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SOUTH DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
SOUTH DISTRICT OF NEW YORK
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KATHERYN LYONS,

Plaintiff,

v.

MARIST COLLEGE, a not-for-profit corporation,
and DENNIS J. MURRAY and PATRICIA CORDNER,
individually,

Defendants.
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09 CIV. 2290
COMPLAINT AND
JURY DEMAND
JUDGE SEIBEL

Plaintiff, Katheryn Lyons, by her attorneys, Kahn Opton, LLP, for her Complaint alleges
as follows:

NATURE OF ACTION

1. Katheryn Lyons (“Kat”) is a sophomore transfer student at Marist College (“Marist”), a member of its basketball team, and a recipient of a Marist College athletic scholarship. She has been academically successful during her first semester at Marist and is a valued member of the basketball team. Beginning on November 17, 2008 and continuing through early 2009 Kat sought help for depression she was experiencing by informing her basketball coach, college officials and the Marist’s Counseling Service that she was having suicidal thoughts. As a consequence of her report, Kat was suspended from Marist College on an interim basis by letter dated January 20, 2009. She was even barred from attending any Marist event “off the campus.”

Next, the Marist Judicial Affairs Office, a college disciplinary body, charged Kat with “Reckless Endangerment” again for no reason except that she had sought treatment for her suicidal thoughts. Although Kat did not take any actions that endangered herself or anyone else, on January 27, 2009 the Judicial Affairs Office suspended Kat for at least one year. Marist also banned her from living on campus “through graduation.” After this yearlong penalty, Kat may not re-apply to Marist unless she submits certain mental health evidence and accepts counseling from a psychologist in the Poughkeepsie area. Marist never made any individualized assessment of Kat’s condition and did not try to accommodate an individual with a disability. Instead it punished and stigmatized a student who was regarded as disabled. The College treated her medical issue as a discipline matter. As a consequence of Marist’s action, Kat has been denied the right to participate in Marist College’s programs, services and activities. Her education has been disrupted. She has been stripped of her athletic scholarship. She has suffered loss of esteem and emotional trauma. Her promising athletic career has been interrupted, and perhaps, destroyed. Most important of all, rather than help support and comfort Kat, Marist has added immeasurably to the pressures that she must contend with during a difficult time.

2. This is an action pursuant to Americans With Disabilities Act, (“ADA”) Americans With Disabilities Act, Title III “Public Accommodations and Services operated by Private Entities” 42 U.S.C. § 12181 et seq. and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 to remedy unlawful discrimination against Plaintiff based upon her disability or perceived disability. This action also states a pendant state law claim under the New York State Human Rights Law, N.Y. Exec. Law §296 for unlawfully denying the use of Marist College facilities and permitting harassment on the basis of disability. This action also states pendant

state law claim to recover for the intentional infliction of emotional distress to recover against Marist for its breach of its athletic scholarship contract with Kat.

JURISDICTION AND VENUE

3. This action arises from violations of Title III of the ADA, 42 U.S.C. §12181 et seq. and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794a. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and 1343. Supplemental jurisdiction exists over the pendant state law claims pursuant to 28 U.S.C. § 1367 because these claims arise from a common nexus of operative facts.

5. Defendants engaged in unlawful discrimination within the State of New York. Venue lies in this Court pursuant to 28 U.S.C. § 1391 (b) and (c).

PARTIES

6. (a) Plaintiff Katheryn Lyons, an individual who resides in Kernersville, North Carolina, has availed herself of Marist College's educational programs, service and activities and seeks to continue to do so.

(b) In late 2008 and early 2009 Kat and suffered from a mental impairment that was diagnosed as an adjustment disorder with depressed mood which substantially limited major life activities including Kat's sleeping, concentrating and thinking.

(c) At all times relevant herein, Marist College and its officials regarded Plaintiff as a person with a disability and a person with a record of an impairment .

(d) Plaintiff is an individual with a disability as defined in the ADA, 42 U.S.C. § 12102(2); an individual with a handicap as defined in Rehabilitation Act Section 504, 29 U.S.C. § 7067B; and an individual with a disability as defined in NY Exec. Law § 292 (21).

7. (a) Defendant Marist College is a private, not-for-profit, higher education institution with its principal place of business in the City of Poughkeepsie, County of Dutchess, State of New York. Marist and its programs and activities receive Federal financial assistance. Marist is a “public accommodation” within the meaning of the ADA, 42 U.S.C. § 1281 and NY Exec. Law §292(9) Marist operates programs, services and activities receiving federal funds, and is subject to Rehabilitation Act Section 504.

(b) Defendants Dennis J. Murray and Patricia Cordner are, respectively, the President of Marist College and its Dean of Students.

STATEMENT OF FACTS

8. Kat, a highly talented high school basketball player, attended the University of Maryland where she achieved both athletic and academic success. Despite her success she felt that another basketball program might better suit her needs.

