

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LAURA ANN SATIR,)	
)	
Plaintiff)	
)	
v.)	Civil No. 04-42-P-S
)	
UNIVERSITY OF NEW ENGLAND,)	
)	
Defendant)	

Recommended Decision on Motion for Summary Judgment

Laura Ann Satir is the plaintiff in this action against the University of New England. Satir was a student in the University's medical school which prepares students to become osteopathic physicians. Satir's complaint is pled in two counts. Count I charges the University with disability discrimination under the Rehabilitation Act and Title III of the Americans with Disability Act. Count II claims that the University breached its contract with Satir. Defendant University of New England has filed a Motion for Summary Judgment (Docket No. 49). For the reasons that follow, I recommend that the Court grant the motion for summary judgment as to both counts.

Discussion

The Summary Judgment Standard and Satir's Pro Se Status

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). If the University of New England

(UNE) meets this burden, Satir must "produce specific facts, in suitable evidentiary form, to establish the presence of a trialworthy issue." Triangle Trading Co. v. Robroy Indus., Inc., 200 F.3d 1, 2 (1st Cir.1999) (citation and internal punctuation omitted). I view the record on summary judgment in the light most favorable to Satir, the nonmovant, drawing all reasonable inferences in her favor. Nicolo v. Philip Morris, Inc., 201 F.3d 29, 33 (1st Cir.2000).

In presenting its motion, UNE has complied with Federal Rule of Civil Procedure 56 and the District of Maine Local Rule of Civil Procedure 56. In addition to its summary judgment memorandum UNE has filed a statement of material facts (Docket No. 50) that contains record citations to affidavits and exhibits.

In responding to the present motion, Satir has not complied with subsections (c) and (e) of the Local Rule.¹ Satir has filed a memorandum which contains numbered paragraphs of factual assertions that do not align with UNE's but do dispute some of the statements put forth by UNE. Furthermore, while her factual statement contains her

¹ These subsections provide:

(c) Opposing Statement of Material Facts

A party opposing a motion for summary judgment shall submit with its opposition a separate, short, and concise statement of material facts. The opposing statement shall admit, deny or qualify the facts by reference to each numbered paragraph of the moving party's statement of material facts and unless a fact is admitted, shall support each denial or qualification by a record citation as required by this rule. The opposing statement may contain in a separate section additional facts, set forth in separate numbered paragraphs and supported by a record citation as required by subsection (e) of this rule.

...

(e) Statement of Facts Deemed Admitted Unless Properly Controverted; Specific Record of Citations Required

Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted. An assertion of fact set forth in a statement of material facts shall be followed by a citation to the specific page or paragraph of identified record material supporting the assertion. The court may disregard any statement of fact not supported by a specific citation to record material properly considered on summary judgment. The court shall have no independent duty to search or consider any part of the record not specifically referenced in the parties' separate statement of facts.

Dist. Me. Loc. R. Civ. P. 56(c),(e)

version of events Satir has not provided a supporting affidavit or otherwise sworn to her account.

The Court has discretion to insist on compliance with the Local Rules' summary judgment pleading requirements. See Mercado-Alicea v. P.R. Tourism Co., ___ F.3d ___, ___, 2005 WL 175502, *2 -3 (1st Cir. Jan. 27, 2005). Accordingly, the court could grant summary judgment to UNE on the grounds that Satir's failure to properly contravene UNE's material facts means that they are deemed admitted. However, as demonstrated below, even if the court credits Satir's unsworn factual assertions (but only those of which she would have first hand knowledge), UNE is, as a matter of law, entitled to judgment on both counts.

