

[Cite as *Revay v. Cleveland State Univ.*, 2003-Ohio-101.]

IN THE COURT OF CLAIMS OF OHIO

GEORGE A. REVAY :
 2105 W. 31st Pl. :
 Cleveland, Ohio 44113-4015 : Case No. 2002-04003-AD

 Plaintiff : MEMORANDUM DECISION

 v. :

 CLEVELAND STATE UNIVERSITY :

 Defendant :

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For Defendant: Nancy J. Cribbs
 University Legal Counsel
 Cleveland State University
 2121 Euclid Avenue
 Rhodes Tower 1212
 Cleveland, Ohio 44115-2214
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¶1 During the spring semester of 2001, plaintiff, George A. Revay, a student enrolled at defendant, Cleveland State University (CSU), applied for financial aid for the 2001 summer semester. Plaintiff had been attending classes at CSU since 1993 and had completed over 200 hours of class credit. Previously in 1991 and 1992 plaintiff had attended Cuyahoga Community College where he completed 102.67 hours of classroom credit which transferred to CSU. However, only 23 hours of transferred credit applied to plaintiff's degree. For the purpose of calculating plaintiff's financial aid eligibility, the 23 transfer hours were combined with credit hours completed at CSU. Consequently, plaintiff had completed nearly 250 credit hours when he applied for financial aid covering the 2001 summer semester.

{¶2} On March 26, 2001, defendant university sent plaintiff a letter notifying him that he was being offered a "Part-time Ohio Instructional Grant" of \$500.00 for the 2001 summer semester. The letter notifying plaintiff of a financial assistance grant also contained the following:

{¶3} "Awards made prior to the start of the semester are based on assumed full-time enrollment and will be confirmed or adjusted based on your actual enrollment each term on the Last Day to Drop (September 15 for Fall 2000; January 26 for Spring 2001; July 6 for Summer 2001). Your award is also based on the following cost of education ("Budget") and family contribution amounts, and the accuracy of the information you provided on your Free Application for Federal Student Aid (FAFSA). Cleveland State University reserves the right to adjust any aid offered based on verification of eligibility and enrollment status."

{¶4} For the 2001 summer semester plaintiff enrolled in one class, Physics-242. Total tuition cost of Physics-242 amounted to \$853.00. Plaintiff applied the \$500.00 financial aid grant to the class tuition cost and paid the \$353.00 balance with his own funds. Plaintiff attended every class of Physics-242 during the eight week summer semester and successfully completed the course with a passing grade.

{¶5} Plaintiff indicated, after the end of the summer semester at some time during August 2001, he received written notice and a voice mail from defendant regarding an eligibility problem with the \$500.00 financial aid grant for the 2001 summer semester. Plaintiff stated he was notified by defendant to file a petition to reinstate his financial aid eligibility for the 2001 summer semester. Plaintiff asserted he had previously filed a reinstatement petition, but defendant's financial aid office personnel denied receiving it. Therefore, plaintiff maintained he filed a second reinstatement petition. Plaintiff submitted a letter addressed to him from the university's financial aid office

dated August 2, 2001. This letter informed plaintiff his petition for reinstatement of financial aid had been reviewed and reinstatement had been denied. This August 2, 2001 letter contained the following notice and explanatory information:

{¶6} "The Financial Aid Office has concluded a review of your petition to reinstate your financial aid eligibility. This review is required to insure those students receiving financial aid who failed to meet the Satisfactory Academic Progress standards have an opportunity to petition for reinstatement of their financial aid eligibility.

{¶7} "Your petition for reinstatement of financial aid eligibility has been denied. You are no longer eligible to receive financial aid. You may attend school (without financial aid) to meet the satisfactory academic progress standards after which you may request a review of your eligibility status for future semesters.

{¶8} "We strongly suggested you contact your academic advisor to discuss your educational goals and services available from CSU to assist you. You will be responsible for payment of any balance due on your student account resulting in this loss of eligibility."

