

B-14



STATE OF NEW JERSEY
DECISION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of C.B.,
Kean University

CSC Docket Nos. 2017-1322
and 2017 - 1391

Discrimination Appeal

ISSUED: JUN 27 2017 (WR)

C.B., a former Adjunct Professor with the Kean University (Kean) appeals the determination of the Chief of Staff, Office of the President, Kean, which determined that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). The appellant also appeals the determination that she failed to present sufficient evidence to support a finding that she had been subjected to a violation of the State Policy.

By way of background, in mid-March 2016, several Kean students in the appellant's Business Law II class contacted Kean administration officials with concerns about comments that the appellant made during class that implicated the State Policy. Specifically, students alleged that the appellant repeatedly made inappropriate remarks about gender, religion, national origin and ethnicity. In response, Kean conducted an investigation, which included interviewing other students in her class who corroborated the initial complaints. For instance, one student complained that the class lectures were "random," the appellant spent class time speaking her personal views, and once remarked that "America should stick to Catholic/Christian principles." Another student complained that the appellant would consistently make remarks about immigration (e.g. "Mexicans stealing jobs") and Christianity (e.g. the appellant would "denounce all of those who do not follow Christian values) in "every single class." A third student said that the appellant made remarks in class that were offensive to homosexuals and immigrants. A fourth student said that the appellant was "old school" in her beliefs about gender roles and indicated that the appellant had said that "women shouldn't have to carry heavy items." This student also said that the appellant never indicated that her remarks were her personal opinions. Other students alleged that the appellant

made similar remarks and complained that her lectures were often off-topic "rants." The matter was referred to the Office of Affirmative Action Programs (OAAP) for an investigation, which determined that the appellant's comments violated the State Policy.

Additionally, the appellant filed a discrimination complaint, alleging that a Kean attorney and several unnamed students violated the State Policy by referring to her as "Ms." instead of "Mrs." She also alleged that a student violated the State Policy by referring to her as "old school." Kean did not substantiate the appellant's complaint, as it determined that the alleged violations did not implicate the State Policy.

On appeal to the Civil Service Commission (Commission), the appellant contends that the students' complaints are based on political correctness and do not implicate the State Policy. She alleges that Kean violated the State Policy and used it as a pretext to terminate her from her position, punish her for teaching critical thinking, promoted its "extreme political correctness agenda" and retaliated against her for filing a complaint. She also argues that "Kean is violating various numerous portions of its Policy Statement on Free Speech and Dissent." Similarly, she claims that Kean violated her free speech rights, academic freedom and due process rights. The appellant also argues that the State Policy concerns Kean employees only, and is "not for students to utilize to have professors replaced."

Additionally, the appellant argues that, during class, she lectured out of the textbook and used "debate points" to "encourage and develop students' critical thinking, interdisciplinary thinking and debating skills." She contends that her lectures and debate points were designed to apply legal principles and concepts, public policy and ethics to her students' lives. She states that she would ask students a question and then all viewpoints would be "zealously debated." She denies making any personal remarks, but instead contends that her statements were debate points. The appellant also states that she would provide both sides of the debate and sometimes would play devil's advocate to challenge her students and develop their arguments. In this regard, she argues that debates points that encourage critical thinking do not violate the State Policy. Moreover, the appellant asserts that she treated everyone equally.

Regarding the specific complaints against her, the appellant contends that illegal immigration, gender roles, and religion were all referenced in the textbook and covered as debate points. She denies making any offensive comments about homosexuals or mentioning Catholicism. Moreover, she argues that student complainants took her comments out of context.

Procedurally, she complains that Kean did not disclose the identities of the student complainants, which violates her rights and the State Policy. She also

complains that Kean did not notify her about the investigation at its inception, did not inform her of the allegations and accusers, did not provide her with a hearing and reached its determination in the matter before it started the investigation. Similarly, the appellant asserts a prompt, thorough and impartial investigation was not conducted, the determination was based on disgruntled, biased students and "with no other evidence than baseless hate, lies and discrimination and without Kean ever having observed [her] class."