The Material Facts

It is undisputed that the University of New England operates a Medical School known as the University of New England College of Medicine (UNECOM). UNECOM is a four-year medical school which prepares students to become osteopathic physicians. Currently students at UNECOM spend their first two years taking classes on campus and their third and fourth years in clinical rotations.² Laura Satir, who was then known as Laura Gross, first matriculated at UNECOM in 1993. (UNE SMF, ¶¶ 1-2)

According to UNE, UNECOM has an Office of Scholastic Support for Students with Disabilities (“OSSSD”) which is responsible for supporting students with disabilities. OSSSD records are kept confidential and information maintained by OSSSD

² Satir states that at the time of her matriculation the program was split two and one half years course work and one and one half years clinical rotation. UNE objects to and denies this qualification on the ground that the document cited does not support the statement for which it is cited. Its support for this assertion is paragraph 3 of the Bates affidavit which is solely Bates's assertion that: "UNECOM is a four year medical school which prepares students to become osteopathic physicians. Students at UNECOM spend their first two years taking classes on campus and their third and fourth years in clinical rotations." I will take the point as disputed but cannot discern how the fact is material to the outcome of this case.

concerning a student's disabilities is kept confidential and is only disclosed to personnel at UNECOM on a need-to-know basis. The OSSSD records indicate that Satir first applied for services on December 9, 1993.³ She requested a proctor for a couple of exams during the 1993-1994 school year. All of her requests were granted. The records indicate that Satir had no further contacts with OSSSD after 1994. Satir has not placed into dispute UNE's assertion that, other than the requests reflected in her OSSSD file, Satir has made no other formal requests to UNECOM for accommodations for any disability. (UNE SMF, ¶¶ 25-28).

Satir's academic performance prior to her rotations

There is no dispute that Satir failed four courses in her first year -- Gross Anatomy, Embryology, Physiology and Biochemistry. UNE contends that Satir then voluntarily withdrew from the College. UNE's support for this contention is solely Bates's affidavit. (See UNE SMF ¶ 2; Def.'s Reply SMF ¶ 3; Bates Aff. ¶ 4.) According to UNE, on July 18, 1994, Satir reapplied to UNECOM and she was accepted for admission to the class of 1998 with advanced standing.⁴ (UNE SMF. ¶ 3).

³ UNE's records indicate that this was prior to her matriculation. Faulting UNE's records, Satir explains that she matriculated in September of 1993 and, after it was suggested, Satir familiarized herself with OSSSD. In objecting to Satir's qualification the defendant asserts that the documents cited do not support Satir's contention that she did not contact OSSSD. However, that is NOT Satir's contention. The Bates affidavit stating that she matriculated in 1994 seems to be, as Satir contends, in error (see, e.g., Resp. Mot. Summ J. Ex. 6) unless Satir did not matriculate until January of 1994. The letter indicating Satir had gained admission was dated in the Summer of 1993. Neither side has done much to enlighten the court on this score but, like many of the disputes between the parties, answering this question is not determinative of the outcome.

⁴ Satir states that she was asked to leave but she refused. She claims that she asked Dean Walsh to let her stay if she could re-take the course, work with OSSSD, and get treatment for her depression as her current medication did not seem to be working at the time. Satir asserts that she never voluntarily withdrew and continued to take classes and that she was told by Deans Kelly and Walsh that she was on the "5 year program" and would graduate in 1998 instead of 1997. Satir claims that she repeated her course during the summer of 1994 and during her second year of matriculation. She wants the court to note that, of all the students who had to repeat the course, she received the highest grade in her class in Gross Anatomy in the summer session. Satir has no record support for this contention other than her own unsworn assertion. Apparently in an effort to demonstrate her concerted effort that summer, she explains that she was going to

According to UNE, Satir failed the Cardiovascular and Renal Systems courses during the 1995/1996 school year.⁵ As a consequence, as set forth in a letter dated July 2, 1996, from Acting Dean Stephen Shannon to her, Satir was placed on academic probation. As part of that probation she was required to retake the Cardiovascular System course at its next regularly scheduled time and to remediate the Renal System course during the summer of 1996. She was further notified in that letter that failure of either Cardiovascular or Renal System class would result in her dismissal. Satir successfully completed both of these courses, earning a C- in Cardiovascular System, and a C in the Renal System. (UNE SMF, ¶¶ 4-5).

Satir's clinical rotations

There is no dispute that supervising physicians for clinical rotations are required to fill out an evaluation form, which is included as Appendix A to the Clinical Manual. The form includes numerical ratings from 1 (unsatisfactory) to 5 (outstanding) for a number of categories. Although not specifically stated in the manual, a numerical rating of 3 or higher is considered a passing grade. Supervising physicians are also asked to make a recommendation for an overall grade by checking either “pass” or “fail.” Once the evaluation form is completed by the supervising physician it is submitted to the Clinical Affairs office where the numerical scores are checked against the written

physical therapy for a sprained left knee and had surgery on her pinkie finger at the same time she was participating in Gross Anatomy labs all day.

