

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JACQUELINE LEACOCK : CIVIL ACTION
v. :
TEMPLE UNIVERSITY SCHOOL OF MEDICINE : NO. 97-7850

MEMORANDUM

Giles, J.

November 25, 1998

Jacqueline Leacock a former student of Temple University School of Medicine has brought action against the medical school pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*, and the Due Process Clause of the United States Constitution. Leacock performed poorly during her first curricular year at the medical school. At its close, the Associate Dean of Curriculum, William E. Barry, informed her that she would be dismissed in accordance with the school's promotional guidelines. Leacock then informed Barry, and subsequently the Student Promotions Committee, that she believed that she may have a learning disability. Despite her offer of proof, the committee stated that strong evidence had not been presented of Leacock's purported learning disability. It voted to uphold her dismissal. Leacock now claims that, when it dismissed her, Temple University School of Medicine discriminated on the basis of her avowed disability.

Before the court is the defendant's Motion for Summary Judgment. For the reasons which follow, defendant's Motion is GRANTED.

FACTUAL BACKGROUND

Leacock began her studies at Temple University School of Medicine (the "medical school") in the fall of 1994. (Amend. Compl. ¶ 6.) In her first year, Leacock received non-passing grades in her seven courses, failing five and receiving a marginal grade of "condition" in the remaining two. (Letter from Barry to Leacock of 6/26/95; see Temple University School of Medicine 1994-1995 Student and Faculty Handbook at IV.A.1.)

According to the medical school's Student and Faculty Handbook (the "handbook"), with the exception of certain electives, all courses, clerkships, and research within the approved curriculum are assigned to one of four groups and each group is assigned a specific credit point value. (Temple University School of Medicine 1994-1995 Student and Faculty Handbook at IV.C.1.; see id. at Table 1.) The handbook provides that the total of accumulated promotional points earned by a student at the end of an academic year determines the student's promotional status. Id. at IV.C.1. Upon the completion of an academic period, a student may be: a) promoted, b) promoted with contingency, c) required to be evaluated further in relation to course objectives without

repetition of a curricular semester or year, d) required to repeat a curricular semester or year, or e) dismissed. Id. at IV.C.2.

Leacock achieved only twenty-one of the fifty-four points required for promotion to the second year. (Letter from Barry to Leacock of 6/26/95; see Temple University School of Medicine 1994-1995 Student and Faculty Handbook at Table 3.) The promotional regulations of the medical school provide that a student is to be dismissed if his or her promotional point total is thirty (30) or less for the first year. Id. On or about June 26, 1995, Leacock received a letter from Barry, the medical school's Associate Dean for Curriculum, stating that "since your promotional point total is less than 30, you shall be dismissed from school." (Letter from Barry to Leacock of 6/26/95.)

Temple University School of Medicine's handbook allows for an appeal to the Student Promotions Committee (the "committee") of decisions based on academic performance, including the promotional point system. Id. at IV.F.1. According to the handbook:

[t]he Committee regards the promotional decisions based on grades, and it regularly abides by the application of this point system to each student's situation. However, for procedural irregularity or extenuating circumstances a student may appeal the application of the promotional point system[.]

Id. at IV.F.1.a. Extenuating circumstances are defined as "[s]evere and documented situations which were beyond the student's control and which prevented the student from performing in a manner truly reflective of his/her knowledge and skills." Id. The

handbook further states that “[a]ppeals will be acted upon favorably only when real and convincing evidence is presented to suggest that application of the promotional point system is inappropriate in particular circumstances.” Id. Where deemed appropriate, the medical school also provides generally for a leave of absence at the discretion of the Associate Dean for Curriculum. Id. at IV.E.

Barry’s June 26, 1995 letter stated that Leacock could proceed in one of three ways: (1) let the action stand and be dismissed, (2) withdraw from school rather than have the record show the dismissal, or (3) appeal the dismissal if she had a “strong reason to believe that dismissal is an inappropriate or unfair action.” (Letter from Barry to Leacock of 6/26/95.) In accordance with the instructions provided in the letter for pursuing appeals, Leacock wrote to the Chairman of the committee on or about June 29, 1995 stating that she sought “to appeal the decision made by the Promotion Committee to dismiss [her].” (Letter from Leacock to Ryan of 6/29/95.)