9. In the Spring 2008 Kat was recruited by Marist basketball coaches. On May 4, 2008 she was awarded an athletic scholarship. Her Marist athletic scholarship contract stated that it could not be canceled because of “illness.”

10. During Kat’s first and only semester at Marist she was academically successful and a valued member of the women’s basketball team.

11. In early November 2008, over a few weeks, Kat experienced a series of extremely stressful personal events including the death of a family member, the breakup of a personal relationship with a teammate, and intense demands to provide emotional support to a teammate who was suffering severe psychiatric problems.

12. On November 17 Kat volunteered to Marist Women’s Basketball Assistant Head Coach Megan Gebbia that she was having suicidal thoughts. The coach suggested that Kat go to the

Marist Counseling Center which she promptly did.

13. Marist counselor Allison Friedman recommended that Kat go to the St. Francis Hospital Emergency Room for evaluation. At the St. Francis Emergency Room, psychiatrist Dr. Michael Susco told Kat that Marist was concerned about its liability because suicide is not good for the campus. She was observed at the hospital through the morning of November 20. Since she was not in any danger, the hospital temporarily released her without supervision on November 19 so that she could return to her dorm room to get her school books and visit with her friends and teammates. Dr. Susco subsequently explained to Kat's mother, Sheila Lyons ("Sheila"), that Kat was simply having difficulty adjusting to a series of upsetting life issues.

14. Sheila spoke with Coach Gebbia by telephone on the evening of November 17. The coach stated that she was surprised that Kat was experiencing emotional difficulties since she was doing extremely well and had her best basketball practice ever earlier that day. The coach said that Kat's emotional problems might be caused by the breakup of her relationship.

15. Kat travelled to her North Carolina home on November 20. Dean of Students Patricia Corder must have believed that Kat was not in danger since she dropped her off at the airport and permitted her to travel to North Carolina unaccompanied.

16. While at home, North Carolina psychiatrist Dr. Palmer Edwards diagnosed her as experiencing an "adjustment disorder with depressed mood." Dr. Edwards's written report stated that Kat was at "low risk for self harm" and that she could "safely attend classes."

17. Kat returned to Marist on December 1. There she met with Marist psychologist Dr. Jenny Colman at on December 4 for one forty- five minute psychological assessment. Unlike her relationship with Dr. Edwards, her relationship with Dr. Colman was neither ongoing nor therapeutic. Prior to that meeting, in a November 26 telephone conversation, Dr. Edwards

reported her findings to Dr. Colman who apparently concurred in the diagnosis. Kat also met twice with Marist counselor Andrea Pesavento, MSW, during early December 2008.

18. On December 10 Kat advised counselor Pesavento that she was again thinking about suicide. Dean Cordner then arranged for her to meet with Dr. David Schefflein, a psychiatrist with offices in Wappingers Falls, New York. Kat was never advised that Dr. Schefflein was an agent of Marist. She met with her for only about thirty minutes solely for an assessment. Subsequently, without Kat's knowledge or consent, Dr. Schefflein divulged the results of his examination of Kat to Marist officials including Pesavento and to Dean Cordner. Dr. Schefflein never reported her diagnosis or any therapy plan to Kat, her erstwhile patient. This deceptive referral to Dr. Schefflein and disclosure of private medical information violates Kat's privacy rights and the Health Insurance Portability and Accountability Act of 1996 (HIPAA.) After meeting with Dr. Schefflein, Kat was voluntarily hospitalized overnight in Poughkeepsie.

19. Later on December 10 Dean Cordner spoke by telephone with Kat's mother. Sheila advised Dean Cordner that she would come to Poughkeepsie to live with her daughter while she completed the semester.

20. The next day, December 11, Dean Cordner told Sheila that Kat should not remain at school and should voluntarily withdraw. Apparently Dean Cordner acted on her own initiative despite the fact that her decision would have such momentous implications for Kat's education, college basketball career and mental health. Dean Cordner never accorded to Kat any of the substantive or procedural safeguards guaranteed to her by law and regulation. See, e.g., 28 CFR Part 36; 34 CFR Part 104. Dean Cordner refused to consider whether Sheila's offer to remain in Poughkeepsie might reasonably accommodate Kat's emotional needs and assist her in remaining at college.

21. No one at Marist consulted with Kat during this time period, or afterwards, to discover what she wanted and whether any reasonable accommodation was needed or possible. In fact, Dean Cordner and Coach Gebbia refused to speak with Kat or her mother at this time.

22. Kat's treating psychiatrist, Dr. Edwards, subsequently concluded that a return to Marist would actually improve Kat's mental state.

23. Despite Marist's administrative obstinacy and disregard, Kat persisted in advising Marist, its deans, coaches and counselors that she wanted to remain at college and could remain at college. Throughout this time of extraordinary distress she has been respectful, thoughtful and appropriate in her attempt to be treated fairly.