{¶9} The letter also contained the following written defined guidelines for Satisfactory Academic Progress:

{¶10} "Cumulative Grade Point Average (CGPA). The required cumulative grade point average requirement of Cleveland State University's academic policy based on your academic standing. Example: At the conclusion of 60 attempted Credit hours your Cumulative Grade Point Average (CGPA) must be 2.00 or above if you are an Undergraduate student. Graduate students must maintain a minimum CGPA of 3.00.

{¶11} "Percentage of Hours Successfully Completed (Minimum Credit hours). The successful completion, with a passing grade, of at least 67% of your attempted credit hours each academic year. You do not have to be enrolled at a full-time level (12 or more

credit hours), however you must complete at least 67% of the total hours attempted.

{¶12} "Total Allowable Attempted Hours (Maximum Time frame). The timely completion of degree requirements. As an undergraduate student you can attempt no more than 192 Credit hours (150% of the required total credit hours to complete a degree program at CSU)."

{¶13} When plaintiff's petition for reinstatement of financial aid was denied he was charged \$500.00 for the Physics-242 class he had taken leaving an unpaid balance on his student account. Plaintiff related he went to CSU's financial aid office and attempted again to have his financial aid reinstated, but was unsuccessful. Since plaintiff could not persuade CSU staff to reinstate his financial aid for the 2001 summer semester, he petitioned the university to permit him to withdraw from the Physics-242 class he had already completed and passed. The petition for late withdrawal was denied, due to the fact plaintiff had sufficient time during the 2001 summer semester to drop the Physics-242 course. An outstanding balance of \$500.00 remained on plaintiff's student account with an additional late fee charge of \$15.00 added on February 13, 2002. Plaintiff's total unpaid debt to defendant university amounts to \$515.00.

{¶14} Consequently, plaintiff filed this complaint attempting to appeal the decisions of defendant's administrators in revoking plaintiff's financial aid and denying plaintiff's petition to withdraw from class. Plaintiff has requested this court absolve him of the \$515.00 debt he was assessed or alternatively grant his late withdrawal from class with full tuition reimbursement of \$853.00. Plaintiff was not required to pay a filing fee to prosecute this action. Plaintiff captioned his complaint as, "Appeal From Agency." This claim was originally assigned to the judicial docket of this court but was subsequently transferred to the Administrative Determinations section by an entry dated July 22, 2002. Upon motion, the court determined plaintiff's claim for

monetary relief was less than \$2,500.00 and therefore a transfer was appropriate. While plaintiff's claim was pending on the judicial docket of this court, plaintiff filed various motions for injunctive relief. In a particular document dated June 26, 2002, plaintiff described his position in regard to monetary damages claimed. Plaintiff explained:

{¶15} "I am not seeking money damages of \$515.00 per say. I have not lost any thing of value with respect to this issue as of this date. I am disputing the Defendant's claim to the said amount of \$515.00 by seeking either a reversal of the decision of the petitions' committee of the College of Business of Cleveland State University under 2743.02(A)(2), or the nullification of the unjustified reversal of my Ohio Instructional Part Time Grant (OIG) after I had completed a course and after the summer 2001 semester had finished."

{¶16} After this claim was transferred, plaintiff filed two motions on July 29, 2002. In the first motion plaintiff requested the court issue an injunction to stop defendant from carrying out collection proceedings against him for the \$515.00 debt owed. In the second motion plaintiff asked the court to reconsider a previous decision denying plaintiff injunctive relief. Additionally, plaintiff moved to amend his complaint for monetary damages. Plaintiff requested his complaint be amended to include monetary compensation equaling two years of college tuition at the rate for eighteen semester-credits per semester. Plaintiff argued he was entitled to the additional damages based on breach of contract. Plaintiff contended defendant breached a contract with him by revoking a financial aid award covering the 2001 summer semester. Plaintiff further contended defendant acted unreasonably by not granting his late withdrawal request from Physics-242. Plaintiff characterized defendant's refusal to grant the withdrawal request as reckless. Alternatively, plaintiff claimed the two years worth of tuition damages were based on him suffering one year

of delay in obtaining his degree and one year of hardship. On August 19, 2002, the court denied plaintiff's motions for reconsideration and injunctive relief. The issue of plaintiff's amended damage claim was not addressed.