In her letter requesting appeal, Leacock stated her belief that she had certain learning related difficulties which had become apparent to her during her first year studies and an inability to adjust to her class schedule. Id. Further, Leacock asked the committee to grant her a leave of absence and the opportunity to repeat her first year. Id. Leacock said that a leave of absence would “enable [her] to secure and to work with a specialist to help [her] identify and deal with [her] learning deficits.” Id. Plaintiff has not alleged that she notified the medical school of her potential disability prior to her appeal letter.

At a subsequent meeting, Leacock reiterated to the committee her belief that she felt that she may have a learning disability. (Amend. Compl. ¶ 12.) The committee then voted to defer action on Leacock's request for a leave of absence until she provided documentation of the extent and nature of her alleged learning disability. (see Amend. Compl. ¶ 13.) This action was confirmed by a letter on or about July 13, 1995 from Barry to Leacock, explaining to Leacock that she must arrange appropriate testing. (Letter from Barry to Leacock of 7/13/95.)

Leacock consulted with Dr. Judith Katz, an Academic Consultant working for the medical school, and asked Dr. Katz to refer her to someone who might be able to diagnose her. (Amend. Compl. ¶ 17.) Dr. Katz referred Leacock to the Linn Center for Psychology where she was seen and tested by Dr. Jonathan Cohen on August 28, 1995. (Amend. Compl. ¶¶ 18, 19.) Dr. Cohen concluded that Leacock had Attention Deficit Disorder and Mixed Receptive Expressive Language Disorder. (Amend. Compl. ¶ 20.) The medical school was sent these results soon thereafter. Id.

On or about December 20, 1995, Leacock received a letter from Barry informing her that the committee had reviewed Dr. Cohen's evaluation and opinion regarding the disability and had solicited two additional opinions from experts in testing and education, Dr. Kevin Riley, a member of Temple University's Psychology Department, and Dr. Katz. (Letter from Barry to Leacock of 12/20/95; Affidavit of Dr. James P. Ryan at ¶ 17.) Barry stated that the committee had concluded that the

documentation provided by Leacock was not sufficient to prove that she had a learning disability, and had voted to uphold the promotional guidelines and thus Leacock's dismissal from medical school. Id.

The handbook provides that decisions of the committee made in response to an appeal of a promotional decision may be appealed to the Dean for procedural irregularities. (Temple University School of Medicine 1994-1995 Handbook at IV.F.1.b.) Leacock entered an appeal through her attorney. (Amend Compl. ¶ 22; Letter from Raiken to Barry of 1/5/96.) Six months later, the medical school's Acting Dean, wrote a letter to Leacock's counsel on June 7, 1996 stating that there were no procedural irregularities in Leacock's case and that the appeal was denied. (Letter from Kozera to Raiken of 6/7/96.) In her amended complaint, Leacock claims that Temple denied her appeal without notifying her that the committee was meeting and without speaking to her about her purported disability. (Amend. Compl. ¶ 21.)

Leacock brought the present action against the medical school complaining that its conduct in dismissing her, violated Section 504 of the Rehabilitation Act of 1973 (the "Rehabilitation Act"), 29 U.S.C. § 794, et seq.,¹ and the Due Process Clause of the

¹ Section 504 of the Rehabilitation Act provides in pertinent part:

No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . .

(continued...)

United States Constitution. She alleges that Temple discriminated against her by not allowing her to remain as a student after she provided documentation of her learning disability. (Amend. Compl. ¶ 28.) Leacock asserts that, according to the opinion of Dr. Cohen, she will benefit and become a much improved student if she is given reasonable accommodation, such as a reduced course load and extended time for testing. (Amend. Compl. ¶ 32.) Leacock requests this court to order the medical school to readmit her and to provide her with appropriate reasonable accommodations to help her to be a successful student. (Amend. Compl. ¶ 32.) In addition to declaratory and injunctive relief, Leacock seeks compensatory and punitive damages. She asserts that as a result of Temple's action, she has been unable to return to school to complete her studies, (Amend. Compl. ¶ 29), and that she has had to struggle to adapt to a career not in her field of choice, (Amend Compl. ¶ 34).

Temple University School of Medicine now moves for summary judgment on the grounds that Leacock has failed to state a claim and that her complaint is barred by the applicable statute of limitations. For reasons that follow, the medical's school's motion is granted.

ANALYSIS

I. Leacock's Claim Pursuant to the Rehabilitation Act

¹(...continued)
29 U.S.C. § 794.

The medical school asserts that it cannot be held liable under the Rehabilitation Act for failure to accommodate if it did not know, or have reason to know, of the student's alleged disability at the time it notified her that she was dismissed. It argues that Leacock's claims fail as matter of law since she did not notify the medical school of her alleged learning disability until after she received notice of her dismissal in a letter dated June 26, 1995 from the medical school's Associate Dean for Curriculum. Further, the medical school asserts that Leacock's claim is barred by the applicable statute of limitations since she did not file within two years of June 26, 1995.