⁵ Satir faults the defendant for incorrectly stating that she had failures in her second year of course work. She states that in her second year she had no failures. However, the defendant clearly states that these shortfalls occurred in the 1995/1996 year which would be her third year according to my calculations. UNE is not much better at paying attention to the facts asserted. In its reply statement of fact to Satir's statement that she had no failures in the second year, it contends that there is no evidence that Satir "has any personal knowledge as to the grades of other students and thus whether she had the highest grade and the document is unauthenticated."

comments and a final grade is given. This final grade considers both the evaluation form completed by the supervisor(s) and any narrative reports relevant to the performance of the student on the service. If there is a discrepancy between the numerical score and the recommendation, it was the practice of Dr. Bruce Bates, the associate Dean of Clinical Affairs, to discuss the discrepancy with the supervising practitioner. If the supervising physician feels the scoring to be accurate, then the average of the numerical score prevailed over the pass/fail recommendation of the supervising physician. (UNE SMF, ¶¶ 10 – 14).

UNE states that while student doctors from UNECOM are on clinical rotations, they often work with resident doctors as well as supervising physicians. Dr. Gillis, who is mentioned in the complaint, was one such resident. According to UNE, although these residents may, from time to time, fill out evaluation forms on the student doctors, the evaluations of residents are never counted in the calculation of a student's grade. Rather, Bates's office only takes into account the evaluation forms received from those physicians who have been assigned to supervise the clinical rotation. (UNE SMF, ¶ 15).

According to UNE, during the fall semester of 1997, Satir was scheduled to take two clinical rotations, Family Medicine and Obstetrics/Gynecology (“OB/GYN”). She started her rotation later than her classmates because she had to finish other course work. (UNE SMF, ¶¶ 6-7). Vis-à-vis the arrangement of her clinical rotations, Satir points to the schedule (printed October 17, 1997) that the Clinical Affairs Department gave her. (See Resp. Mot. Summ. J. Ex. 13.) She states that her Exhibit 14, which is a rotation schedule printed December 3, 1996, shows she was supposed to have a pediatric rotation in July 1997 but was instead given what Satir describes as a more difficult pediatrics

rotation in November 1997. Satir offers no explication of why this fact is material to her claims.⁶

What we know about the OB/GYN rotation

According to UNE, Satir first took and failed the OB/GYN rotation. (UNE SMF, ¶ 8). Satir's pleadings contain complaints about the fitness of the supervising physician during this rotation. She has no record support for these factual assertions.⁷ Satir also feels it is contradictory for this physician to have failed Satir even though he recognized the need for further testing for learning disabilities on his evaluation sheet.

What we know about the Family Medicine rotation⁸

Satir next took the Family Medicine rotation. This rotation included assignments at various locations including the University Health Center where she was supervised by Dr. Craig Wallingford and Dr. Audrey Okun-Langlais. (UNE SMF, ¶ 9). Satir received

⁶ Perhaps she faults Bates for this change, but if that is the case she has not adequately supported her assertion.

⁷ UNE objects to this statement of material fact on the grounds that Satir's "testimony" is unsworn and it includes allegations of which she has no personal knowledge.

⁸ The assertions in Satir's memorandum that relate to this rotation and evaluation are that Bates told Satir's class on November 21, 1996, that the students should get evaluations from everyone they clinically rotated with. This Satir did. This included Dr. Brian Gillis, a family practice resident from UNECOM. When Satir called to see if his evaluation was received, Satir was told that she did not have the Gillis evaluation. Satir knows that the evaluation was sent because after they went through it (presumably Satir and Gillis) Satir personally mailed it off to UNECOM Clinical Affairs. Once Satir found out it was "missing" she had Dr. Gillis submit a second evaluation. Once Satir brought up inconsistencies between what Bates said in his class about obtaining evaluations and his refusal to credit Gillis's evaluation, Bates, Satir complains, "changed his story" and said evaluations were only done by residents and interns "as practice." (Resp. Mot. Summ. J.Ex. 19.) It seems that Satir believes the more favorable Gillis evaluation should have been given determinative weight, counterbalancing the negative evaluations of Wallingford and Okun-Langlais.

