

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 11-080335-Middlebrooks/Johnson

KYRA ALEJANDRO,

Plaintiff,

v.

PALM BEACH STATE COLLEGE,
DENNIS P. GALLON, in his official
capacity as President of Palm Beach State
College, and PENNY J. McISAAC, in her
official capacity as Dean of Student
Services at Palm Beach State College, Lake
Worth Campus,

Defendants.

AMENDED COMPLAINT

I. Introduction

1. This complaint is brought against Palm Beach State College (“PBSC” or “the College”), Dennis P. Gallon, and Penny J. McIsaac for discrimination on the basis of disability.

2. Plaintiff Kyra Alejandro relies on a psychiatric service dog to mitigate the symptoms of her mental disabilities. Soon after she enrolled for the Spring 2011 semester at the College’s Lake Worth campus, PBSC officials began inquiring into the nature and severity of the disabilities for which she relies on her service animal. Ms. Alejandro’s request for a reasonable modification of the College’s animal control policy, to allow her to bring her service animal to campus, was denied repeatedly throughout the course of the semester.

3. PBSC officials required voluminous documentation from Ms. Alejandro to justify

her need for her service animal. Even as she provided them with more documentation than was legally required, PBSC officials harassed her, threatened her with removal from campus, and, on several occasions, security personnel removed Ms. Alejandro and her service animal from classes and other campus locations.

4. As a result of these invasive inquiries, threats, and removals, Ms. Alejandro was embarrassed and humiliated before her peers and professors; experienced serious panic attacks; and was prevented from attending her classes and from completing assignments timely.

5. This action is brought against the College, Dr. Gallon, and Ms. McIsaac for (1) injunctive and declaratory relief under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132; (2) injunctive and declaratory relief under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; and (3) against the College only for compensatory damages for each act of discrimination under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

II. Parties

6. The plaintiff, Ms. Alejandro, is a citizen of the State of Florida. She is a student at defendant PBSC, and has diagnosed mental impairments – post-traumatic stress disorder, major depressive disorder, and generalized anxiety disorder – that substantially limit her in major life activities including learning, thinking, concentrating, and brain function. These impairments are disabilities under the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12102, and Section 504 of the Rehabilitation Act (“Section 504”), 29 U.S.C. §705(20)(B).

7. PBSC is an agency or other instrumentality of the government of the State of Florida, located in Palm Beach County. As such, it is covered by Title II of the ADA, 42 U.S.C. § 12131. PBSC is a recipient of federal financial assistance and thus is covered under Section 504,

29 U.S.C. § 794.

8. Dennis P. Gallon is President of Palm Beach State College. Dr. Gallon is the chief executive of the College, and is responsible for assuring the College's compliance with all laws and regulations, including the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. He is sued in his official capacity only for injunctive relief.

9. Penny J. McIsaac is Dean of Student Services at Palm Beach State College, Lake Worth Campus. Ms. McIsaac is responsible for overseeing a variety of campus programs to support students on the Lake Worth Campus, including academic advising, career planning centers, counseling services, and disability support services. She is sued in her official capacity only for injunctive relief.

III. Jurisdiction and Venue

10. This Court has jurisdiction pursuant to 42 U.S.C. § 12133; 29 U.S.C. § 794a; and 28 U.S.C. §§ 1331 and 1343. Declaratory and injunctive relief and damages are sought under 28 U.S.C. §§ 2201-2202.

11. Venue is proper in this Court under 28 U.S.C. § 1391, as a substantial portion of the events or omissions giving rise to the claims herein occurred in this judicial district.

IV. Procedural History

12. Ms. Alejandro initially filed this action in the Fifteenth Judicial Circuit in and for Palm Beach County on March 14, 2011. PBSC removed the case to federal court and a hearing was scheduled for May 4, 2011.

13. On May 2, 2011, PBSC filed a Notice of Consent to Relief Requested in Motion for Temporary Injunction and Motion to Cancel Hearing on Plaintiff's Motion for Temporary

Injunction. In this notice, PBSC represented to the Court that, effective May 2, 2011, “the College will allow Plaintiff to bring her service dog to campus, campus functions, and her classes consistent with all relief requested by Plaintiff ... and consistent with the terms set forth in the Americans with Disabilities Act.” *See* Docket No. 12.

14. Based on PBSC’s representation in its May 2, 2011 filing and at the May 4, 2011 hearing, this Court denied Ms. Alejandro’s Motion for a Temporary Injunction in an Order dated May 5, 2011.

