



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

DASHON M. HINES,

Complainant,

v.

**BRYANT & STRATTON COLLEGE, INC.,
DEBORAH A. FRANKLIN, MICHAEL
MCKINLEY, KEVIN MUSE,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10206420

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on August 5, 2024, by Rebecca A. Clancy, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE DENISE M. MIRANDA, ESQ., ACTING COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the

Division at One Fordham Plaza, 4th Floor, Bronx, NY 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, NY 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: 12/19/2024
Bronx, NY



DENISE M. MIRANDA
ACTING COMMISSIONER



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**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. 10206420

SUMMARY

Complainant alleged that Respondents subjected him to unlawful discrimination based on his race and sex and retaliated against him after he filed grievances. Complainant failed to satisfy his burden of proof and the complaint is dismissed.

PROCEEDINGS IN THE CASE

On February 3, 2020, Complainant filed a complaint with the New York State Division of Human Rights ("Division"), charging Respondents with unlawful discriminatory practices relating to education in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Rebecca A. Clancy, an Administrative Law Judge (“ALJ”) of the Division. A virtual public hearing session was held on March 18, 2024.

Complainant and Respondents appeared at the hearing. The Division was represented by Catherine Ostrowski Martin, Esq., Senior Attorney. Respondents were represented by Amanda L. Lowe, Esq.

Permission to file post-hearing briefs was granted. Respondents timely filed a post-hearing brief which was considered and, where appropriate, adopted. In addition, Respondents’ counsel filed an application for an award of attorney’s fees and costs. The motion for attorney’s fees is received into evidence as ALJ’s Exhibit 4. The Division did not submit any response to Respondents’ application for attorney’s fees.

FINDINGS OF FACT

1. Complainant is an African American male. (Tr. 29)
2. Respondent Bryant & Stratton College, Inc. (“Bryant & Stratton”) is a college with campuses located in and around Buffalo, New York. (Tr. 143, 157; Complainant’s Exhibit 1)
3. Respondent Michael McKinley, who was Respondent Bryant & Stratton’s dean of instruction and grievance coordinator, is a White male. (Tr. 19, 116, 119)
4. In 2011, Complainant enrolled as a student in Respondent Bryant & Stratton. (Tr. 48)

5. In 2011, Complainant filed an action in federal court for various claims against Respondent Bryant & Stratton and made a demand for, among other things, \$60 million in compensatory damages and \$300 million in punitive damages. (Tr. 48; Complainant's Exhibit 3; Respondent's Exhibit 3)

6. In 2013, the court dismissed the action and noted that Complainant had filed 19 cases in a period of 11 months. (Tr. 48-49; Complainant's Exhibit 3)

7. In 2015, Complainant's appeal of the court's decision to the United States District Court, Second Circuit was dismissed because it "lack[ed] an arguable basis in law or fact." (Complainant's Exhibit 3)

8. From 2012 to 2019, Complainant attended classes on an intermittent basis at Respondent Bryant & Stratton. (Tr. 49-50)

9. During the fall 2019 semester, Complainant applied for an internship. (Tr. 19)

10. On or about October 10, 2019, Paul Martello, a White male who was an associate dean of instruction, informed Complainant that he needed to meet with Angelette Boddie¹ about internship placements and that internships were not connected to work study that was performed on campus. (Tr. 74, 89; Respondents' Exhibit 3)

11. Boddie is an African American female and was Respondent Bryant & Stratton's director of career services. (Tr. 20, 89; Respondents' Exhibit 3)

12. Boddie spoke with Complainant regarding an internship and told him that he was free to follow up with her if he had any questions. (Tr. 127; Respondents' Exhibit 3)

¹ Angelette Boddie's surname was misstated as "Bowie" during certain parts of the hearing. (Tr. 20-21)

13. On or about October 12, 2019, Complainant complained to Respondent McKinley that Boddie and Martello had subjected him to harassment and discrimination due to his sex and race by denying him internship opportunities. (Tr. 19-21, 74)

14. Complainant's testimony that Boddie said that she did not want to communicate with people outside of her race to help him secure an internship and that he told her she was subjecting him to "black on black discrimination" was confusing and nonsensical and such testimony is not credited. (Tr. 20-21)

15. On or about October 29, 2019, Complainant received a letter from Respondent Bryant & Stratton's financial aid office, which indicated that he owed a balance of \$186.44. (Tr. 21; Complainant's Exhibit 1)

16. Complainant argued with two White female employees in the financial aid office, whose names were not established on the record, about the balance calculation. (Tr. 22-24)

17. Complainant called the police during this conversation regarding his financial aid and alleged that Respondent Bryant & Stratton had committed criminal acts of fraud against him. (Tr. 23, 29)