According to Satir, Bates made untruthful statements to Dean Shannon and the appeals committee. In particular, Bates knew that Satir had disabilities and Bates told Shannon and the committee that he did not know. And when the appeals committee asked Bates if there was (any documentation) that Satir had disabilities (specifically, learning disabilities or post-traumatic stress disorder) he answered: "Not to our knowledge." (Id. Ex. 25) (question and answer number 3). Satir also alleges that Bates's assistant Rita did say to Satir that she passed the Family Medicine rotation and, from this, Satir deduces that Bates actually changed this grade. Bates's response to this is that his secretary had no recollection of telling her this and that she could not have so told her because the composite evaluation had not been determined. (Resp. Mot. Summ. J. Ex. 24 at 2.)

evaluations from both Okun-Langlais and Wallingford for her participation in the Family Medicine rotation. (UNE SMF, ¶ 16). Okun-Langlais submitted her evaluation directly to Bates's office. (UNE SMF, ¶ 17). There is no dispute that Okun-Langlais's evaluation unambiguously recommends a failing grade. She gave numerical ratings with an average of 1.68, recommended a failing grade, and wrote, among other things that Satir's "skills were so poor that I felt I was unable to allow her to write notes on the charts." (UNE SMF, ¶ 18). There is also no dispute that Dr. Wallingford gave his evaluation to Satir to submit to Bates's office and it was not received until August 8, 1997. (UNE SMF, ¶ 19). Wallingford was also critical of Satir's performance. He wrote: "Her overall medical knowledge is borderline; I think has problems providing a comprehensive DDX. Need to review basis science and apply to clinical area." Wallingford rated Satir an average of 2.6 on the numerical scale. His written comments, however, recommended a passing grade. (UNE SMF, ¶ 20).

After receiving both evaluations, Bates went over them with Dr. Sarah Sprafka, UNECOM's Director of Predoctoral Education. In keeping with common practice, as outlined above, the numerical ranking given to Satir overrode the written recommendation, giving Satir a failing grade in the Family Medicine rotation. (UNE SMF, ¶ 21). Before deciding on the failing grade, however, Bates spoke with Doctors Okun-Langlais and Wallingford. They both agreed that Satir's performance in the rotation did not justify a passing grade. (UNE SMF, ¶ 22). Bates wrote to Satir by letter dated August 21, 1997, informing her that she had failed the rotation and that he would be reporting the grade to the Student Affairs Committee. (UNE SMF, 24).

After Satir was given a failing grade for her Family Practice rotation, Satir submitted a written request that her grade be reviewed. (UNE SMF, ¶ 29). UNECOM's Student Affairs Committee met on September 10, 1997, and after review of Satir's submissions and her academic record, it unanimously voted to sustain the grade and to recommend her dismissal. (UNE SMF, ¶ 30). Shannon informed Satir of the vote of the Student Affairs Committee and indicated his concurrence with the recommendation that she be dismissed in a letter dated September 19, 1997. Satir was dismissed because she failed her rotations. (UNE SMF, ¶ 31).

Satir filed an appeal on that decision on October 5, 1997. (UNE SMF, ¶ 32). Because Satir's appeal made allegations that UNECOM had failed to accommodate a disability, it was necessary for the Appeal Review Committee to review records from her OSSSD file so that the Committee could ascertain what information the college had as to any such disability. (UNE SMF, ¶ 33). On October 16 and 20, 1997, UNECOM's Appeal Review Committee met to consider her appeal and voted to dismiss the appeal. (UNE SMF, ¶ 34). Shannon notified Satir of this decision by letter dated October 30, 1977. In the same letter he notified Satir that she was dismissed from UNECOM effective October 30, 1997. (UNE SMF, ¶ 35).