Leacock disputes neither the law as asserted by Temple, nor the evidence that she did not inform Temple of her potential disability until after she received the June 26, 1995 letter from Barry. However, Leacock argues that Barry's letter did not notify her of dismissal, but reiterated a previous conversation merely putting her on notice that her studies at the university were in danger. Leacock asserts that she was not actually dismissed until December 20, 1995, after the academic committee had assessed her claim of a learning disability and had determined that she did not have one.

For a school to be able to make reasonable accommodations for a student, it must have knowledge that such accommodations are required. Goodwin v. Keuka College, 929 F. Supp. 90, 94 (W.D.N.Y. 1995). Therefore, where a student has failed to show that the school was aware of her disability at the time she was terminated, the student has failed to state a claim under the Rehabilitation Act. Id.; see Nathanson v.

Medical College of Pennsylvania, 926 F.2d 1368, 1381 (3d Cir. 1991)) (holding that to be liable defendant “must know or be reasonably expected to know” of plaintiff’s disability). Further, the Rehabilitation Act does not require a school to reconsider its dismissal because a student subsequently provides evidence of a learning disability. See Goodwin, 929 F.Supp. at 93 (holding that a school can only be held responsible for information it had at the time the decision was made).

The facts demonstrate that the medical school was not informed of Leacock’s disability during her first year or prior to the receipt of her failing grades. Further, the medical school’s promotional guidelines provide that students with grades such as Leacock’s are subject to dismissal. Barry’s June 26, 1995 letter to Leacock notified her of her dismissal in accordance with the school’s promotional guidelines. The letter unambiguously stated to Leacock that “since your promotional point total is less than 30, you shall be dismissed from school.”

Any subsequent actions of the medical school’s administration with regard to Leacock’s dismissal were in accordance with the medical school’s appeal process as set forth in the medical school handbook. In Barry’s initial letter, he provided Leacock with an opportunity to appeal the committee’s dismissal decision. In a letter dated June 29, 1995, Leacock acknowledged her dismissal and stated her desire “to appeal the decision made by the Promotion Committee to dismiss [her]” and requested a leave of absence from the medical school.

In accordance with stated procedure, the committee subsequently heard Leacock's appeal and evaluated whether real and convincing evidence of an extenuating circumstance existed to suggest that the application of the medical school's promotional point system was inappropriate in Leacock's case. Unconvinced of Leacock's purported disability and, therefore, failing to find extenuating circumstance to justify deviation from its regular promotional guidelines, the committee notified Leacock, on or about December 20, 1998, that it had decided to uphold the guidelines and thus her dismissal. It follows that Leacock's request for a leave of absence, an action not in accordance with the promotional guidelines, was rejected.

Since it is undisputed that the medical school did not know, or have reason to know, of Leacock's disability during her first curricular year and prior to notifying her of her dismissal, it cannot be found to have discriminated against her or to have owed her a reasonable accommodation. Leacock, therefore, fails to state a claim on this ground.

Leacock's claim pursuant to the Rehabilitation Act is also barred by the applicable statute of limitations. Because the medical school notified her of her dismissal on June 26, 1995, her original complaint, filed on December 18, 1997, was not timely. Pennsylvania's two year statute of limitations applicable to personal injury actions governs Rehabilitation Act claims. Saylor v. Ridge, 989 F. Supp. 680, 685-686 (E.D. Pa. 1998). The statute of limitations in a Rehabilitation Act claim accrues when the plaintiff "knows or has reason to know of the injury that is the basis of the action." Id. at 686

(citation omitted). Leacock's cause of action accrued the date that she initially received notice that the medical school would dismiss her. See Morse v. University of Vermont, 973 F.2d 122, 125 (2d Cir. 1992) (holding that in an academic scenario, the statute of limitations begins to run once the plaintiff is aware of the school's formal decision that gives rise to the purported injury); Goodwin, 929 F. Supp. at 94-95 (holding that plaintiff's cause of action accrued on the date she was terminated from college).