15. In early June 2011, Ms. Alejandro brought her service dog to PBSC’s Lake Worth campus and was harassed and forcibly removed from campus because of the dog’s presence.

16. PBSC issued a letter on June 14, 2011 denying Ms. Alejandro’s requested policy modification for permission to use her service animal on campus. Contrary to its May 2, 2011 representation to this Court, the College’s June 14 letter states clearly that Ms. Alejandro is not permitted to bring her service dog to campus.

V. Facts

18. Ms. Alejandro is a qualified individual with a mental disability that substantially limits the major life activities of, *inter alia*, learning, thinking, concentrating, and brain function.

19. From approximately August 2007 until December 2010, Ms. Alejandro attended Palm Beach State College (PBSC) at its Palm Beach Gardens campus.

20. In the Fall of 2009, Ken Swain, the Disability Services Coordinator for the Palm Beach Gardens campus, referred Ms. Alejandro for a psychological evaluation focused on her learning disabilities to determine whether she required any special education and learning supports.

21. Dr. Shari Rottblatt, of Martin D. Segel, Ph.D. & Associates, evaluated Ms. Alejandro and diagnosed Ms. Alejandro with post-traumatic stress disorder (PTSD), major depressive disorder, attention deficit hyperactivity disorder (ADHD), and a learning disorder. Dr. Rottblatt recommended special education services, including extended time to complete tests and assignments, as well as psychological counseling services and a psychiatric consultation.

22. After Ms. Alejandro received her diagnoses from Dr. Rottblatt, she began having her dog trained as a psychiatric service animal. Ms. Alejandro's dog was trained to establish eye contact, nip her fingers, or snort when he perceives an imminent panic attack. Ms. Alejandro and her dog also completed several obedience-training courses.

23. Since the late Fall 2009, Ms. Alejandro has relied on her psychiatric service animal to enable her to participate in and benefit from her education.

24. From the Fall 2009 semester until January 2011, PBSC did not challenge Ms. Alejandro's use of a service animal on campus.

25. In approximately December 2010, Ms. Alejandro checked with Mr. Swain to ensure that she could bring her service dog to graduation ceremonies on December 20, 2010.

26. In response to Mr. Swain's request for documentation, Ms. Alejandro brought him a "Doctor's Statement" on a form entitled "Registered Service Dogs," which Ms. Alejandro's physician, Dr. Gonzalez, signed to authorize that Ms. Alejandro's dog "be registered as a Service Dog under the guidelines of the Americans with Disabilities Act."

27. Mr. Swain informed Ms. Alejandro that this documentation was sufficient and that she could bring her service dog to the graduation ceremony.

28. On December 20, 2010, before the graduation ceremony began, Ms. Susan Lang, from the Disability Support Services office at PBSC's Lake Worth campus, approached Ms. Alejandro to tell her that it was inappropriate to bring her "emotional support animal" to the graduation ceremony. Ms. Alejandro informed Ms. Lang that her dog was a psychiatric service dog, to which Ms. Lang replied that there is no such thing. In the end, Ms. Lang allowed Ms. Alejandro to "walk" with her dog to accept her Associate's Degree.

29. Following graduation, Ms. Alejandro elected to enroll at PBSC's Lake Worth campus for the Spring 2011 semester.

30. On January 12, 2011, Jelicia Kirk and Ms. Lang, both from the Disability Support Services office at the Lake Worth campus, met with Ms. Alejandro to discuss the documentation necessary for her service dog to be permitted on campus. The officials probed Ms. Alejandro about the causes of her post-traumatic stress disorder and her need for a service dog. Ms. Alejandro gave the college officials copies of the following documentation:

a. Psychological Evaluation by Dr. Rottblatt, Ph.D., at Martin D. Segel & Associates, dated October 28, 2009, outlining Ms. Alejandro's mental health diagnoses; and

b. The same "Doctor's Statement" signed by Dr. Gonzalez, which Ms. Alejandro had provided Mr. Swain just before graduation.

31. Ms. Kirk and Ms. Lang informed Ms. Alejandro that her documentation was insufficient.

32. On February 21, 2011, Ms. Kirk e-mailed at least one of Ms. Alejandro's professors, advising him to "deny access [to class to Ms. Alejandro and her dog] because the

college's policy states that animals are not allowed on campus unless it is for the purpose of service as identified by the ADA. The animal in question is not a certified service animal."