She also argues that Kean "bungled" the investigation. For instance, she complains that it did not timely update her with information about the investigation; ignored her multiple requests for information; and did not consider her supporting documents, which included "unsolicited letters" from supportive students, letters from her attorneys, and a "Statement in Lieu of Meeting" that outlined her reasons why she did not violate the State Policy. The appellant further alleges that the investigation was flawed due to a conflict of interest because people who violated the State Policy influenced the investigation and determination. Finally, the appellant alleges that Kean did not issue its determination within 120 days of the complaint.

Regarding the determination letter, the appellant contends that it was flawed because it did not list all of the facts and how the complaints against her were substantiated. She complains that Kean did not investigate her complaints. The appellant additionally complains that the determination letter included her separately filed complaint against Kean.

Additionally, the appellant complains that Kean locked her out of her classroom mid-semester. She also complains that Kean did not provide her with a copy of the State Policy and did not provide her training on it. In this regard, the appellant contends that Kean is equitably estopped from invoking the State Policy against her. More broadly, the appellant contends, without any explanation, that the State Policy is unconstitutionally overbroad and vague.

Regarding her own complaint, the appellant reiterates that several students and a Kean attorney violated the State Policy on the basis of marital status by referring to her as "Ms." instead of "Mrs." because she is married. The appellant states that she informed her class at the beginning of the semester that she finds the address "Ms." offensive and requested that they refer to her as "Mrs." The appellant also reiterates her complaint that a student violated the State Policy on the basis of age by calling her "old school." Additionally, she claims that several students violated the State Policy on the basis of nationality, stating that "they appear to denigrate and discriminate against American citizens and the great U.S.A., they essentially say American citizens don't have the right to expect immigrants to abide by U.S. laws." Similarly, the appellant claims that several

students violated the State Policy by denying that women have the option to ask men for assistance in changing flat tires or carrying heavy items. She contends that two students violated the State Policy regarding religion because they seemed to dislike Christianity and “discriminate[d] against [her] for making debate points about Christianity.” The appellant also complains that Kean did not investigate her complaint. She states that she referred her matter to the State Division of Equal Employment Opportunity and complains that it did not investigate her complaint, but instead referred the matter to C.W., Director of the OAAP, at Kean who had a conflict of interest in the matter.

For relief, the appellant requests that the determination against her be reversed, a letter of apology signed by those involved in the investigation and that she be awarded monetary damages equal to her pay for the 2016-17 school year. In support of her appeal, the appellant submits letters of support from her students, letters from her attorneys to Kean that request information about the investigation, correspondence with Kean and her course syllabus.¹

In response, Kean reiterates that its investigation, “corroborated by multiple sources,” revealed that the appellant’s social, political and personal opinions clearly implicated the State Policy “and were in no way related to the course content and related subject matter, thus nullifying any possible academic freedom justification for the comments.” In this regard, Kean observes that referencing categories protected by the State Policy is not prohibited in an academic context. However, multiple students reported that the appellant would go on “rants” during class time, spent large portions of class time discussing issues not related to the course subject matter and stated her personal opinions as fact. Kean states, by way of background, that after it received these complaints, it attempted to meet with the appellant, but the meeting never took place. After students continued to complain about the appellant’s comments and a preliminary review of the matter, Kean states that it removed the appellant from her classroom. Thereafter, it referred the matter to its OAAP for an investigation, which “contacted multiple students from the class to obtain specific details of the allegations.” In a letter dated May 2, 2016, Kean contends that it notified the appellant of the OAAP investigation and requested a meeting with her. Following a series of correspondence, including a July 18, 2016 letter from Kean to the appellant, which detailed the allegations against the appellant but kept the students anonymous, Kean states that the appellant responded to the investigation on September 14, 2016 and the appointing

¹ The syllabus states that the appellant’s course “is an introduction to the basic legal principles that govern the areas of property, sales and leases, administrative agencies, negotiable instruments, contracts, negligence, bankruptcy, principals and agents, consumers, workers/employers/employees, various business organizations, etc.” Regarding the letters of support from her students, it is noted that the students do not refute the allegations against the appellant. Rather, the students generally praise the appellant as a teacher.

authority issued its determination on October 6, 2016. Kean asserts that throughout the course of the investigation it provided the appellant with sufficient information to respond to the allegations and complied with the procedures for addressing matters implicating the State Policy.