II. Leacock's Due Process Claim

The amended complaint states that the medical school's conduct violated the Due Process Clause of the United States Constitution. However, Leacock failed to set forth in her amended complaint specific grounds upon which the medical school allegedly violated her rights and failed to assert either a protected property or liberty interest. In her amended complaint, Leacock claims that the medical school denied her appeal on December 20, 1995 without notifying her that the committee was meeting and without speaking to her about her alleged disability. From this allegation, it appears that Leacock was attempting to make a claim of deprivation of a right to procedural due process. To the extent that Leacock may have been attempting to bring a substantive due process claim challenging the committee's decision to uphold her dismissal, the court will address that claim as well.

Assuming that Leacock has stated a viable, protected interest,² the facts demonstrate that Leacock was provided with sufficient process to satisfy her rights under the Fourteenth Amendment.

The courts have had occasion to discuss the due process rights of students in state operated universities, and have made a clear distinction between disciplinary and

² Leacock may have a viable protected property interest in the pursuit and continuation of her graduate medical school education. See Stoller v. College of Medicine, 562 F.Supp. 403 (M.D. Pa. 1983), aff'd, 727 F.2d 1101 (3d Cir. 1984) (holding that a medical school student dismissed for academic reason, had a property interest in continuing his studies); Ross v. Pennsylvania State University, 445 F.Supp. 147 (M.D. Pa. 1978).

academic dismissals. Mauriello v. The University of Medicine and Dentistry of New Jersey, 781 F.2d 46, 50 (3d Cir. 1986). Where there is an academic dismissal, as in the present case, it has been held that “courts are ill-equipped to review the largely subjective academic appraisals of the faculty.” Id.; see Board of Curators of University of Missouri v. Horowitz, 435 U.S. 78, 90 (1978) (“[T]he determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision making”). The third circuit has held that the only process due a student dismissed for academic reasons is an “informal give-and-take” between the student and the administrative body that dismisses the student. Mauriello, 781 F.2d at 50. In Mauriello, the circuit held that “in the procedural due process context, informal review and evaluation sessions between student and faculty meet constitutional requirements.” Id.

The facts demonstrate that Leacock was promptly notified of the medical school’s decision to dismiss her, and that her dismissal was consistent with the promotional guidelines set forth in the medical school’s handbook. Leacock was also afforded an opportunity to appeal this decision consistent with stated procedures. It is undisputed that Leacock met with the Student Promotions Committee and was to present her belief that she may have a learning disability. She was then given an opportunity to submit documentation of her disability to the committee for its review. Further, Leacock was able to appeal the committee’s decision for alleged procedural irregularities. In light

of these undisputed facts, the court finds that this process was more than sufficient to satisfy the procedural process Leacock was due.

To the extent that Leacock sought to bring a claim for violation of her substantive due process rights, such claim is likewise without merit. The decision of the committee to deny her appeal and to uphold its promotional guidelines were clearly within its discretion. In Regents of University of Michigan v. Ewing, 474 U.S. 214 (1978), the Supreme Court observed that “[w]hen judges are asked to review the substance of a genuinely academic decision, . . . they should show great respect for the faculty’s professional judgment. Plainly they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.” Ewing, 474 U.S. at 225. In Ewing the Court found that the student’s dismissal in that case “rested on an academic judgment that [was] not beyond the pale of reasoned academic decision making when viewed against the background of [the student’s] entire career at the University” Id.; see Mauriello, 781 F.2d at 52 (adopting this standard and holding that a student’s dismissal was not beyond the pale of reasoned academic decision making).

The medical school’s handbook unambiguously stated that students with grades such as Leacock’s would be subject to dismissal. According to the handbook, appeals will be acted upon favorably only when real and convincing evidence is presented to suggest that the promotional points system is inappropriate in a particular case. In

light of these and other undisputed facts, this court finds that the medical school's decision to dismiss Leacock was not beyond the pale of reasoned academic decision making. Further, the evidence does not permit a finding that Leacock's dismissal was not justified by the poor quality of her academic performance.

CONCLUSION

Because Leacock's first amended complaint fails to state a claim against Temple University School of Medicine, the medical school's motion for summary judgment is granted, and Leacock's complaint is dismissed.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JACQUELINE LEACOCK : CIVIL ACTION
 :
 v. :
 :
 TEMPLE UNIVERSITY SCHOOL OF MEDICINE : NO. 97-7850

JUDGMENT ORDER

AND NOW, this day of November, 1998, upon consideration of defendant's Motion for Summary Judgment and plaintiff's response thereto, it is hereby ORDERED that defendant's Motion is GRANTED and plaintiff's amended complaint is DISMISSED with prejudice. Judgment is entered in favor of defendant and against plaintiff.

BY THE COURT:

JAMES T. GILES, J.

Copies by fax on: _____
to:

