

IN THE COURT OF CLAIMS OF OHIO

BRANDON D. MARQUETTE

Plaintiff

v.

OHIO UNIVERSITY

Defendant

Case No. 2024-00676AD

Deputy Clerk Holly True Shaver

MEMORANDUM DECISION

{¶1} Before the Deputy Clerk are plaintiff's amended complaint, defendant's investigation report, and various motions and responses regarding plaintiff's enrollment in a summer course and plaintiff's subsequent interaction with defendant regarding his final grade for that course. For the following reasons, the Deputy Clerk finds that plaintiff has failed to prove any of his claims by a preponderance of the evidence, and, therefore, judgment shall be entered in favor of defendant.

Procedural History

{¶2} Plaintiff, Brandon Marquette, was a student of defendant, Ohio University. According to plaintiff's amended complaint, in the summer of 2024, plaintiff paid \$761.83 to enroll in a course. The instructor of the course was Dr. Susan Tice-Alicke. The name of the course was "Child and Adolescent Psychology – PSY 2410." The syllabus contained a schedule of lessons and readings, specifically listing seven lessons and readings and their due dates and times. (Plaintiff's Exhibit II). For example, Lesson 1 had a due date of Monday, May 20, 2024 by 5:00 pm ET; Lesson 2 had a due date of Tuesday, May 28, 2024 by 5:00 pm ET; and Lesson 3 had a due date of Monday, June 3, 2024 by 5:00 pm ET. All seven lessons and their due dates appeared in boldface type on the syllabus.

{¶3} In other parts of the syllabus, the following language appears. Under "REQUIREMENTS," the syllabus states:

There will be 7 lessons throughout the semester. It is the student's responsibility to submit lessons by the due dates and time. Please contact

me if you need an extension from the due date/time **at least two hours before due**. . . . Lessons not submitted by the due date & time will result in a grade of zero. Therefore, you should be proactive and submit the lessons early. Note: missing lessons will result in a lower grade for the semester.

{¶4} **Note: Failure to complete 2 or more lessons will result in receiving a failing grade for the course.** (Emphasis in original.)

{¶5} In the “submission of lessons” portion of the syllabus, it states: “All lessons are to be submitted via Blackboard to the instructor.” Additional language explains how a student is to submit a lesson electronically, and the syllabus notes: **“You cannot make changes once you submit.”** You will notice the due date and time at the top of the assignment.” (Emphasis in original). In the “grading policy” portion of the syllabus, it also states: **“Note: Failure to complete 2 or more lessons will result in receiving a failing grade for the course.”** (Emphasis in original.)

{¶6} Plaintiff alleges that on June 4, 2024, he sought clarification of the language of the syllabus, which states: “Failure to complete 2 or more lessons will result in receiving a failing grade for the course” and “Lessons not submitted by the due date & time will result in a grade of zero.” Plaintiff further alleges that on June 5, 2024, defendant conflated the two clauses, treating late submissions as failures to complete assignments, despite the distinction of the two different clauses in the syllabus. On July 3, 2024, plaintiff alleges that despite having “completed” all course work, which plaintiff calculated as resulting in a 93.83 percent grade, defendant posted the final letter grade of “F” for his participation in the class.

{¶7} Plaintiff initiated defendant’s internal grade appeal process at the department chair and associate dean level, but plaintiff’s appeals were not successful. Plaintiff brings claims of breach of contract and violation of due process and seeks economic damages for the cost of tuition for PSY 2410 and noneconomic damages for emotional distress and reputational harm. Plaintiff filed various documents including Section IV of defendant’s faculty handbook, the course syllabus, and email correspondence between himself and defendant’s employees. Plaintiff also filed a “motion to introduce new evidence,” wherein he sought to supplement his amended complaint with responses to a public records request that he served on defendant, which

he included with the motion. Plaintiff's November 12, 2024 motion to introduce new evidence is GRANTED.

{¶8} Defendant filed an investigation report, wherein it argues that the decision not to change plaintiff's grade was correct, and that defendant's employees acted appropriately through the grade appeals process as stated in the faculty handbook. According to defendant, the faculty handbook provides that, when academic misconduct is not at issue, which is the case here, the burden of proof for changing a student's grade is on the student. Further, defendant argues that plaintiff exhausted the appeals process as outlined in the handbook. Defendant contends that it did not breach any contract under the syllabus or the handbook, and that plaintiff's claims of violation of due process are not actionable in the Court of Claims.