{¶17} CSU filed an investigation report acknowledging plaintiff was initially granted financial aid for the 2001 summer semester, which was subsequently revoked based on plaintiff's failure to comply with Satisfactory Academic Progress (SAP) requirements. Defendant indicated SAP eligibility requirements are mandated by federal regulations. A petition committee of CSU's Financial Aid Office determines if a petitioning student under SAP requirements warrants continuation of a financial assistance grant. Defendant admitted plaintiff's financial aid was revoked because plaintiff failed to meet SAP standards. Specifically, plaintiff became ineligible to receive financial aid by exceeding the maximum time frame for receiving a bachelor's degree. This SAP standard of maximum time frame applies when a student has attempted 192 credit hours of study. Defendant explained plaintiff has taken 225 hours at CSU with an additional 23 transfer hours from Cuyahoga Community College applying toward the maximum time frame limit. Defendant related plaintiff had successfully petitioned for reinstatement of financial aid eligibility prior to the 2001 summer semester. Defendant's records indicated letters with attached reinstatement petitions were sent to plaintiff on June 20, 2001 and June 21, 2001 notifying him that he had exceeded the maximum time frame and was required to file a reinstatement petition for consideration of financial aid eligibility. Defendant asserted the university Financial Aid Office had not received plaintiff's reinstatement petition as of July 27, 2001. Therefore, defendant's personnel at the Financial Aid Office left a message with plaintiff advising him his reinstatement petition had not been received. Defendant related plaintiff's petition was delivered on July 31, 2001. On August 2, 2001, plaintiff's petition for reinstatement of financial

aid eligibility was denied based on SAP standards regarding maximum time frame permitted. Plaintiff was notified of the decision and was billed \$500.00, the amount of the financial aid denied.

{¶18} Defendant insisted the university's SAP standards are clearly specific concerning reinstatement of financial aid eligibility. Defendant asserted proper procedures were followed when plaintiff's petition for reinstatement was denied. Defendant submitted a copy of the SAP Standards for financial aid eligibility requirements. The section of the SAP Standards requiring financial aid reinstatement contains the following:

{¶19} "Petition for Reinstatement of Financial Aid Eligibility

{¶20} "Students who wish to petition for reinstatement of financial aid eligibility due to failure to maintain satisfactory academic progress may submit a written petition to the Financial Aid Office. In order to submit a petition, you must:

{¶21} "1. Complete all items on the Petition for Reinstatement of Financial Aid Eligibility (available from the Financial Aid Office). Complete both sides of the petition form. Attach required documentation and additional sheets, if necessary, to make your best case.

{¶22} "2. Explain the mitigating circumstances that contributed to your academic and resulting satisfactory academic progress problems. If your difficulties spanned multiple academic semesters, you must explain the factors that contributed to the deficiencies over the entire period, not just the most recent semester.

{¶23} "3. You are encouraged to schedule an appointment to meet with your academic advisor or dean's office representative to discuss your academic progress and identify ways in which you can improve your academic performance.

{¶24} "4. ALL petitioners will receive a written response as soon as possible, but no later than four weeks after submitting the necessary information.

{¶25} "5. If your petition is denied, you will be responsible for all charges incurred as a result of the loss of federal financial assistance."

{¶26} Defendant stated all SAP Standards are available in the university's catalogs and on its website. Therefore defendant contended plaintiff had access to all information regarding potential consequences resulting from a revocation of financial aid.

{¶27} Furthermore, defendant asserted the denial of plaintiff's financial aid reinstatement petition was a determination made in adherence to federal regulations. Defendant apparently believed plaintiff, by needing 47 credits to earn a degree, was not making sufficient academic progress to justify reinstatement of aid in satisfaction of federal guidelines.

{¶28} Defendant has argued this court does not have jurisdiction to decide plaintiff's claim on the merits or grant the relief sought. Defendant asserted this court does not have appellate jurisdiction over administrative matters involving the operation of state entities. Defendant contended this court has no jurisdiction under R.C. 2743.02 or R.C. 2743.10 to review internal decisions of CSU concerning student financial aid awards and denials of late withdrawals from course study.