Kean indicates that the appellant included her discrimination complaint in her September 14, 2016 letter. In response to her complaint, Kean contends that "the usage of 'Ms.' does not rise to the level of a policy violation" because "the term is used in a general manner and does not necessarily reflect marital status." It likewise asserts that usage of the term "old school" does not violate the State Policy because the term is "associated with traditional practices, characteristics, mannerisms, etc." Finally, Kean contends, since the appellant was hired in January 2012, all employees have been provided the State Policy multiple times. In support of its position, Kean submits a letter dated February 7, 2013 and an email dated February 12, 2013, both addressed to all Kean employees, which notifies the recipient of the State Policy and writes that "adjunct employees may complete this training on a voluntary basis." Kean also submits its correspondence with the appellant during the investigation.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. Additionally, *N.J.A.C.* 4A:7-3.1(b) states that it is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background or any other protected category set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. Moreover, the appellant shall have the burden of proof in all discrimination appeals. See *N.J.A.C.* 4A:7-3.2(m)3.

Discrimination appeals are treated as reviews of the written record. See *N.J.S.A.* 11A:2-6(b). Hearings are granted in those limited instances where the Commission finds that a material and controlling dispute of facts exists that can only be resolved by a hearing. See *N.J.A.C.* 4A:2-1.1(d).

Initially, regarding the appellant's complaint that a Kean employee violated the State Policy by referring to her as "Ms." instead of her preferred title of "Mrs.,"

the Oxford English Dictionary defines "Ms." as "a title of courtesy prefixed to the surname of a woman, sometimes with her first name interposed." Merriam-Webster's Dictionary indicates that "Ms." is used "when the marital status of a woman is unknown or irrelevant." While the appellant argues that she expressed her preference to be referred to as "Mrs.," referral to her as "Ms." would be a breach of etiquette, but not a violation of the State Policy. Finally, the appellant's complaint that Kean did not investigate her complaint is without merit because *N.J.A.C. 4A:7-3.2(i)* gives an EEO Officer the discretion to conduct an investigation. For the foregoing reasons, no basis exists to find a violation of the State Policy. As such, the appellant has therefore failed to meet her burden of proof in these matters. See *N.J.A.C. 4A:7-3.2(m)3*.

With respect to the appellant's complaint against her students, *N.J.A.C. 4A:7-3.1(a)1* provides that the State Policy "applies to all employees and applicants for employment" and "persons doing business with the State." Students do not fall under any of these categories and thus, the Commission does not have jurisdiction over her appeal regarding this matter.

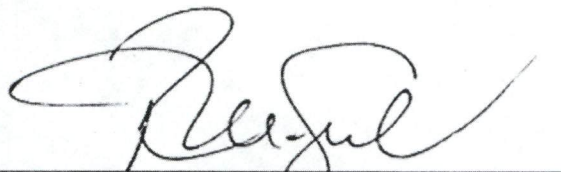
However, material disputes of fact exist which warrant granting a hearing at the Office of Administrative Law (OAL) with regard to the appellant's appeal of the finding that she violated the State Policy. Kean contends that the complained of comments were unrelated to the course content and therefore are not protected by academic freedom. The appellant argues that her comments were "debate points" related to the course content and, therefore, protected by academic freedom. Although the appellant provides the course syllabus and lists several instances where her comments could relate to topics covered in the course textbook, the record is unclear whether or not her comments sufficiently relate to the course content and were intended to encourage discussion in class rather than her simply stating her opinions as fact as alleged by the complainants. Under these circumstances, the Commission finds that disputed issues of material fact exist which cannot be determined on the written record, thereby requiring a hearing in the matter where an Administrative Law Judge (ALJ) may evaluate evidence and assess the credibility of the witnesses. Therefore, the Commission grants a hearing at the OAL on the sole issue specified above.

ORDER

Therefore, it is ordered that these appeals be denied in part and the matter regarding the appellant's violation of the State Policy be referred to the Office of Administrative Law.

This is the final administrative determination regarding the appellant's complaints regarding Kean's attorney and students. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 21st DAY OF JUNE, 2017



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