24. Kat and her mother returned to their North Carolina home. While at home, Kat admitted herself voluntarily to Gaston Memorial Hospital to continue treatment from December 13-16.

25. While she was in North Carolina Kat learned that Marist directed that her personal items be removed from her dormitory room.

26. On December 23 Dean Cordner reiterated that Kat should withdraw from Marist.

27. On December 18 Dean Cordner, athletic department officials including the Athletic Director and administrators met to discuss Kat's fate at Marist. No thought was given to anti-discrimination laws and regulations. Neither Kat's input, nor that of her doctor, was solicited. She only learned about this meeting in mid-January 2009. Dean Cordner invaded Kat's privacy rights by divulging confidential information to individuals who had no need to know such information. They discussed Kat's situation despite the fact that they had no contact with medical officials, had received no medical records, and were not competent to evaluate medical evidence. There was no discussion of the college's obligation to engage in an interactive process to accommodate a mental health disability. This informal tribunal did not keep minutes or notes.

28. While in North Carolina Kat again consulted with psychiatrist Edwards and with psychologist Dr. Thomas Hendren. Both doctors concluded that it was safe for Kat to return to Marist and resume classes and other activities.

29. On January 7, 2009 Sheila Lyons again discussed with Dean Cordner Kat's education at Marist. Kat's mother, Sheila, renewed her offer to live near her daughter as she continued her education. Dean Cordner did not consider this proposal or the possibility that an accommodation might assist Kat in continuing her education. She did tell Sheila that Kat could go to another college. Dean Cordner treated Kat solely as a potential liability to be dumped on another college's doorstep as quickly as possible.

30. On January 9 Kat told her coaches that she would visit with her basketball teammates while they were playing a game on January 11 in Maryland. She was told that she was welcome to attend the basketball game but was barred from visiting with her teammates.

31. By letter dated January 14 Dean Cordner advised Kat that since she would not voluntarily withdraw from Marist, the matter was referred to the Marist Judicial Affairs system. This was the first written notice received by Kat despite the fact more than one month earlier Dean Cordner had determined that she could not attend Marist.

32. Kat was formally charged with violating the Marist "Reckless Endangerment Policy" and compelled to appear before an administrative panel consisting of the Director of Judicial Affairs and three faculty members. "Reckless Endangerment" is defined as "taking any action that creates a substantial risk such that bodily harm could result . . ." Marist Student Code of Conduct ¶ IV (c)(5) This charge was exclusively motivated by Kat's efforts to obtain help and treatment for her mental health impairment. Dean Cordner wrote that Kat must choose to "plead in violation to the charges or accept your sanction [of withdrawal from Marist.]"

33. The jurisdiction of the Judicial Affairs office is disciplinary. (Marist Code of Conduct, §III.) Its powers are to forgive or to punish. Judicial Affairs has no procedure to accommodate a physical or mental disability. The Judicial Affairs staff and the faculty members recruited to serve on judicial panels have neither the competence to evaluate medical evidence nor the training required to give force to the legal rights of disabled individuals.

34. Marist has a formal procedure to assist disabled individuals and to accord them their rights and dignity. No Marist official ever told Kat that Marist Special Services could assist students with disabilities. Kat was never given an opportunity to use that procedure.

35. The Judicial Administrative Panel met on January 21. A recording of the proceedings reveals that the panelists had no comprehension of Marist's obligations to a student with a psychological disability. The panel was uninterested in Kat's condition as of the time of the hearing or of her future prognosis. In fact, the panel showed scant interest at all in medical evidence. Kat had met with two Poughkeepsie area psychiatrists and St. Francis Hospital doctors at Marist's request. None of these doctors testified. Instead, the Panel considered letters written to the panel by its physicians, Drs. Colman and Schefflein. Kat could not question these doctors or examine their medical records. The only medical testimony presented to the panel was submitted by Kat. The two doctors who treated Kat while she was at home in December and January testified by telephone that she was not presently suicidal, was not a danger to herself, and mainly suffered from situational stressors which had, to a considerable extent, been resolved as of the date of the hearing.

36. The Judicial Administrative Hearing was riddled with procedural flaws including, but not limited to, the failure to make any effort to protect Kat's privacy rights. Kat's adviser, a family friend, barred from the hearing room because she was employed as an attorney, was additionally

excluded from the vicinity of the hearing by the Hearing Officer. Kat was not permitted to inquire as to the professional qualifications of the witnesses called by Marist.

37. The Administrative Hearing Panel of the Judicial Affairs office Panel announced its decision in a January 22 letter. That decision was upheld by the Suspension/Dismissal Panel by letter dated January 27. Marist suspended Kat from college for two semesters and barred her forever from living in campus housing.

