petitioners' real argument is that these policies are invalid, were promulgated in violation of university rules and unfairly curtailed their rights to free expression on campus. It should be noted that the main arguments the petitioners put forth to challenge the propriety of the amendments to the Special Events Policy are referenced only in the Reply Brief. Petitioners have failed to establish that the amendments to the Special Events Policy were not authorized by prior university rules and procedures, particularly given the amount of discretion a private university has in regulating the time, place and manner of campus expression.

Given this record, the only review this Court can make is the limited review cited above as to whether Colombia University substantially complied with its own rules. There is no evidence that they did not. Of course, not everyone agrees that these policies have had their stated intended effect of balancing the competing concerns of safety and freedom of speech and expression on campus. And there will undoubtedly be suggestions and recommendations as to how Colombia's policies could be changed or improved. But it is not the role of this Court or any court to wade into that difficult policy discussion.

The petition is denied and the cross-motion to dismiss the petition is granted.[2] The Clerk may enter judgment dismissing the petition.

11/4/2024
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE: [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION

[ ] GRANTED [X] DENIED [ ] GRANTED IN PART [ ] OTHER

[2] Although not addressed at length by the respondents, it is likely that the petitioners lacked standing to bring this proceeding in the first place. In New York, unincorporated associations, such as the student groups petitioning here, may not bring Article 78 proceedings in their own names. (*See Cmty. Bd. 7 of Borough of Manhattan v. Schaffer*, 84 NY2d 148, 155 [1994]). Rather, they must sue through their "president or treasurer," N.Y. Gen. Ass'ns L. § 12, "an elected or de facto officer performing equivalent functions and responsibilities," (*Arbor Hill Concerned Citizens Neighborhood Ass'n v. City of Albany, N.Y.*, 250 F Supp 2d 48, 62 [N.D.N.Y. 2003], or a member who pleads that the action is brought in the names of all the members of the group (*McOwen v. Boccacio*, 79 AD.2d 1098, 1098 [4th Dep't 1981]). Petitioners have not satisfied those requirements here.