Reason for missing last class of Family Practice rotation

The fact that Satir missed the last day of her clinical rotation in Family Practice played no part in the decision to dismiss Satir from UNECOM. (UNE SMF, ¶ 36). Satir did not notify UNECOM as to why she missed the last class until September 3, 1997. (UNE SMF, ¶ 37).⁹

⁹ Satir's assertions relating to this last class are as follows. During Satir's first clinical rotations—at Saint Mary's in Lewiston, Maine -- from May 4, 1997, to May 30, 1997, Satir realized that she must have

Bates's awareness of Satir's alleged disability

Bates did not know at the time that he wrote to Satir about her dismissal that Satir had claimed to have disabilities that were currently interfering with her academics. (UNE SMF, ¶ 23).

Satir contends that Bates, and therefore UNECOM, discriminated against her on numerous occasions because she followed UNE policy by letting the community know that she suffered from depression that needed constant monitoring. She states that she failed courses because of her depression but that she knew she could continue with the help from UNECOM and others. In Satir's opinion, Bates harassed Satir and deliberately made sure she was dismissed from UNECOM.¹⁰

some other disability preventing her from reading. Satir states that she did fine in this rotation and was able to write notes in patient's charges, go to Doctor Gruen's office and on his hospital rounds, and that Gruen had no problems with Satir. Doctor Schkert, a psychologist in the same private practice, agreed to test Satir for learning disorders. It appears that on the day set for testing Satir asked permission from her instructor, Wallingford, if she could leave early for the appointment to test her for additional disabilities and he agreed. Satir reminded him the morning of the test that she had to leave early. Then, just before she was to leave, Wallingford passed Satir and expressed his concern (apparently about her leaving early). Satir was terribly upset that he had not brought this up earlier. Their evaluation ran over the time that Satir needed to leave for her testing and she was late for the appointment and was unable to get tested. (*Id.* Ex. 24 at 2.). Because Satir knew that this additional medical testing was imperative for her success, she took off the last day of her rotation. She later explained to Wallingford in a letter that she had to use the time to locate someone to administer the test in Michigan or Ohio because she was pressed for time as a result of her impending move to Toledo, Ohio. Time was of the essence, Satir stresses, and she needed answers to her problems with reading to ascertain the nature of her learning disability.

¹⁰ In support of this assertion Satir argues that as the Dean of Clinical Affairs and a member of various committees Bates was told on numerous occasions about Satir's disability. Satir cites to three letters, two by her and one by Doctor Marie Guay, that discuss Satir's depression. (Resp. Mot. Summ. J. Exs. 16, 17 & 18.) Defendant rightly objects to the admissibility of these documents as they are not authenticated nor has Satir provided a sworn affidavit regarding these facts.

In an April 17, 1996, letter to Doctor Norton, Dean Kelley, Dean Shannon, and Dean Bates, Satir states that it is "imperative" that she inform them of her "relapse of depression." She indicates that this has caused her to do very poorly in Cardiovascular System and to fall behind in Geriatrics and her personal responsibilities. Noting that a similar scenario played out in her first year, Satir relays that she has finally recognized that her depression gets worse in the winter and that she seems to end up needing help in March. She states that depression and addictive behavior are a part of her. She relates that she is getting assistance from Doctor Guay and that she wants to "work towards the solutions of this situation, instead of rehashing the problems." She concludes:

Satir offers no evidence from which to infer that Bates was aware of letters that were not sent to him.¹¹ On one instance, Satir claims, she directly told Bates that she needed his help because her depression was causing her to get behind in her geriatrics practicum. However, Bates "abused" her by stating, "As a physician, I've seen depression, and if it doesn't get better, ... you need a 'time-out.'" Satir describes how, after hearing this, she immediately left Bates's office upset at how unprofessionally she had been treated. Satir went directly to Dean Kelly's office and told Kelly what Bates said. Kelly was able to postpone Satir's presentation which Satir had arranged to do at a later date with her instructor Lisa Paddock. Paddock was fired under the auspices of Bates and the geriatrics faculty. Paddock knew that Satir was having trouble with her energy but that she could do the work with a little more time. Kelly knew this too. Nevertheless, Bates made it "more difficult" for Satir.