38. The Judicial Panel penalty, including its exclusion of Kat from living on campus through graduation, proves that it has abandoned all pretense of making the type of individualized assessment of an individual with a disability that is required by law.

39. The totality of Marist's response to Kat sends to its students the message – "Don't use our counseling services or disability procedures."

40. Marist terminated the athletic scholarship which it had awarded to Kat for medical reasons despite the fact that the contract specifically barred termination on such grounds. Marist women's basketball Coach Brian Giorgis and Director of Athletics Tim Murray confirmed to the Poughkeepsie Journal on February 24, 2009 that Kat's scholarship had been terminated and that Lyons was no longer a student at the college because of an unspecified medical condition.

41. Marist callously refused to consider Kat's needs and recklessly compounded her emotional suffering.

42. The actions of the Defendants resulted from Defendants' deliberate indifference to the legal rights of disabled individuals.

FIRST CAUSE OF ACTION

Discrimination in Violation of the ADA

43. Plaintiff repeats the allegations of all of the above paragraphs as if fully set forth herein.

44. Defendants' actions and practices described above constitute unlawful discrimination under 42 U.S.C. § 12182(a) and (b), in that Defendants have discriminated against Plaintiff on the basis of Plaintiff's perceived disability, with regard to the full and equal enjoyment of Defendants' goods, services, facilities, privileges, advantages, or accommodations. Defendants' actions and practices described above also constitute unlawful discrimination under the various subparts of 42 U.S.C. § 12182(b)(1)(A), and § 12182(b)(2)(A).

45. Defendants have excluded Plaintiff from participation in and denied her the opportunity to participate in or benefit from their programs, services and activities based upon fear, speculation and stereotype about her perceived disability. 42 U.S.C. § 12102(2)(c).

46. Additionally, Defendants have failed to provide a reasonable accommodation under the ADA that would enable Plaintiff meaningful access to Defendants' services, programs or activities. As a result of Defendants' violation of the ADA, plaintiff was damaged as detailed above.

SECOND CAUSE OF ACTION

Violation of Section 504 of the Rehabilitation Act

47. Plaintiff repeats the allegations of all of the above paragraphs as if fully set forth herein.

48. Defendants, actions and practices described above, have discriminated against Plaintiff, and excluded her from participation in, and denied her benefits of Defendants' programs, services and activities because of Plaintiff's perceived disability.

49. Additionally, Defendants have failed to provide a reasonable accommodation under Section 504 of the Rehabilitation Act that would enable Plaintiff meaningful access to defendants' services, programs or activities.

THIRD CAUSE OF ACTION

50. Plaintiff repeats the allegations of all of the above paragraphs as if fully set forth herein.
51. The above actions were extreme and outrageous conduct.
52. Defendants had intent to cause, or disregard of a substantial probability of causing Kat to suffer severe emotional distress.
53. As a proximate cause of the above conduct Kat suffered severe emotional distress loss of esteem, emotional trauma, and other irreparable harm, pain and suffering.
54. Defendants, by the above conduct, intentionally inflicted emotional distress on the Plaintiff.

FOURTH CAUSE OF ACTION AGAINST MARIST COLLEGE ONLY

Breach of Contract

55. Plaintiff repeats the allegations of all of the above paragraphs as if fully set forth herein.
56. Marist has breached its contract with Kat to provide her with an athletic scholarship

PRAYER FOR RELIEF

- a. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment on her behalf on all counts contained herein, and grant her the following relief:
1. Declaratory judgment that Defendants' conduct violated Plaintiff's rights. In particular, the Court declare the actions of Defendants complained of herein to be in violation of: the Americans With Disabilities Act of 1990, as amended, 42 U.S.C. § 12181 et seq; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq; and NY Exec. Law §296.; that Defendants intentionally inflicted emotional distress upon Plaintiff, and that Marist College breached its athletic scholarship contract with Plaintiff;

2. Injunctive relief permanently enjoining Defendants; their agents, employees, and successors from discriminating on the basis of disability against Plaintiff of any persons in violation of the aforementioned acts;
3. Appropriate compensatory and punitive damages be awarded to Plaintiff and against Defendants, in an amount to be determined by the jury;
4. Prejudgment and post-judgment interest on all damages;
5. Corrections of all records to restore Plaintiff's academic standing and expungement of all negative information from Defendants' records;
6. Restoration of Plaintiff's athletic scholarship
7. Reasonable attorney's fees and costs;
8. That this Court retain jurisdiction to monitor the above affirmative relief; and
9. Such other relief as the court shall deem just and proper.

DATED: March 12, 2009

KAHN OPTON, LLP



By: Stephen H. Kahn (SHK 7780)
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JURY DEMAND

Plaintiff hereby demands a trial by pursuant to Fed. R. Civ. Pr. 38.

DATED: March 12, 2009



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Attorney for Plaintiff

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