18. In 2019, Complainant made at least 25 calls to the police to complain about Respondent Bryant & Stratton's faculty or staff members. (Tr. 62-63)

19. On or about October 29, 2019, Complainant complained to Respondent McKinley about the financial aid calculation and alleged that he was experiencing unlawful racial discrimination and retaliation. (Tr. 24-25; Complainant's Exhibit 1)

20. Respondent Bryant & Stratton forgave Complainant's balance of \$186.44 by awarding him a grant. (Tr. 73; Respondents' Exhibits 3, 7)

21. Respondent Deborah A. Franklin is a White female. (Tr. 27)

22. Respondent Franklin has been employed as a professor by Respondent Bryan & Stratton since 1981. (Tr. 198)

23. In the fall 2019 semester, Complainant was a student in Respondent Franklin's virtual office information management class. (Tr. 158-59)

24. Respondent Franklin had a policy requiring students to take quizzes and tests in the classroom during the class. (Tr. 160)

25. After Complainant was absent from class and missed a quiz, he asked Respondent Franklin if he could make up the quiz in the learning center. (Tr. 26)

26. On October 10, 2019, Respondent Franklin denied Complainant's request to take the quiz in the learning center and told him that he could make up the quiz when he returned to class. (Tr. 26; Complainant's Exhibit 1; Respondents' Exhibit 3)

27. On or about November 5, 2019, Complainant filed a grievance against Respondent Franklin with Respondent McKinley in which he alleged that he had not been permitted to complete the quiz due to unlawful discrimination based on his race and sex. (Tr. 27; Complainant's Exhibit 1; Respondents' Exhibit 3)

28. On December 9, 2019, Respondent Bryant & Stratton notified Complainant that he was charged with violating its student code of conduct. (Tr. 37-38; Complainant's Exhibit 3)

29. Specifically, Complainant was charged with bringing unsupported and frivolous charges against members of Respondent Bryant & Stratton's faculty and staff since he began his studies in 2011 and that such conduct had violated the prohibition against disruption or obstruction of "teaching, research, administration, disciplinary proceedings or other college activity" and constituted abusive, threatening, intimidating, harassing or endangering conduct. (Tr. 38; Complainant's Exhibit 3)

30. The written charge further alleged that Complainant had abused the student judicial system by “knowingly instituting a judicial process without cause” and set a deadline of December 19, 2019, for Complainant to request a hearing on the charges. (Tr. 38-39; Complainant’s Exhibit 3)

31. The written charges included a chronological list of the 23 grievances that Complainant had filed regarding, among other things, his reported absences from classes, grades, and lists of outstanding class assignments issued by Respondent Bryant & Stratton’s employees. (Tr. 128-29; Complainant’s Exhibit 3)

32. On December 19, 2019, a three-member faculty panel conducted a hearing on the charges against Complainant. (Tr. 39, 123, 146)

33. The chair of the panel was Respondent Kevin Muse, an African American male who was Respondent Bryant & Stratton’s director of admissions. (Tr. 39, 123-24, 146, 151).

34. The other members of the panel were David Lewis, a White male librarian, and Brandon Rudroff, a White male instructor. (Tr. 40, 146; Complainant’s Exhibit 4)

35. Respondent McKinley presented evidence in support of the charges against Complainant and Complainant was afforded an opportunity to present evidence in his defense. (Tr. 40, 124-25, 148)

36. During the hearing, Complainant did not provide any evidence that the charges against him were retaliatory or related to racial discrimination. (Tr. 151)

37. Following the hearing, the panel determined that there was substantial evidence that Complainant had repeatedly filed grievances against employees of Respondent Bryant & Stratton “without factual foundation,” without complying with proper procedures for filing such grievances, and that the “frequent and repeated nature of the claims amounted to harassing and

intimidating conduct in violation of [Respondent Bryant & Stratton's] code of conduct." (Tr. 133; Complainant's Exhibit 4)

38. The panel concluded that, although it had considered a lesser sanction, "any action short of expulsion will not prevent [Complainant] from submitting additional frivolous or baseless grievances and appeals of any action, which he believes is unfavorable." (Tr. 149-50; Complainant's Exhibit 4)

39. In January 2020, Complainant was expelled from Respondent Bryant & Stratton. (Tr. 41-42; Complainant's Exhibit 4)

40. On January 13, 2020, Complainant appealed his expulsion from Respondent Bryant & Stratton. (Tr. 133-34; Respondents' Exhibit 6)

41. Complainant's appeal was directed to the director of Respondent Bryant & Stratton's Buffalo campus, Marvel Ross-Jones, Ph.D., an African American female. (Tr. 31, 134; Respondents' Exhibit 7)

42. On January 15, 2020, Ross-Jones adopted the panel's decision and confirmed the expulsion of Complainant from Respondent Bryant & Stratton. (Tr. 134-35; Respondents' Exhibit 7)

OPINION AND DECISION

It is an unlawful discriminatory practice for an educational institution "to deny the use of its facilities to any person otherwise qualified, or to permit the harassment of any student or applicant" because of his race or sex. N.Y. Exec. Law ("Human Rights Law") § 296.4.