33. On March 2, 2011, Ms. Kirk, defendant McIsaac, and Jeannie Hoban, a PBSC counselor and social worker, met with Ms. Alejandro, her mother, and a family friend. At this meeting, Ms. Alejandro presented the following documentation:

a. The same psychological Evaluation by Dr. Rottblatt, Ph.D., at Martin D. Segel & Associates, dated October 28, 2009, outlining Ms. Alejandro's diagnoses, which Ms. Alejandro had given to Ms. Kirk and Ms. Lang at their January 12, 2011 meeting;

b. The same "Doctor's Statement," signed by Dr. Gonzalez, which Ms. Alejandro had provided to Mr. Swain just before graduation and to Ms. Kirk and Ms. Lang at their January 12, 2011 meeting; and

c. A note from Dr. J. Enrique Rivera, Psy. D., at Wellington Psychological Associates, dated March 1, 2011, confirming that Ms. Alejandro receives outpatient counseling for symptoms of anxiety and depression.

34. At the March 2, 2011 meeting, Ms. Alejandro explained that her service dog had been trained to signal her when a panic attack is imminent, to allow her to take precautions to prevent the attack from coming on full force. Nevertheless, the college officials told Ms. Alejandro the documentation she presented was insufficient.

35. On March 14, 2011, Ms. Alejandro attended class with her service dog. Campus security retrieved Ms. Alejandro from class and escorted her to defendant McIsaac's office, where Ms. McIsaac and Ms. Kirk awaited her. Ms. Alejandro was then escorted off campus.

36. On March 14, 2011, PBSC informed Ms. Alejandro that it was initiating disciplinary proceedings against her.

37. The disciplinary hearing took place on April 8, 2011. Immediately following the hearing, on April 8, 2011, Ms. Alejandro submitted to defendant McIsaac a new note from her treating physician, Dr. Gonzalez. The note confirmed that Ms. Alejandro has been his patient for one year, that she has depression, anxiety, panic attacks, and PTSD, and that her service dog has been “very efficacious in helping her cope with her medical conditions.” Ms. Alejandro’s lawyer also sent the note to counsel for PBSC.

38. On April 11, 2011, the Disciplinary Committee issued a determination letter, in which the Committee communicated that it found Ms. Alejandro guilty of “disruption and interruption of the learning environment” and of “failure to obey requests/order from College officials, including the Dean, professors, and the Coordinator of Disability Services.”

39. The Disciplinary Committee also required Ms. Alejandro to “submit an addendum to her psychiatric evaluation stating the need for Ms. Alejandro to bring her dog on campus, from either Dr. Rivera or Dr. Segal (*sic*), within two weeks.”

40. Under threat of suspension and wishing to avoid academic failure, Ms. Alejandro attended class without her service dog on April 18, 2011 and April 20, 2011. After attending class on April 18, she returned home with debilitating anxiety.

41. On April 20, 2011, in the middle of her first class, Ms. Alejandro stepped out to clear her head, only to find a security guard there to verify she did not bring her service dog to class. At the sight of the security guard awaiting her, Ms. Alejandro experienced waves of panic attacks.

42. On April 19, 2011, through its attorney, PBSC continued to request documentation of Ms. Alejandro's service dog's "training records." Ms. Alejandro complied with the PBSC's request by providing the college's attorney with documentation that her service dog passed the Service Dog Public Access Test, the American Kennel Club's Canine Good Citizen Program, and graduated from Puppy Kindergarten and Home Obedience training.

43. On April 25, 2011—within two weeks of the Disciplinary Committee's determination letter requesting further documentation – Ms. Alejandro forwarded a letter from Dr. Rivera to Susan Caldwell, the Disciplinary Hearing Committee Chairperson, as well as to defendant McIsaac, Provost Vallejo, and Patricia Anderson, the Vice-President of Student Services.

44. In his letter, filed with Docket No. 20, Dr. Rivera attests that Ms. Alejandro's "dog has been task-trained to recognize her symptoms of anxiety, such as quick, shallow breaths, increased perspiration, increased heart rate, and abnormal body language or intonations in her voice. When observing these symptoms, her service dog responds by establishing eye contact with Ms. Alejandro, emitting a snort, and/or nipping her fingers gently, which allows her to take precautionary measures to avert further distress. ... I have personally observed him to respond to her symptoms of anxiety on numerous occasions. The use of this current intervention makes a clinical difference for Ms. Alejandro, and has proved to be a crucial accommodation, enabling her, for the most part, to study and learn without experiencing debilitating anxiety."