{¶29} In support of the university's argument defendant offered prior decisions. Defendant cited *Bailey v. Dept. of Administrative Services* (March 5, 2002), Franklin App. No. 01 AP-1062 for the proposition that the Court of Claims has no appellate jurisdiction.

In *Bailey, id.*, it was determined procedures were already in place for redressing the state's decision denying disability benefits to a state employee. Unlike the situation in the instant claim, the plaintiff in *Bailey* had a statutory right to appeal the state's adverse decision to a common pleas court. Additionally, defendant submitted this court does not have jurisdiction over the present claim based on the holding in *Pinter v. Young* (Feb. 27, 1991), 6th

Cir. No. 90-03849, unreported, where it was stated the Court of Claims' enabling legislation does not grant new rights such as review of revocation decisions of the state's Bituminous Concrete Certification Committee. Furthermore, defendant offered *Dunkin v. Dept. of Administrative Services* (1987), 35 Ohio Misc. 2d 24, where this court held it did not maintain jurisdiction over a state employee's appeal over a denial of sick leave benefits. In *Dunkin*, *id.*, the Court of Claims determined plaintiff did not present any statutory authorization to review defendant's denial of benefits.

{¶30} Defendant has also asserted plaintiff's petition for late withdrawal of the Physics-242 class was properly denied. Defendant related plaintiff acted in an extremely untimely manner in requesting the late withdrawal. Evidence has shown plaintiff's request for withdrawal was made several months after he had successfully completed the course. Defendant argued plaintiff did not present any reason to justify a late withdrawal and therefore, the denial was proper.

{¶31} Plaintiff filed a response. Plaintiff asserted he was not informed in a timely manner that his petition for reinstatement of financial aid was denied. Plaintiff has suggested this issue of untimely notice should be actionable. Plaintiff indicated he should have been given financial aid for the 2001 semester, despite exceeding the maximum time frame for obtaining a degree. Plaintiff insisted this court has jurisdiction over the controversy he presented. Plaintiff cited *Organiscak v. Cleveland State University* (Aug. 28, 2001), Court of Claims No. 99-08785, to support his argument regarding jurisdiction. *Organiscak*, *id.*, involved a situation where a plaintiff student alleged she was wrongfully terminated from a defendant, university's graduate speech and language program. This court concluded defendant university acted properly in dismissing plaintiff Organiscak from the graduate program and again exercised appropriate judgment in denying Organiscak's application for readmission.

{¶32} Plaintiff, in the present claim, has reasserted his position that his late withdrawal application from Physics-242 should have been approved. Plaintiff acknowledged his total motivation for submitting the withdrawal petition was to avoid a \$500.00 debt imposed when his financial aid was revoked. Plaintiff reasoned he did not agree to pay the entire cost of his Physics-242 course and therefore he cannot be obligated to pay the debt. Furthermore, plaintiff argued he had a right to withdraw from class, and a right to choose not to pay for the class, although he did not elaborate about how these rights were established or obtained.

{¶33} Plaintiff again maintained this court has subject matter jurisdiction over the acts of state university employees dealing with academic matters involving students. Plaintiff has asserted he relied on the representations of defendant's staff at the university's Financial Aid Office initially awarding him financial aid for the 2001 summer semester. Plaintiff insisted the revocation of his financial aid was not merited and was unjust.

{¶34} Concomitantly, plaintiff has consistently asserted his late withdrawal petition was improperly denied. Plaintiff suggested he was forced by circumstances under defendant's control to file his petition for withdrawal in an untimely manner. Therefore, plaintiff reasoned his petition should have been approved.

{¶35} After reviewing all evidence in the claim file the court concludes it has subject matter jurisdiction over this claim. Plaintiff's claims, essentially dealing with financial aid eligibility and a dispute over withdrawing from a class, relate to contractual matters involving defendant university and a student. Such matters fall under the jurisdictional purview of this court. However, jurisdiction to decide a dispute does not equate to liability.

