

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
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EHSAN MAHALATI

Plaintiff

v.

OHIO STATE UNIVERSITY

Defendant

Case No. 2006-02978

Judge Joseph T. Clark
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶1} On December 18, 2006, plaintiff filed a motion for summary judgment pursuant to Civ.R. 56(A). On January 22, 2007, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On March 5, 2007, plaintiff filed a response. On March 22, 2007, an oral hearing was held on both motions.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} “*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor. ***” See, also, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} Defendant’s motion for summary judgment is accompanied by an affidavit of Richard Hollingsworth who was employed on December 10, 2003, as defendant’s

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Associate Vice President for Student Affairs. On that date, Hollingsworth learned that plaintiff, a student at defendant university, had been arrested in Delaware County, Ohio, on charges of aggravated burglary and felonious assault. Hollingsworth reviewed the police report and discussed plaintiff's arrest with William Hall, defendant's Vice President for Student Affairs. According to Hollingsworth, Hall was responsible both for enforcing defendant's code of student conduct and for approving the final decision to "disenroll" plaintiff from the university because of the criminal charges. Plaintiff was ultimately convicted of felonious assault.

{¶5} In his affidavit, Hollingsworth explained the procedure that defendant utilized to disenroll plaintiff, as follows:

{¶6} "5. Mr. Hall's final decision to disenroll Mr. Mahalati was communicated through a letter signed by Mr. Hall and dated December 12, 2003. The letter stated: 'Pursuant to The Ohio State University Code of Student Conduct, Section 3335-23-21(A)(I), and in response to your recent arrest, I am advising you that you have been immediately disenrolled from attendance at The Ohio State University. Your actions present clear and convincing evidence to me that your continued presence at the University poses a significant risk of substantial harm to the health and safety of others.' The letter also stated: 'You have the right to petition for revision of this status. Details of the petition process are enumerated in Section 3335-23-21(C) of the Code of Student Conduct.' A true and accurate copy of that letter is attached to this Affidavit as Exhibit B. The Ohio State University Police Department hand delivered this letter to Mr. Mahalati while he was being held at the Delaware County Jail.

{¶7} "6. Section 3335-23-21 of the Code of Student Conduct governs administrative disenrollment and other restrictions. Section 3335-23-21(A)(I) provides: 'A student may be disenrolled from the university; prohibited from all or any portion of university premises, university-related activities or registered student organization activities; and/or permitted to remain only under specified conditions when the vice president for

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student affairs or designee finds that there is clear and convincing evidence that: (1) The student's continued presence poses a significant risk of substantial harm to the health or safety of themselves, others, or to property ***.' A true and accurate copy of the current Code of Student Conduct is attached to this Affidavit as Exhibit C. The 2003 version of Section 3335-23-21(A)(l) is identical to the version which is currently in effect.

{¶8} "7. Section 3335-23-21(C) addresses the petition procedure. Section 3335-23-21(C) provides: 'A student who has been disenrolled; prohibited from university premises, university-related activities or registered student organization activities; or permitted to remain only under specified conditions may petition the vice president for student affairs for revision of that status. ***' Section 3335-23-21 does not specify a time limit for a student to petition for revision of their status following an administrative disenrollment. The 2003 version of Section 3335-23-21(C) is identical to the version which is currently in effect.

{¶9} "8. The Office of Student Affairs has no record of ever having received a petition or other communication from Mr. Mahalati or anyone acting on his behalf requesting revision of his disenrolled status.

{¶10} "9. Under the circumstances, any petition by Mr. Mahalati for revision of his status filed from the time of his disenrollment up to the present would be denied. Among other potential considerations, Mr. Mahalati is unable to meet the general standards for re-enrollment at The Ohio State University due to his incarceration. Pursuant to Section 3335-23-21(C)(2) of the Code of Student Conduct a petition for revision of a disenrollment must include supporting documentation or evidence that: 'The student meets all normal and appropriate standards for admission and enrollment in any academic unit in which the student seeks to re-enroll.' Due to his incarceration, Mr. Mahalati has been and remains unable to attend classes or satisfy other conventional educational obligations and does not meet all the normal and appropriate standards for admission and enrollment at The Ohio State University."