{¶9} In response to the investigation report, plaintiff argues that defendant's decision was arbitrary and capricious. In essence, plaintiff argues that he should not have received a failing grade in the course, and that defendant also acted arbitrarily and capriciously when it rejected his arguments during his grade appeal. Plaintiff asserts that because he completed lessons 1 and 3, albeit late, the fact that he eventually completed the lessons shows that he did not fail to "complete" 2 or more lessons. Thus, he should not have received a failing grade for the course. Plaintiff asserts that there "is no principle, plain language nor intent contained within the syllabus or faculty handbook to support failing plaintiff based on punctuality as lessons 'are meant to be applications of the assigned reading material' and 'professors must evaluate students based on each student's true merit.'" (Response, p. 12.) Plaintiff argues that his professor for the course and the individuals involved in his grade appeal process failed to adhere to academic norms and, thus, acted arbitrarily and capriciously. As stated during the appeals process, plaintiff argues that for completing two assignments late, he received zero points but does not accept the contention that he failed to "complete" two assignments, which resulted in receiving an F letter grade for the course. (Response, p. 16.) Plaintiff argues that the course instructor and assistant chair, Dr. Susan Tice-Alicke, made a quick, arbitrary and capricious decision to deny his grade appeal, and that Department Chair Jeff Vancouver and Associate Dean Morgan Vis-Chiasson "rubber stamped" that decision, making their decisions arbitrary and capricious as well. Plaintiff seeks a refund of \$761.83 for the cost

of tuition he paid for the course and asks that his final grade be changed from an F to 93.83 percent, which he asserts is a reflection of the points that he earned on assignments during the class. Finally, plaintiff concedes that this court does not have jurisdiction over his due process claim, so it will not be addressed further. (See p. 19 of plaintiff's response to the investigation report.) The sole remaining issue is plaintiff's claim for breach of contract.

{¶10} Evidence presented

In an email dated June 4, 2024, at 4:12 pm from plaintiff to Dr. Tice-Alicke, plaintiff states:

I see that I have missed my second lesson assignment ("lesson 3").

I know that in your announcements you state,

"Failure to complete 2 or more lessons will result in receiving a failing grade for the course."

I noticed it said, "2 or more", does this mean I should drop the class or that more than two can be missed on a case by case basis?

If you could provide some clarification so I can plan accordingly, I would greatly appreciate it.

(Emphasis in original.) (Plaintiff's Exhibit III.)

Less than a minute later, on June 4, 2024 at 4:12 pm, Dr. Tice-Alicke responded:

Hi Brandon. The policy is 2 or more lessons. I just checked BB [Blackboard] and you know [sic] have 2 lessons that were not submitted by the due date and time. Also, I do not have any documentation that you requested an extension.

I would recommend you withdraw from the course rather than taking an F for the course.

Id.

Later that evening, at 7:17 pm, plaintiff wrote:

Dear Ms. Tice-Alicke,

Before unenrolling for the course, I would first like to see if you would be willing to consider the following mitigating factors:

I recognize that I unfortunately forgot to complete the assignment at the due date specified and did not request an extension. In light of these unfortunate events, I did participate, and complete Lesson 1 & Lesson 3. Although the completions do not justify points, it does show that I have a firm grasp of the material and am willing to complete the lesson absent of the recognition of points.

Furthermore, although distinctly separate I have completed the quizzes for Chapter 1,2,& 3, which again is indicative of my efforts in retaining the material.

I let personal commitments allow me to forget the due date as listed. My fiancé had a court appearance in which as a paralegal [I] felt obligated to assist her in preparing her case to receive the best outcome, which fortunately had a positive outcome. As we see from my inclination of duty “no good deed goes unpunished.” Having to rescind my participation in this class would severely delay graduation slated for August, as this was planned as my last semester. I do not seek to appeal to emotion however, dropping from the course would require me to take this class fall semester for which aid would not cover the credit hours.

As the policy is written it states “two or more.” In my interpretation you are stating you have discretion in whether this rule is enforced. This is because if it was solely “two” then there would not be more. I ask that you consider the preceding mitigating factors before I drop the course.

I look forward to your response.

Id.

The next day, on June 5, 2024, at 4:28 pm, Dr. Tice-Alicke wrote:

Hi Brandon. Thank you for your message and for sharing your mitigating factors. The course syllabus outlines the course policies in this course and clearly communicates my policy with respect to the lessons. The syllabus also outlines that students are to request an extension for a university excused absence if needed. You failed to complete, thus far, two lessons by the due date and time and I never received communication for a request

for an extension as a result of a university excused absence. In fairness to all students in the course, I am consistent with the course policies and hold all students to the syllabus. Modifying the syllabus for one student and not other students in the course would be unethical.

Please let me know if you have any questions.

Id.

{¶11} Apparently, after this email exchange, plaintiff remained enrolled in the course despite Dr. Tice-Alicke's warning that his failure to timely complete lessons 1 and 3 would result in a failing grade unless he withdrew from the course. By July 3, 2024, plaintiff emailed Dr. Tice-Alicke again, wherein he complained that she had "unjustly submitted" an F letter grade for the final grade. Plaintiff argued that he had "completed" all coursework, resulting in a cumulative score of 289 points out of a possible 308. Plaintiff argued that in his view, his final grade should reflect his overall performance and the fact that all lessons were eventually submitted and reviewed. Plaintiff asked for leniency for the late submissions and requested that his grade be changed before he formally submitted a grade appeal. *Id.*

On July 5, 2024, at 9:08 am, Dr. Tice-Alicke responded, wherein she stated: Hi Brandon. Thank you for your message. In regard to your final grade in the Psy 2410 summer 1 course, the grade F is the correct grade. As stated in the course syllabus, "Failure to complete 2 or more lessons will result in receiving a failing grade for the course."

On June 4, 2024, you emailed me asking for clarification about this policy before unenrolling. On June 4, 2024, I replied to you indicating that you had missed two lessons, you did not submit them by the due date/time, and you never requested an extension for completion of a lesson for a university excused absence as stated in the syllabus. I advised you to withdraw from the course rather than getting a grade of F. You then sent a message asking me to consider mitigating factors. I replied that you should drop the course. You made the choice to not drop and continue submitting the lessons which were scored by me or the TA for the course.

Being that I am denying your appeal based on the course syllabus policy, you may appeal to the chair of the Department of Psychology, Dr. Vancouver, copied.

Id.

{¶12} With his motion to introduce new evidence, plaintiff filed an email between Dr. Tice-Alicke and Professor Jeffrey Vancouver, Chair of the Department of Psychology, that plaintiff obtained after a public records request. In the main email, dated July 5, 2024, Dr. Tice-Alicke states the following:

Hi Jeff. I am forwarding the communication I had with Brandon Marquette who is appealing the grade of F from the summer 1 Psy 2410 course. I believe you should be able to view the exchanges. I responded to two different messages from him in this exchange. In addition, I spoke with Mac Stricklen from the ombuds office on Monday, June 24, 2024 by phone. He indicated that Brandon contacted his office regarding his interpretation of “2 or more lessons”. I explained that I had 2 or more so that there wasn’t confusion. If I only had 2 lessons and someone missed three or four, then they can’t say they missed 3, rather than 2 and so onalso, some students stay in the course, don’t withdraw, but continue to miss more than 2 lessons. It is an F grade. He thanked me for my time, and I never heard anymore from him.

I have in my syllabus that students can request an extension for a university excused absence if they contact me at least two hours before the due date/time. Also, I think it is important to recognize that students have a week to complete the lessons. All due dates are on the syllabus and Blackboard. Furthermore, I send out weekly reminders. If you would like me to forward my reminders to you just let me know.

Please let me know if you require any additional information. I have attached the course syllabus.

(Plaintiff’s Exhibit XI.)

The response from Professor Vancouver, dated July 8, 2024, states:

Hi Susan, I just got the formal request on Saturday. The case they are making is that the work reflects the effort and should be graded on that basis. This argument ignores the fairness issue, and your syllabus is clear. I am going to deny the request. *Id.*

Defendant's Faculty Handbook, Section IV(C), states the following, in relevant part:

2 Correction of Grade

A grade reported to the Registrar becomes official as soon as it is reported. A permanent grade may be changed only if an error has been made. The only exception is that if the instructor's chair or dean recommends a change on the basis of evidence presented during the course of a student grievance procedure, the instructor may be permitted (but is not required) to make the recommended change.

. . .

3 Grade Appeals

b A student appealing a grade must make a concerted effort to resolve the matter with the instructor of the course. Failing such a resolution, the student may appeal the grade to the department chair. The chair must attempt a resolution acceptable to both the student and the instructor but does not have the authority to change the grade. The department chair may enlist departmental grievance procedures to assist in resolving the grade appeal at the departmental level. The student shall be notified of the departmental decision within 21 business days of the initial appeal. If the student wishes to appeal the departmental decision, the chair shall forward the appeal to the dean of the college within 14 days for action. If the chair is the instructor, the student appeals directly to the dean.

c In cases not involving academic misconduct, the burden of proof for a grade change is on the student. If the dean concludes that the student has insufficient grounds for an appeal, there can be no further appeal by the student.