{¶36} It is well recognized that when a student enrolls in a

college or university, pays his or her tuition and fees, and attends the school, the resulting relationship is construed as contractual in nature. *Behrend v. State* (1977), 55 Ohio App. 2d 135, 139. The terms of the contract between the university and the student are generally found in the college catalog and handbooks applied to students. *Embrey v. Central State University* (October 8, 1991), Franklin County App. No. 90 AP-1302; *Smith v. Ohio State Univ.* (1990), 53 Ohio Misc. 2d 11, 13. However, where the contract permits, the parties may modify the terms by mutual agreement. *Ottery v. Bland* (1987), 42 Ohio App. 3d 85, 87.

{¶37} In the instant claim, both plaintiff and defendant were aware of the requirements for financial aid eligibility. Plaintiff had access to information which indicates he either knew or should have known his financial aid award could be revoked. Plaintiff acknowledged he was aware of consequential eligibility problems invoked by exceeding the maximum time frame for obtaining a degree.

The fact plaintiff's prior petitions for reinstatement of aid were approved did not constitute a guarantee of approbation of subsequent petitions. Accordingly, the court concludes, plaintiff has failed to prove the decision to deny him financial aid was made improperly or fell outside the bounds of reasonable professional judgment. While the timing of defendant's revocation was unfortunate, the revocation itself did not create an actual event.

Defendant had the authority and discretion to grant or deny plaintiff's petition for reinstatement. Under the facts of the instant claim, plaintiff cannot be absolved of a debt arising from defendant's proper act.

{¶38} Alternatively, plaintiff has evoked some contentions he was defrauded by defendant in regard to the award and revocation of financial aid. Plaintiff has not established fraud. The elements of fraud are: (a) a representation of fact; (b) which is material; (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that

knowledge may be inferred; (d) with the intent of misleading another into relying upon it; (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury proximately caused by the reliance. *Cohen v. Lamko, Inc.* (1984), 10 Ohio St. 3d 167. In the present claim, plaintiff has failed to show defendant intended to mislead him about financial aid eligibility. Additionally, plaintiff knew from past experience he was ineligible for financial assistance based on exceeding maximum time frame standards. Evidence has shown plaintiff knew of his eligibility obstacle and any reliance professed about a preliminary grant of aid cannot be considered justifiable. Plaintiff has not presented a case of fraud.

{¶39} In the same vein plaintiff has also failed to produce sufficient proof to invoke promissory estoppel. Promissory estoppel is defined as follows: "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." Restatement of the Law, Contracts 2d (1973), Section 90; *McCroskey v. State* (1983), 8 Ohio St. 3d 29, 30. The promise of financial aid as characterized by plaintiff in the instant claim contained the following limitation: Cleveland State University reserves the right to adjust any aid offered based on verification of eligibility and enrollment status. The court concludes the initial offer of financial aid should not have been expected to produce action on the part of plaintiff since he knew of his eligibility difficulties. Also, a direct promise of financial aid to a student exceeding the maximum time frame was converse to federal regulations. Therefore, any representations made by CSU's Financial Aid Office would be contrary to federal regulations and consequently, promissory estoppel does not apply. See *Marbury v. Central State University* (Dec. 14, 2000), Franklin App. No. 00 AP-597.

{¶40} Additionally, plaintiff has failed to prove defendant acted improperly in denying his late withdrawal from Physics-242. A court is required to defer to academic decisions of a college unless it perceives "*** such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment. ***" *Bleicher v. Univ. of Cincinnati* (1992), 78 Ohio App. 3d 302, 308, quoting *Regents of the Univ. of Mich. v. Ewing* (1985), 474 U.S. 214, 225. The standard of review is not merely whether the court would have decided the matter differently but whether the university action was arbitrary and capricious. *Bleicher, supra*. See, also, *Bd. Of Curators of Univ. of Mo. V. Horowitz* (1978), 435 U.S. 78, 91. Plaintiff has failed to prove defendant acted in such a manner as to establish liability.

{¶41} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶42} IT IS ORDERED THAT:

{¶43} 1) Plaintiff's motion to amend his complaint is DENIED;

{¶44} 2) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶45} 3) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk