

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

LAW DOCKET NO: Som-24-402

XINXIU TINA HOGAN
Appellant

v.

KENNEBEC VALLEY COMMUNITY COLLEGE
Appellee

BRIEF OF APPELLANT

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INTRODUCTION

Two years into her Respiratory Therapy program, and two weeks from her graduation, Kennebec Valley Community College (hereafter “KVCC”) summarily dismissed XinXiu “Tina” Hogan from its program. Appellant, the first in her family to attend college, brought civil rights, discrimination and M.R.Civ.P. 80B claims in the Superior Court. Her claims were wrongly dismissed and should be reinstated for the reasons set forth below.

STATEMENT OF FACTS

Appellant was only a few clinical rotations from earning her Respiratory Therapy (hereafter “RT) degree from KVCC when she was unfairly and indiscriminately derailed. This derailment was based on two incidents during her clinical rotations. Most of these details are drawn from the Administrative Record¹.

A. *Appellant Was An Excellent Student*

The record suggests that Appellant was an excellent student while at KVCC. She was enrolled from the Spring of 2017 to the Spring of 2022. Appellant was an Honor’s student throughout her enrollment, with a grade point average of 3.27. [Administrative Record, hereafter cited as ”AR” 305]. In the Spring of 2020, after

¹ The Clerk of the Law Court has indicated that the Court has the Administrative Record, and it has not been fully included in the Appendix given its length.

yet another Semester on the Dean's List, Appellant was offered to participate in the KVCC RT Program. [AR 74].

The controversy here arises from Appellant's work in the clinical setting. It is worth noting however, that Ms. Hogan was very successful in her clinical rotations. For example, Appellant's Clinical I grade was an "A." [AR 75; 417]. Her preceptor² evaluations were an "A-". [AR 419] Her Clinical II grade was a "B." [AR 75; 387]. Her Clinical II Performance Evaluations was an "A-" and her Final Performance Evaluation was a "B+". [AR 390].

Contrary to the allegations late into her academic career, Appellant's clinical evaluations are very complimentary. For example, in Clinical I:

- May 19, 2021, Northern Light Health Center (hereafter "NLMCH"), Chris Salzberg (Resident Respiratory Therapist (hereafter "RRT) wrote: "Tina did an excellent job and took opportunities given to her to try new things she hadn't previously done outside of the clinical lab." [AR 431].
- On June 2, 2021, Farmington Hospital (hereafter "FMH"), Heidi Hilton RRT wrote: "Tina was very attentive, asked questions, and was good with the patient she acted professional at all times." [AR 433].

Further, in Clinical II:

- On September 21, 2021, FMH, Laura Price RRT wrote: "Tina was very helpful on a very busy day w/ inpatient of stress lab. Very hands on & asked great questions. I think w/ more time her skills will be great." [AR 391].

² Preceptors are "...employees of the clinical sites who have been selected to provide clinical instruction and supervision to the RT students. It is also the responsibility of the preceptor to evaluate the students' overall clinical performance." ["AR" 120].

- On September 30, 2021, Maine General Medical Center (hereafter “MGMC”), Keith Englehart RRT wrote: “Tina was extremely thorough and performed tasks with competency. Her speed will maximize with more experience. She was a pleasure to work with and was respectful of all safety.” [AR 396].
- On September 30, 2021, MGMC, Katlyn Whitman RRT wrote: “Tina had a very good day! Our workload was dramatic from proning to interesting Stoma sx, to problem-solving in several situations. More confidence! Other than that, 10/10. Tina will be a great therapist!!” [AR 406].
- On November 12, 2021, FMH, Sharon Ness RRT wrote: “Communicates well with patients and staff.” (AR 412)

Finally, in Clinical III:

- On January 27, 2022, MGMC, Keith Englehart wrote: “Tina was helpful in the COVID unit, she asked appropriate questions and used PPE appropriately, she gives neb, and assess patient well.” [AR 367].
- On February 1, 2022, MGMC, Keith Englehart wrote: “Tina was very helpful in CCU today. She did an accurate assessment and conducted herself professionally and learned some new skills. She helped intubate and then troubleshoot. We proned a vented PT and provided many treats.” [AR 369].
- On February 1, 2022, MGMC, Debra Colomy wrote: “Good day. with solid patient assessment skills, Med/ Surg floor so not a lot of critical issues, but good solidification of skills.” [AR 374].
- On March 3, 2022, MGMC, Katlyn Whitman wrote: “Tina showed a lot of initiative, and asked a lot of questions. Many moving parts of the day!!” [AR 376].
- On April 5, 2022, Central Maine Medical Center (hereafter “CMMC”), KVCC instructor Hannah Leadbetter wrote: “Tina, you did a nice job following the competency steps. Good interpersonal relations.” [AR 379].