(Emphasis in original.)

{¶13} Because this claim did not involve academic misconduct, the dean was the final step in the process for plaintiff. Dr. Morgan L. Vis, Associate Dean, sent plaintiff a letter, dated July 29, 2024, which states the following, in relevant part:

Dear Brandon Marquette,

I have completed my review of your grade appeal for PSY 2410 Child and Adolescence Psychology taken in Summer 1st semester of the 2023-2024 academic year.

I am writing this letter following the review of your July 11, 2024 appeal letter email, which included the syllabus, your correspondence with Dr. Tice-Alicke, your correspondence with Dr. Vancouver, the online gradebook and a copy of the faculty handbook. Your appeal centers on details of language in the syllabus stating “Failure to complete two or more lessons will result in receive [sic] and [sic] failing grade for the course” rather than completing the assignments late. In addition, you cite a sentence of the faculty handbook as follows: “Professors make every reasonable effort to foster honest academic conduct, and to ensure that their evaluations of students reflect each student’s true merit.” The syllabus clearly states, ‘Lessons not submitted by the due date & time will result in a grade of zero.’ It also states: “Note: Failure to complete 2 or more lessons will result in receiving a failing grade for the course.” In your email correspondence with Dr. Tice-Alicke, she clarified the syllabus and stated that you should withdraw before receiving an F for the course in accordance with the syllabus. This is all in line with the faculty handbook requirement that faculty follow their syllabus and treat each student equally. In this case, Dr. Tice-Alicke followed the syllabus, provided clarification when asked and specified the grade that was earned based on the syllabus. The information you provided does not indicate that Dr. Tice-Alicke acted in ways that were inconsistent with the syllabus or with university policy.

From my review, I have concluded that this case lacks sufficient grounds for an appeal. I appreciate that this is not the outcome that you had hoped for. In writing this memo, I am concluding the process you initiated when

you submitted your appeal. According to the Ohio University faculty handbook, “In cases not involving academic misconduct, the burden of proof for a grade change is on the student. If the dean concludes that the student has insufficient grounds for an appeal, there can be no further appeal by the student” (for more information please refer to section IV.C.3.c of the Ohio University Faculty Handbook.

(Plaintiff’s Exhibit VII.)

Law

{¶14} It is well-settled that the relationship between a college and a student who enrolls, pays tuition, and attends class is contractual in nature, and that the terms of this contractual relationship may be found in the handbook, catalog, and other guidelines supplied to students. *Bleicher v. Univ. of Cincinnati College of Med.*, 78 Ohio App.3d 302, 308 (10th Dist. 1992); *Embrey v. Central State Univ.*, 1991 Ohio App. LEXIS 4886 (10th Dist. Oct. 8, 1991), citing *Smith v. Ohio State Univ.*, 53 Ohio Misc.2d 11, 13 (Ct. of Cl. 1990). “A court’s standard for reviewing the academic decisions of a college ‘is not merely whether the court would have decided the matter differently but, rather, whether the faculty action was arbitrary and capricious.’” *Jefferson v. Univ. of Toledo*, 2012-Ohio-4793, ¶ 16 (10th Dist.), quoting *Bleicher* at 308, citing *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 91 (1978); see also *Stratton v. Kent State Univ.*, 2003-Ohio-1272, ¶ 40 (10th Dist.). “A trial court must defer to the academic decisions of colleges unless the decisions so substantially depart from accepted academic norms as to demonstrate that the committee or person responsible did not actually exercise professional judgment.” *Eckel v. Bowling Green State Univ.*, 2012-Ohio-3164, ¶ 52 (10th Dist.). See also *McDade v. Cleveland State Univ.*, 2014-Ohio-4026, at ¶ 27 (10th Dist.).

{¶15} “To prevail on a breach of contract claim, a plaintiff must prove the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff.” *Prince v. Kent State Univ.*, 2012-Ohio-1016, ¶ 24 (10th Dist.). “Contract interpretation is a matter of law, not a question of fact.” *Harbor View v. Jones*, 2010-Ohio-6533, ¶ 64 (10th Dist.). “Courts construe contracts to give effect to the intent of the parties and such intent is presumed to be in the language used in the contract.” *Boggs v. Columbus Steel Castings Co.*, 2005-Ohio-4783, ¶ 6 (10th Dist.).