45. In response to Ms. Alejandro's submission of Dr. Rivera's letter, defendant McIsaac told Ms. Alejandro on April 26, 2011 that only Jelicia Kirk, the Disability Support Services Coordinator, could review the letter's sufficiency and that Ms. Kirk was out of the office

on preapproved leave that day. Ms. McIsaac further informed Ms. Alejandro that she was not permitted to attend classes with her service dog pending Ms. Kirk's determination.

46. Neither Ms. Kirk nor Ms. McIsaac responded to Ms. Alejandro's request to inform her of whether Dr. Rivera's April 25, 2011 letter was sufficient to permit her to attend classes with her service animal.

47. On May 2, 2011, PBSC filed the aforementioned Notice of Consent with this Court, in which it agreed to allow Ms. Alejandro "to bring her service dog to campus, campus functions, and her classes consistent with all relief requested by Plaintiff ... and consistent with the terms set forth in the Americans with Disabilities Act." *See* Docket No. 12. Based on this representation, this Court denied Ms. Alejandro's Motion for a Temporary Injunction in an Order dated May 5, 2011.

48. Ms. Alejandro missed a significant number of classes during the Spring 2011 semester because security removed her from campus on several occasions and because she was unable to attend classes without her service animal. Because of these missed classes, Ms. Alejandro asked her professors for additional time to complete her class assignments.

49. Although two of her professors granted her additional time and "Incomplete" status, Ms. Alejandro's Business professor, John Andreoli, refused to give Ms. Alejandro an Incomplete and submitted a failing grade for the semester.

50. Ms. Alejandro petitioned PBSC to allow an appeal of Professor Andreoli's refusal to grant an Incomplete and in the alternative, for a grade change in light of her inability to attend classes for much of the semester with her service animal.

51. On May 23, 2011, defendant McIsaac informed Ms. Alejandro that she was unable to intervene, and that the decisions to grant an “F” and to deny a request for an Incomplete were left to the discretion of Professor Andreoli.

52. On June 1, 2011, Provost Vallejo sent an e-mail to Ms. Alejandro with the results of the appeal of the disciplinary proceedings. In that letter, Provost Vallejo lifted the “disciplinary warning” imposed by the Disciplinary Committee. Provost Vallejo did not acknowledge the submission of additional documentation the Disciplinary Committee requested and stated simply that “the results of the hearing committee stand.”

53. The letter from Provost Vallejo was ambiguous as to whether Ms. Alejandro would be permitted to return to campus with her service animal; however, in reliance on PBSC’s May 2, 2011 notice to this Court that she would be permitted to bring her service animal to campus and to classes, Ms. Alejandro visited PBSC’s Lake Worth campus on Friday, June 3, 2011 with her service animal to attend to some administrative matters.

54. While she was on campus that day, Ms. Alejandro was approached by several PBSC employees, including a woman believed to be Provost Vallejo’s secretary, who expressed doubt as to whether Ms. Alejandro was permitted to bring her service animal to campus. One employee commented that Ms. Alejandro did not look “blind or deaf.”

55. On June 6, 2011, Ms. Alejandro went to the library with her service animal and occupied a study room. Immediately, the librarian knocked on the door and asked if Ms. Alejandro was visually impaired. After receiving a negative response, the librarian demanded documentation that Ms. Alejandro had permission to bring a service animal on campus.

56. Ms. Alejandro suggested that the librarian confirm with security that she was permitted to bring her service animal to campus, as the security officers were aware of her situation.

57. Ms. Alejandro emerged from her study room to find two security guards at the librarian's desk. Lead Security Officer Latoya Thompson told Ms. Alejandro that if she was not blind and the dog was not a "seeing-eye dog," then they would have to leave.

58. After Officer Thompson made a telephone call, she escorted Ms. Alejandro to defendant McIsaac's office.

59. As they approached Ms. McIsaac's office, another security officer ran around the corner, shouting "Wait! She's in the clear!" This officer explained that he had spoken with Ms. McIsaac, who confirmed that Ms. Alejandro was "allowed everywhere but the classroom." The officer also stated that Ms. McIsaac was planning to send an e-mail "to let the entire school know that you are allowed everywhere but in the classroom."

60. Ms. Alejandro asked to see Ms. McIsaac to clarify the scope of her permission to bring her service animal to campus, but Officer Thompson told her she would have to make an appointment for another time.