Finally, it's been a month since Dr. Guay increased my medications and although I'm still anxious and a bit low on self esteem; I'm feeling more energetic, know there is no other place I'd rather be, and have faith that this will all pass. Whatever we decide to do to decrease my personal and scholastic decline, I'm ready to undertake. To make my life less complicated, I have postponed taking the boards until the Fall and have already taken Dermatology. Therefore, the last week of May and the first two weeks of June will be open in my schedule, and maybe that will be a good time to remediate the topics I did poorly in.

(Id. Ex. 16.)

Satir also refers to a May 13, 1996, letter from Doctor Guay addressed to Doctor Stephen Shannon, with a "cc" to Dean Patrick Kelly. (Id. Ex. 17.) Therein Guay notes that she has been treating Satir for major depression since May 1994. She indicates that last Fall Satir experienced a recurrence of her illness. Guay laments that "her grades were affected by very treatable psychiatric symptoms" and indicates that Satir's mood is now stable and that she is learning more effective coping skills to modulate her time and work load. On the bottom of this letter Satir indicates that Shannon has permission to put the letter in her file. Satir offers no evidence from which to infer that Bates was aware of this letter.

The third letter is also directed to Shannon and Kelly and is dated December 15, 1996. Satir writes that she wants help vis -à-vis securing her financial aid refund check. (Id. Ex. 18.) She explains: "As a disabled student I have incurred a lot more debt than anticipated and have been unable to supplement my income with summer jobs, so have been late paying bills twice this year." She reports that she finally went to Doctor Manganello seeking information on how to locate financial aid for disabled students.

¹¹ In responding to Satir's factual assertion UNE cites to paragraph 28 of Bates's affidavit. That paragraph states: "During the time period relevant to Plaintiff's claims in this case I do not believe that I was aware that Plaintiff claimed to have any disability. I did not have access to her records from the Office of Scholastic Support for Students with Disabilities."

Satir states that around the time of her dismissal from UNECOM she found out that she had Attention Deficit Hyperactivity Disorder and she later found out that she had a severe reading disorder. She alleges that she notified Dean Shannon of the 'new' learning disorder on October 5, 1997, and he then requested that Dean Bates do a follow up on the new evidence in Satir's favor. However, Satir's record evidence does not support the chronology of her rendition of the facts.¹² Satir represents that proof of her disabilities can be given from any time period and offers a Michigan Assessment Pathway Adult Evaluation draft dated "11/15/96" but which Satir claims should read 1997.

According to Satir her disabilities became the reason to get rid of her. Satir, without explication or record support, claims that Bates broke rules and changed the handbook and training manuals to see to it that Satir was removed. Satir also points out that, of the forty required courses, she passed thirty-four of them the first time and the other six the second time. In addition, Satir claims that on the same day Dean Shannon agreed to dismiss Satir he made an exception for another student who was having family problems and failed the Cardiovascular System twice. Satir attaches the letter to this student from Shannon which UNE claims is unauthenticated. Satir complains that,

¹² Satir cites to her Exhibit 24 for support of the fact that she notified Dean Shannon of her 'new' learning disorder on October 5, 1997, (the day she filed her appeal) and that Shannon ordered Bates to follow-up. The cited exhibit is dated September 10, 1997, and is Bates's response to Shannon's inquiry. As this document facially predates October 5, 1997, there is no record support that Satir ever notified UNE of her test results. Satir professes to attach summary proof of her assessment but I do not know quite what to make of her Exhibit 26. I agree with UNE that as it is proffered by Satir it is not admissible. The latter point is of little moment, anyhow, as the key inquiry is whether UNE was on notice and received a request of accommodation. Satir has presented no evidentiary support for her allegation that she notified UNE of her 'new' learning disability and she nowhere even suggests that she requested an accommodation from Bates relating to her learning disabilities. Her complaints regarding requests made of Bates all pertain to her depression.

despite her honesty about her depression, Satir was judged differently and on a stricter scale than others.