By all reasonable accounts then, Appellant was a stellar student who was weeks away from finishing Clinical III and graduating with her RT degree.

B. *The March 17, 2022 Allegation*

In her March 17, 2022 assessment, Preceptor and Director of the Respiratory Therapy Clinical Program, Hannah Leadbetter, claimed to have observed Appellant of failing to perform an Allen's test³, incorrectly drawing blood, and not properly capping a needle. [AR 46]. Concurrently, the supervisor at the hospital of the clinical setting accused Appellant of arguing with staff members. [AR 47].

Of course, this was considerably more factually complicated than KVCC considered. It is notable that immediately following the March 17, 2022 incident, that Appellant—following the KVCC Respiratory Therapy Handbook Non-Academic Grievance Procedure Rules [AR 106]—emailed Director of Clinical Education instructor Hannah Leadbetter for help. She explained that her clinical preceptor that day, Hannah Bellavance, had given her an “unacceptable” score without explanation—as the instructions on the form required. When the

³ This cannot be grounds for discipline. KVCC Respiratory Therapy Program students have three chances to pass each competency test, which in Appellant's case was by April 30, 2022. [AR 229 and KVCC Respiratory Therapy handbook AR 110]. On April 10, 2022, Appellant passed the Arterial Puncture (ABG) competency test (including safe needle practice) and the Allen's test procedure, all observed by preceptor Mary E. Flaherty who signed off on the passing of these competencies. [AR 22].

Appellant questioned Bellevance so she could improve, Bellavance⁴ claimed she would never be a Residential Respiratory Therapist. [AR 202].

Appellant asked her Clinical Supervisor, Leadbetter, to correct the evaluation, as she had worked with Leadbetter for the majority of the day on March 17, 2022. [AR 56; 57].

Further, just as clinical preceptors evaluate students they supervise at clinical sites, the students also submit Clinical Performance Evaluations of their clinical instructors. On March 19, 2022, Ms. Hogan submitted Bellevance's Clinical Performance Evaluation for her March 17, 2022 clinical rotation. [AR 204]. Appellant detailed that in her two clinical experiences with Bellevance that she was unprofessional with her. Appellant noted that Bellevance yelled at her in the Emergency Room. [AR 207; 208]. Further, Appellant wrote "I believe a preceptor should be honest, kind, knowledgeable, willingness [sic] to teach, and fair and equal to treat others, Hannah Bellavance did not include any of this [sic] characteristics and ability, she did not show any effectiveness as a preceptor." [AR 206]. Further, Appellant wrote that "...based my experience working with her, I believe her behavior has no place in [sic] medical field." [AR 210].

⁴ Interestingly, Bellevance's review of Appellant's performance on March 17, 2022 was that it was "below average," but she never gave her an "unacceptable" score. [AR 509].

On March 23, 2022, Leadbetter gave Appellant a piece of paper asking “Tina, can you come meet w/ Danielle⁵ and I after class?” [AR 206]. In the Respiratory Therapy office, Schryver accused Appellant of yelling at clinical instructors, which Appellant vehemently denied⁶. [AR 216].

On March 24, 2022, Appellant emailed her advisor for help regarding the March 17, 2022 incident. [AR 219]. Following that meeting, which included Dean C.J. Mckenna, Program Chair Schryver, Director Leadbetter, and Appellant, there was agreement that Ms. Hogan would move forward with the RT Program, provided she passed tests given to her by Leadbetter.

On March 25, 2022, Leadbetter emailed Appellant: “Just wondering how you are feeling about going back to MGMC for clinical for the rest of the semester? I would like to be with you when you go back there next, I know you have some anxiety about going there, but I think it is the best clinical environment for you.” [AR 628]. Appellant continued to follow her clinical schedule, serving at the Rumford clinical site for twelve hours on March 29, 2022. [AR 378]. Plainly, KVCC had decided that Appellant was safe around patients. In fact, on April 8, 2022, Leadbetter’s Clinical Performance Evaluation remarked: “Tina, you

⁵ Referring to Respiratory Therapy Program Chair, Danielle Schryver.

⁶ According to the Appellant’s recitation to the DC, Bellavance was formerly Schryver’s student. [AR 212]. Appellant reported to the DC that Bellavance intimidated her when confronted with the March 19, 2022 incident, noting “I felt the power of ...Schryver. I have never experienced people treating me like that before.” *Id.*

did a nice job following the competency steps, Good interpersonal relations.” [AR 378; 616-617].

