

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 7, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1921-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

DAVID J. REIDINGER,

PETITIONER-APPELLANT,

V.

**BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN
SYSTEM,**

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
GERALD C. NICHOL, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

¶1 PER CURIAM. David Reidinger appeals an order dismissing his petition for judicial review of an administrative decision to terminate him from a Ph.D. program at the University of Wisconsin-Madison. Reidinger claims he has

a substantial interest at stake sufficient to warrant judicial review. We disagree and affirm.

BACKGROUND

¶2 Reidinger was a political science student at the university. In August of 1998, after several years of graduate study, Reidinger took preliminary examinations to determine whether he would be allowed to begin work on a Ph.D. dissertation. The examinations consisted of two essays which were to be assigned grades of distinction, high pass, pass, deficient or fail by members of a faculty committee. Reidinger received one high pass, three pass and four deficient grades on his examinations. His performance was deemed unsatisfactory by the committee, although he alleges his exam score actually exceeded the minimum passing requirements according to a grading formula provided by the department chair.¹

¶3 Reidinger was allowed to retake his preliminary examinations in January of 1999. His performance was once again deemed unsatisfactory, however, after one faculty committee member assigned him three deficient marks. As a result, the political science department terminated Reidinger from its Ph.D. program. Reidinger filed a grievance which was ultimately denied by the dean of the graduate school in a letter dated December 21, 1999. Reidinger then filed a petition for judicial review in the circuit court, seeking either to enjoin the department from terminating him from its program, or to require the department to let him retake the preliminary examinations without being graded by the faculty

¹ The board disputes this fact, but we accept it as true for the purpose of this appeal, in accordance with our standard of review.

member who had previously issued the multiple deficient grades. The circuit court dismissed the petition and Reidinger appeals.

STANDARD OF REVIEW

¶4 We will review the dismissal of Reidinger’s petition de novo, accepting as true the facts alleged therein. See *Doe v. Archdiocese of Milwaukee*, 211 Wis. 2d 312, 320, 565 N.W.2d 94 (1997).

ANALYSIS

¶5 Courts may review determinations by administrative agencies only pursuant to explicit statutory authority. See *Wisconsin’s Env’tl. Decade, Inc. v. PSC*, 93 Wis. 2d 650, 657, 287 N.W.2d 737 (1980). With several exceptions which are not relevant here, WIS. STAT. § 227.52 (1997-98)² permits judicial review of “[a]dministrative decisions which adversely affect the substantial interests of any person.” A “substantial interest” is one based on a legitimate claim of entitlement created by an independent source such as state law. See *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). A unilateral expectation of obtaining or maintaining a certain status does not create a substantial interest. See *Coe v. Board of Regents*, 140 Wis. 2d 261, 273, 409 N.W.2d 166 (Ct. App. 1987) (holding that a professor had no substantial interest in becoming tenured absent any state law or contractual guarantee of tenure upon the satisfaction of performance criteria).

² All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶6 Here, Reidinger seeks judicial review of the university's determination that his performance on one or both of his preliminary examinations was insufficient to allow him to continue in the graduate program. He claims to have a right to remain in the program if his performance has met the "stated rules and standards." Yet, he can point to no statute or published administrative rule which would entitle him to continue his graduate studies based upon any specific performance criteria. Furthermore, he has neither alleged any facts from which a contractual obligation of that nature could be inferred,³ nor cited any case law which would establish that he has a property or liberty interest in remaining in the Ph.D. program. Quite simply, any expectation Reidinger had of continuing in the program was contingent upon faculty evaluation of his progress. *See, e.g.*, WIS. STAT. § 36.09(3)(a) (authorizing the chancellor of the university to design curricula, set degree requirements, determine academic standards and establish grading systems in consultation with faculty).

¶7 Acknowledging that courts have no authority over the substance of faculty evaluations of academic performance, *see Martin v. Helstad*, 699 F.2d 387, 391-92 (7th Cir. 1983), Reidinger nonetheless claims to have a substantial interest in "fair review of his work" and "enforcement of the rules, policies and precedents" of the political science department. He contends that the department violated its own policies when it calculated his overall grade on his first set of preliminary examinations and when it allowed one faculty member to give him three unsatisfactory marks on his second set of preliminary examinations. Again,

³ Unlike the students in *Frank v. Marquette Univ.*, 209 Wis. 372, 245 N.W. 125 (1932) and *Cosio v. Medical College of Wisconsin, Inc.*, 139 Wis. 2d 241, 407 N.W.2d 302 (Ct. App. 1987), Reidinger has not identified any provision in a student handbook or bulletin distributed to students upon which he could claim to have relied when entering the political science graduate program.

however, Reidinger has provided nothing to show that he had a legal entitlement to have his grades tabulated in a certain manner or by certain faculty members.⁴

¶8 Reidinger points to a precedent holding that a university “may not arbitrarily or capriciously dismiss a student or deny to him the right to continue his course of study.” *Frank v. Marquette Univ.*, 209 Wis. 372, 377, 245 N.W. 125 (1932). He then argues that his termination from the political science graduate program was arbitrary because it did not follow prior department policy. In *Frank*, however, the court determined that disciplinary actions taken against some students were not relevant to another student’s action to compel issuance of a diploma because there was “no yardstick which either a faculty or a court may apply to the many situations which arise in educational institutions with respect to discipline.” *Id.* at 378. We are persuaded that academic decisions are no less individual than disciplinary decisions and, thus, the mere fact that a student may have been evaluated differently than other students does not mean that he has been treated “arbitrarily.”

¶9 We are further persuaded that the weight given to an individual committee member’s grades is part and parcel of the overall determination of a graduate student’s academic progress, which this court is in no position to second guess. We therefore conclude that the faculty committee’s determination that Reidinger’s academic performance was unsatisfactory provided a “sufficient reason” for his termination from the graduate program. *See Cosio v. Medical*

⁴ Reidinger also argues that, because academic decisions are not included in the list of decisions excluded from judicial review under WIS. STAT. § 227.52(1)-(7), they must be subject to review under the principle of *inclusio unius est exclusio alterius*. The fact that certain otherwise substantial interests have been specifically exempted from judicial review does not, however, answer the question whether a non-specified interest is “substantial.”

College of Wisconsin, Inc., 139 Wis. 2d 241, 247, 407 N.W.2d 302 (Ct. App. 1987).

¶10 In sum, we are satisfied that Reidinger had nothing more than a unilateral expectation of continuing his graduate studies. That expectation did not rise to the level of a substantial interest sufficient to warrant judicial review of the decision to terminate him from the Ph.D. program.⁵ Reidinger's petition was properly dismissed for failing to state an actionable claim.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

⁵ WISCONSIN STAT. § 227.42 similarly limits the right to request a contested hearing before an administrative agency to those who have had a “substantial interest” injured or threatened. Although Reidinger mentions this provision in passing, he does not appear to be requesting an administrative hearing. We note, however, that the same analysis would apply.