Discussion

ADA & Rehabilitation Act Claim

For the purposes of Satir's complaint, I "treat the ADA and the Rehabilitation Act as imposing parallel requirements." Bercovitch v. Baldwin School, Inc., 133 F.3d 141, 151 n. 13 (1st Cir. 1998). "The ADA and Rehabilitation Act prohibit discrimination against an otherwise qualified individual based on his or her disability." Calero-Cerezo v. U.S. Dept. of Justice, 355 F.3d 6, 19 (1st Cir. 2004). With respect to the "otherwise qualified" inquiry, the First Circuit has stated in the context of education programs:

Congress has mandated that nothing in the ADA shall be construed to apply a lesser standard than under Title V of the Rehabilitation Act. See 42 U.S.C. § 12201(a) (1994).

Under the Rehabilitation Act, in Southeastern Community College [v. Davis], 442 U.S. [397,] 405 [(1979)], the Supreme Court expressly rejected an interpretation of "otherwise qualified" that would prohibit an institution from considering an individual's limitations when determining that person's eligibility for an academic program. The Court stated that "an otherwise qualified person is one who is able to meet all of a program's requirements in spite of his handicap." Id. at 406 (emphasis added). The law does not require an academic program to compromise its integral criteria to accommodate a disabled individual. See id.

Bercovitch, 133 F.3d at 154.¹³

A plaintiff pursuing a discrimination claim against an educational institution must demonstrate that she or he requested a reasonable and necessary modification, putting the defendant on notice of the student's disability, be the claim be brought under Title III of the ADA, see Dudley v. Hannaford Bros. Co., 333 F.3d 299, 309 (1st Cir.2003) ("In contrast, Title III offers no incentive for an individual to conceal his or her disability.

¹³ It is settled in this Circuit that learning is a major life activity. Id. at 155.

The operative provision, 42 U.S.C. § 12182(b)(2)(A)(ii), requires a person with a disability to request a reasonable and necessary modification, thereby informing the operator of a public accommodation about the disability."), or the Rehabilitation Act, see Wynne v. Tufts Univ. Sch. of Med., 976 F.2d 791, 795 (1st Cir.1992) (In the section 504 milieu, an academic institution can be expected to respond only to what it knows (or is chargeable with knowing)."). Furthermore, "[i]f the requested accommodations call for 'substantial modifications' of defendant's program, the accommodations are not reasonable, and will not be required." Bercovitch, 133 F.3d at 152.

Depression

In Calero-Cerezo v. United States Department of Justice, an employment discrimination case, the First Circuit stated that it "recognized depression as a mental impairment that may constitute, at least in some circumstances, a disability under federal law." 355 F.3d 6, 20 (1st Cir. 2004) (citing Criado v. IBM Corp., 145 F.3d 437, 442 (1st Cir.1998); see also id. at 20-121 (collecting cases from other circuits so holding).

The theory of Satir's summary judgment presentation vis-à-vis her depression is that Bates sought to get her dismissed from the program because of her avowed depression. However, the only arguable evidence that Bates was on notice of Satir's depression is the April 17, 1996, letter to Doctor Norton, Dean Kelley, Dean Shannon, and Dean Bates. Therein Satir indicates that she has realized that her depression is seasonally related and that she had adjusted her medication accordingly. There is no request for accommodation and even if you could read this as so requesting there is no dispute that Satir was allowed to repeat the courses impacted by her condition described

in that letter. There is also no dispute that UNE had a program to assist students with disabilities and that early on in her enrollment Satir utilized that program.

With respect to the failed rotations Satir does not even claim that her depression contributed to her problems in fulfilling the requirements. Rather, she faults her supervisors and her need to get testing for her possible learning disabilities (addressed below). To the extent that Satir would have this court credit her contention that Bates manipulated the grading of the clinical rotation evaluations in the hope to get rid of Satir because of her depression, she has "presented no evidence to support this implausible claim, however, and in order to avoid summary judgment, a party 'must do more than simply show that there is some metaphysical doubt as to the material facts.'" Carey v. Crescenzi, 923 F.2d 18, 21 (2d Cir. 1991) (quoting Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 586 (1986)).¹⁴ Satir's "charges comprise more cry than wool. They consist of unsubstantiated conclusions, backed only by a few uncoordinated evidentiary fragments. More is required to forestall summary judgment." Wynne, 976 F.2d at 796.