To establish a prima facie claim of unlawful discrimination under the Human Rights Law, Complainant must show that (1) he is a member of a protected class; (2) he was qualified

for the position or benefit denied (3) he suffered an adverse action and (4) the adverse action occurred under circumstances giving rise to an inference of unlawful discrimination. *See Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 305, 786 N.Y.S.2d 382, 390 (2004) (citing *Ferrante v. Am. Lung Ass'n*, 90 N.Y.2d 623, 629, 665 N.Y.2d 25, 29 (1997)).

If Complainant can establish a prima facie case of unlawful discrimination, the burden shifts to Respondents to articulate a legitimate, independent, and non-discriminatory reason for their actions. If Respondents do so, Complainant must show that the reasons presented by Respondents were merely a pretext for the unlawful discrimination by demonstrating both that the stated reasons were false and that the real reason was unlawful discrimination. *Id.* at 305, 786 N.Y.S.2d at 391. The “burden of persuasion of the ultimate issue of discrimination always remains” with Complainant. *Stephenson v. Hotel Empls. and Rest. Empls. Union Local 100 of the AFL-CIO*, 6 N.Y.3d 265, 271, 811 N.Y.2d 633, 636 (2006).

Complainant failed to establish a prima facie case of unlawful discrimination based on his race and sex. Complainant, who is an African American male, is a member of protected classes and was qualified for the benefits of a college student. However, other than Complainant’s self-serving testimony that he was denied the internship he sought, was given an inaccurate financial aid calculation, and required to take a quiz in the classroom during class due to his race and sex, the record lacks any evidence that he was denied any benefits or suffered any adverse actions under circumstances that would allow for an inference of unlawful discrimination. This claim is dismissed.

Complainant alleged that Respondents engaged in unlawful retaliation against him after he complained about discriminatory conduct by faculty and staff members.

To make a prima facie case of retaliation, Complainant must demonstrate that (1) he

engaged in protected activity, (2) Respondents were aware that he participated in such activity, (3) he suffered an adverse action based upon such activity, and (4) there is a causal connection between the protected activity and the adverse action. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d at 312-13, 786 N.Y.S.2d at 396.

Complainant established a prima facie case of retaliation. Complainant engaged in protected activity when he complained to Respondent McKinley that he had suffered unlawful racial and sex discrimination and retaliation when he had been denied internship opportunities on campus, his financial aid had been purportedly miscalculated and he was not permitted to take a quiz outside of class. Respondents were aware of Complainant's grievances, and he was subjected to expulsion following the filing of such grievances.

Respondents articulated a legitimate, independent, non-discriminatory reason for Complainant's expulsion. While a student at Respondent Bryant & Stratton, Complainant established a pattern of conduct in which he would file baseless lawsuits and grievances against faculty and staff members or call for police intervention when he found a staff response or student policy disagreeable. Given that conduct, Complainant was found, after a hearing, to have violated the student code of conduct which prohibited the disruption or obstruction of the teaching environment, conduct found to be abusive, threatening, intimidating, or harassing, and abusive to the student judicial system. During the public hearing on the instant complaint, Complainant exhibited similar conduct when he called the police to report that he was being harrassed by the hearing participants.

Complainant failed to show that Respondents' reason for his expulsion was a pretext for unlawful discrimination. This claim must be dismissed.

Respondents filed a motion for an award of attorney's fees. To prevail on a motion for attorney's fees, Respondents must also show that the instant complaint is frivolous. *See* Human Rights Law § 297.10. In order to find the a case is frivolous, the Commissioner must that: "(a) the action or proceeding was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or (b) the action or proceeding was commenced or continued in bad faith without any reasonable basis and could not be supported by a good faith argument for an extension, modification or reversal of existing law." *Id.*

Respondents did not establish that Complainant, who filed the complaint as a pro se litigant, commenced or continued the matter in bad faith or to harass or maliciously injure anyone. As a result, Respondents' application for attorney's fees must be denied.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that the complaint be dismissed.

DATED: August 5, 2024
Bronx, New York



Rebecca A. Clancy
Administrative Law Judge