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{¶11} It is well recognized that when a student enrolls in a college or university, pays tuition and fees and attends the school, the resulting relationship is contractual in nature. *Behrend v. State* (1977), 55 Ohio App. 2d 135, 139. The terms of the contract between the university and its student are generally found in the college catalog and handbooks applied to students. *Embrey v. Central State Univ.* (Oct. 8, 1991), Franklin App. No. 90AP-1302. However, where the contract permits, the parties may modify the terms by mutual agreement. *Ottery v. Bland* (1987), 42 Ohio App. 3d 85, 87; *Bleicher v. Univ. of Cincinnati College of Medicine* (1992), 78 Ohio App. 3d 302, 308. In this case, the terms of plaintiff’s contract with defendant are set forth in the code of student conduct.

{¶12} Section 3335-23-04 of defendant’s code of student conduct defines “prohibited conduct” and provides, in relevant part:

{¶13} “B. Endangering health and safety

{¶14} “Taking or threatening action that threatens or endangers the safety, physical or mental health, or life of any person, whether intentionally or as a result of recklessness or gross negligence.”

{¶15} The court finds that defendant was provided clear and convincing evidence that plaintiff had taken or threatened action that endangered the health or safety of others. Furthermore, pursuant to Section 3335-23-21(C) of defendant’s code of student conduct, plaintiff has had the opportunity to petition the vice president for student affairs for revision of his student status; however, no such petition was filed. Therefore, the court finds that the evidence establishes that defendant met its contractual obligations to plaintiff.

{¶16} In his motion for summary judgment, plaintiff asserts that defendant violated his statutory rights by failing to provide him a hearing pursuant to R.C. 3345.22, which states, in pertinent part:

{¶17} “(A) A student, faculty or staff member, or employee of a college or university that receives any state funds in support thereof, *arrested for any offense covered by division (D) of section 3345.23 of the Revised Code* shall be afforded a hearing, as

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provided in this section, to determine whether the person shall be immediately suspended from the college or university. The hearing shall be held within not more than five days after the person’s arrest, subject to reasonable continuances for good cause shown, which continuances shall not exceed a total of ten days.” (Emphasis added.)

{¶18} R.C. 3345.23(D) provides, in relevant part:

{¶19} “Without limiting the grounds for dismissal, suspension, or other disciplinary action against a student, faculty or staff member, or employee of a college or university which receives any state funds in support thereof, the commission of an offense of violence as defined in division (A)(9)(a) of section 2901.01 of the Revised Code or a substantially equivalent offense under a municipal ordinance, *which offense is committed on or affects persons or property on such college or university*, or which offense is committed in the immediate vicinity of a college or university with respect to which an emergency has been declared and is in effect pursuant to section 3345.26 of the Revised Code, is cause for dismissal pursuant to this section or for suspension pursuant to section 3345.22 of the Revised Code. ****” (Emphasis added.)

{¶20} It is undisputed that the offense which gave rise to plaintiff’s arrest and conviction occurred in Delaware, Ohio and did not affect persons or property on or in the vicinity of defendant’s campus. Therefore, the hearing requirement set forth in R.C. 3345.22 is inapplicable in plaintiff’s case.

{¶21} Moreover, even if plaintiff were correct in his assertion that he was convicted of the type of offense that was covered by R.C. 3345.23(D), his conviction would have automatically resulted in his dismissal pursuant to R.C. 3345.23(A).¹ Accordingly, plaintiff’s claim that he was dismissed by defendant in violation of his statutory rights is without merit.

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R.C. 3345.23(A) provides that “[t]he conviction of a student *** of a college or university which receives any state funds in support thereof, of any offense covered by division (D) of this section, automatically effects the student’s *** dismissal from such college or university, except [where the conviction is reversed on appeal].”

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Upon consideration of the arguments presented by the parties and the evidence provided by defendant, the court finds that no genuine issues of material fact exist and that defendant is entitled to judgment as a matter of law. Accordingly, it is recommended that plaintiff's motion for summary judgment be denied, that defendant's motion for summary judgment be granted, and that judgment be rendered in favor of defendant.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

cc:

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