Learning Disability

To understand Satir's claim concerning her learning disabilities it is necessary to return to her complaint. In the complaint, Satir alleges that she made specific requests of the UNE for reasonable accommodations for her disabilities. She alleges that on December 9, 1993, she requested a consultation with a learning specialist. (Compl. ¶ 16.) On March 9, 1994, she requested access to taped lectures, tutors prior to exams, and

¹⁴ Satir's only other factual support for Bates's discriminatory motivation is her unsworn allegation that when she directly told Bates that she needed his help because her depression was causing her to get behind in her geriatrics practicum he "abused" her by stating, "As a physician, I've seen depression, and if it doesn't get better, ... you need a 'time-out.'" It is not clear to me when this occurred; Satir has not tied it chronologically to the decision to dismiss her for failing to pass two of her clinical rotations. Furthermore, this is a suit against UNE and Satir's own allegations indicate that she got the accommodation she requested.

alternative settings in which to take exams. (Id.) On June 9, 1994, Satire requested a reader for exams on an "as needed" basis. (Id.) And, on September 22, 1994, she requested time and a half for tests and exams. (Id.) Manganello, as Director of the OSSSD, determined that all of these requests were reasonable. (Id. ¶ 17.) Satir requested permission from UNE to schedule an appointment with a specialist in Lewiston for her testing in June of 1997 and that request was approved by Deans Kelly and Shannon, with UNE to pay half of the \$400 fee. (Id. ¶ 18.) With respect to the alleged denial of the reasonable accommodation, Satir's complaint cites to Wallingford's refusal to release Satir in a timely manner on the day of her scheduled evaluation. (Id. ¶ 19.) Satir then needed to take the last day of her rotation off, which was June 27, because she needed to find another tester before her clinical rotation commenced in Ohio in August (over a month later). (Id. ¶¶ 20, 21, 22.) The theory of the complaint is that UNE deemed her excuse for her absence to be insufficient (even though Satir complied with unexcused absence protocols) and "dismissed her based on the one-day medical leave of absence on June 27, 1997." (Id. ¶¶ 22-27.)¹⁵ Based on the material facts set forth above it would be impossible to reasonably infer that Satir was dismissed because of her one-day absence on June 27. In fact the deemed admitted facts put forth by UNE establish that the absence played no role in her dismissal. Even if Satir's allegations are credited to the degree indicated, the inference still cannot be made that the dismissal arose as a result of the one absence as opposed to the two failed rotations.

¹⁵ In her Exhibit 24, Satir indicates that because of the missed testing in Lewiston, she was unable to get her testing done until two months later when she could afford the \$1100 test. She therefore received the information two months later "and as a result failed another rotation with a doctor who probably should not have had a student with him." However, this additional fact is simply an interlineation on the memo setting forth Bates's responses to Shannon's request for follow-up on the Satir letter; it is not set forth in Satir's summary judgment paragraphs and UNE has been given no opportunity to respond to it.

Contract Count

In her complaint Satir states that by virtue of all her factual allegations UNE breached its contractual obligations to Satir including those set forth in UNE's student handbook, policy manuals, recruiting brochures, and other written materials. While this might be sufficient to state such a claim under a notice pleading standard, it is not enough for Satir to rely on at this stage of the proceedings. The defendant is absolutely right when it asserts that Satir has in no way carried her burden in defending UNE's motion vis-à-vis her contract claim. See Mangla v. Brown University, 135 F.3d 80, 83 -84 (1st Cir. 1998).

Conclusion

For these reasons I recommend that the Court **GRANT** the motion for summary judgment.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

February 10, 2005.

/s/Margaret J. Kravchuk
U.S. Magistrate Judge

SATIR v. UNIVERSITY OF NEW ENGLAND

Assigned to: JUDGE GEORGE Z. SINGAL

Referred to: MAG. JUDGE MARGARET J.

KRAVCHUK

Case in other court: Cumberland County Superior
Court, PORSC-CV-03-00509

Cause: 42:12101 American Disabilities Act

Date Filed: 03/16/2004

Jury Demand: Plaintiff

Nature of Suit: 442 Civil Rights:

Jobs

Jurisdiction: Federal Question

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