{¶16} In order to prove a breach of contract, plaintiff must show that defendant “did not perform one or more of the terms of the contract.” *Little Eagle Properties v. Ryan*, 2004-Ohio-3830, ¶ 15 (10th Dist.). “In addressing the issue of whether such contract has been breached, the trier of fact appropriately looks to the terms of the contract as found in the college guidelines supplied to students.” *Bremar v. Ohio Univ.*, 2022-Ohio-1382 ¶ 18, (10th Dist.) quoting *Grubach v. Univ. of Akron*, 2020-Ohio-3467, at ¶ 24 (10th Dist.). “[C]ontracts must be read as a whole, and individual provisions must not be read in isolation.” *Nour v. Shawar*, 2014-Ohio-3016, ¶ 14 (10th Dist.). “The contract’s words are given their ordinary meaning unless this will result in ‘manifest absurdity’ or unless ‘some other meaning is clearly intended from the face or overall contents of the instrument.’” *Lill v. Ohio State Univ.*, 2019-Ohio-276, ¶ 26 (10th Dist.), quoting *Alexander v. Buckeye Pipeline Co.*, 53 Ohio St.2d 241, 245-246 (1978).

Analysis

{¶17} Upon review of the evidence in the claim file, the Deputy Clerk finds that the course syllabus and the faculty handbook constitute the terms of the contractual relationship between plaintiff and defendant. However, the Deputy Clerk further finds that plaintiff has failed to prove by a preponderance of the evidence that defendant breached any provision of the syllabus or the handbook. Plaintiff admits that he submitted two lessons after their due dates and times, as required in the syllabus. When he inquired about having two late lessons, Dr. Tice-Alicke specifically told him to withdraw from the course so that he would not receive a failing grade for the course, consistent with the language of the syllabus. The Deputy Clerk finds that the language in the syllabus, “**Note: Failure to complete 2 or more lessons will result in receiving a failing grade for the course**” was unambiguous, and that plaintiff’s failure to submit two completed lessons by the due dates and times as set forth in the syllabus without prior approval by Dr. Tice-Alicke for an extension of time to submit those lessons resulted in a failing grade for the course. It is undisputed that plaintiff failed to submit two lessons in a timely manner as required per the syllabus. The fact that he later “completed” those lessons and apparently submitted them late without an approved extension does not change the fact that they were not submitted on time and, therefore, not “completed” as required per the syllabus. Thus, although plaintiff may have “completed” them belatedly, and submitted them

belatedly, because he failed to complete and submit the lessons pursuant to the due dates and times as outlined in the syllabus, his failing grade in the course was justified and a direct result of enforcement of the syllabus language. As such, plaintiff has failed to prove by a preponderance of the evidence that defendant breached the contract. Indeed, the evidence shows that defendant complied with the unambiguous language in the syllabus when it issued a failing grade for the course because plaintiff failed to timely complete two or more lessons.

{¶18} Furthermore, the evidence does not support plaintiff's contention that defendant's employees acted in an arbitrary and capricious manner regarding his grade appeal. The language in the faculty handbook explains the grade appeal process. The documents in the case file show that the policy was followed by Dr. Tice-Alicke, Dr. Jeff Vancouver, and Dr. Morgan Vis. Based on the evidence in the claim file, the Deputy Clerk finds that defendant's decisions during the grade appeal process complied with the faculty handbook, and that those decisions did not substantially depart from accepted academic norms as to demonstrate that the individuals responsible did not actually exercise professional judgment. Plaintiff has failed to show that any step in the grade appeal process was not followed by defendant, or that defendant violated any provision of the faculty handbook.

{¶19} In the final analysis, the Deputy Clerk finds that plaintiff has failed to prove any of his claims by a preponderance of the evidence and judgment is rendered in favor of defendant. All remaining motions are DENIED as moot.

BRANDON D. MARQUETTE

Plaintiff

v.

OHIO UNIVERSITY

Defendant

Case No. 2024-00676AD

Deputy Clerk Holly True Shaver

ENTRY OF ADMINISTRATIVE
DETERMINATION

{¶20} Having considered all the evidence in the claim file, and for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Plaintiff's November 12, 2024 motion is GRANTED. All other pending motions are DENIED as moot. Court costs are assessed against plaintiff.

HOLLY TRUE SHAVER
Deputy Clerk

Filed 6/25/25
Sent to S.C. Reporter 9/9/25