61. On June 8, 2011, Ms. Alejandro returned to campus to meet with a tutor in the writing lab to finalize one of her class assignments. A few minutes after she arrived, Learning Specialist Lowrie Osborne told Ms. Alejandro that she was not permitted to have her dog in the lab. Ms. Alejandro replied that her dog was a service animal, to which Osborne replied, "I don't care. It doesn't matter."

62. Ms. Alejandro asked Ms. Osborne to call defendant McIsaac to confirm that Ms. Alejandro had permission to bring her service animal to campus. Ms. Osborne replied that Ms. McIsaac had sent an e-mail instructing staff that Ms. Alejandro is not permitted to bring her dog to campus and to notify security if they see Ms. Alejandro on campus with her dog.

63. Within a few minutes, Security Officer Kimani Trapp arrived at the writing lab and informed Ms. Alejandro that she and her dog would have to leave. Officer Trapp escorted Ms. Alejandro and her service animal to her car.

64. On June 14, 2011, Ms. Kirk sent Ms. Alejandro a letter stating that Dr. Rivera's April 25, 2011 letter was insufficient to demonstrate Ms. Alejandro's need for a service dog. Ms. Kirk stated that the service dog is not a "reasonable accommodation under the ADA and/or section 504" because it was not included among the recommendations in Dr. Rottblatt's 2009 psychological evaluation. *See* Docket No. 20.

65. On June 15, 2011, Ms. Alejandro asked Ms. Kirk to reconsider her request in light of an April 2011 evaluation by Dr. Shari Rottblatt, attached in Docket No. 20. Ms. Alejandro had received this evaluation after she submitted the letter from Dr. Rivera in compliance with the Disciplinary Committee's sanction. Dr. Rottblatt recommends in her April 2011 evaluation that Ms. Alejandro "would benefit from the ability to utilize a service dog when attending post-secondary education courses, as her service dog helps to reduce anxiety and maintain focus."

66. Ms. Alejandro is working on class assignments essential to completing her coursework in the two Spring 2011 courses for which her professors granted her "Incompletes."

67. Ms. Alejandro requires access to the library, the writing lab, and other services and facilities available on PBSC's campus. Denying her service animal admission to the campus disrupts Ms. Alejandro's ability to study, learn and benefit from her education.

68. Ms. Alejandro cannot bring her service animal on campus, and she reasonably fears that she will be escorted off of campus should she attend class with her service dog.

69. An immediate hearing is necessary as Ms. Alejandro's health, as well as her educational opportunities, are at risk if she is required to access PBSC's campus, facilities, and services without her service animal.

70. Exclusion from the services and facilities available on PBSC's campus will result in adverse academic consequences for Ms. Alejandro.

71. Ms. Alejandro seeks relief to afford her a meaningful opportunity to complete her class assignments and fully participate in her education.

72. Ms. Alejandro has suffered multiple acts of discrimination by the PBSC, for which she seeks compensatory damages, and will continue to suffer discrimination unless an injunction prohibiting such discrimination is entered.

VI. Violations

73. PBSC has failed to make reasonable modifications in its policies, practices, or procedures as are necessary to avoid discrimination on the basis of disability, under the ADA, 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(b)(7), 35.136, and Section 504, 29 U.S.C. § 794, 34 C.F.R. § 104.44.

VII. Prayer for Relief

74. Ms. Alejandro seeks an Order enjoining defendant Palm Beach State College, from preventing her from being present with her service animal on all areas of campus, including the library, the writing lab, the cafeteria, and classrooms.

75. Ms. Alejandro further requests the following remedies for harms stemming from the College's refusal to grant her a reasonable accommodation:

a. an expungement from her academic record of her failing Spring 2011 grade in Professor Andreoli's Business class or, alternatively, a change of grade to "Incomplete" with a full and fair opportunity to complete the class;

b. reimbursement from PBSC of the tuition and fees she paid that correspond to Professor Andreoli's Spring 2011 Business class;

c. an expungement of her disciplinary record;

d. compensatory damages for each act of discrimination;

e. payment of all reasonable attorneys' fees and costs expended in the prosecution of this matter; and

f. all such other and further relief as the Court may deem just and appropriate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of July, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record listed below and all counsel in the MDL proceedings either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are authorized to receive electronically Notices of Electronic Filing.

s/ James K. Green, Esq. _____