Appellant passed her tests, resolving the situation. [AR 381; 383-384]. On April 8, 2022, Leadbetter emailed Appellant her remaining semester schedule, assigning her ”12hrs, EMMC⁷ on 04/12/22; 8hrs RFGH⁸ on 04/14/22, 8hrs MGMC⁹ on 04/19/22; 12hurs EMMC on 04/22/22; 8hrs MGMC 04/28/22; 12hrs, EMMC 04/29/22.” [AR 65]. With the completion of those clinical rotations, Appellant would have graduated from the Respiratory Therapy Program.

C. The April 12, 2022 Allegation

On April 12, 2022, Amanda Fuller (hereafter “Fuller”), a preceptor at Eastern Maine Medical Center (hereafter “EMMC”), accused Appellant of not properly recognizing that her patient was in respiratory distress. [AR 67-68]. As with the March 17 incident, Appellant's version of events, written on the same date as the allegation, are strikingly different. [AR 69-72].

Fuller essentially claimed that Appellant conducted a full patient assessment when there was no time to do so. [AR 184]. Contrarily, Appellant indicated that she was following her training and that the patient was not exhibiting signs of distress. [AR 69]. Appellant indicated that Fuller became frustrated with her and told her that she would not have time to complete the full assessment as she had

⁷ Eastern Maine Medical Center.

⁸ Reddington Fairview General Hospital.

⁹ Maine General Medical Center.

been trained to do for each patient in a busy hospital setting. [AR 69]. Fuller's frustration with and dislike of Appellant is evident in the record from her refusal to continue to work with Appellant for the afternoon¹⁰. [AR 66]. The Disciplinary Committee's finding that there is no bias or animus evident from the record is simply unsupported by the record evidence, which demonstrates that this preceptor was frustrated with Appellant, which bolsters Appellant's account to any reasonable fact finder.

Sometime after 2:00 PM on April 12, 2022, the Clinical Respiratory Therapy Program Assistant Manager, Marissa Nason (hereafter “Nason”) told Ms. Hogan: “Tina, Amanda (Fuller) has not many things left to do, you work with Brad (a Residential Respiratory Therapist on staff) OK?” [AR 69-72]. That same day, Nason emailed Leadbetter that they were moving Appellant to a different preceptor due to patient safety concerns [AR 66]. Appellant disputes the patient safety concerns, which have never been explained to her. However, this complaint was the tipping point removing Appellant from the program.

On April 13, 2022, Leadbetter suggested Appellant be dismissed from Clinical Practicum III. [AR 175-185]. This was all done without an interview with Appellant.

D. *The KVCC Discipline*

¹⁰ Despite this, the DC unfoundedly declared “...we did not find any evidence of...personal animosity...” [AR 66].

On April 15, 2022, KVCC Assistant Dean C.J. McKenna emailed Appellant that she violated the Student Code of Conduct (hereafter “COC”), Section 501, III, B16. [App. at 108; AR 1]. McKenna placed Appellant on interim suspension and prohibited her from contacting Schryver or Leadbetter or from having anyone else contact them. *Id.* This interim suspension was based on the April 12, 2022 incident and no mention of the March 17, 2022 incident was included. Appellant was excluded from all clinical sites.

April 29, 2022, Dean McKenna emailed Appellant that he determined it was more probable than not that she endangered patient safety and violated Sections 501, III, B16 of the COC. [App. at 109; AR 2]. Under Section IV of the COC, Appellant was dismissed from RT program. *Id.* She was permitted to request a Disciplinary Committee (hereafter “DC”) hearing. *Id.* Once again, she was prohibited from contacting Schryver or Leadbetter or from having anyone contact them. *Id.* Notably, McKenna added the March 17, 2022 incident as grounds for her suspension in his April 29, 2022 letter. *Id.*

On May 1, 2022, Appellant requested an appeal to the DC. [AR 169]. She followed that with a simple request of the DC, notably, “Will you please send me a description of all the evidence that will be presented against me so that I will know...” [AR 172-173].

On May 13, 2022, still lacking the evidence the school would present at the hearing, Dean McKenna emailed to Ms. Hogan “The Appeal summary (evidence in Disciplinary Committee), and Hannah Leadbetter will be a witness at the hearing.” [AR 174]. For the first time, Appellant received a redacted email from MGMC detailing complaints from their clinical site¹¹. [AR178].

On May 16, 2022, doing what the school would not, Appellant provided the DC proof that she did not violate the COC and that Dean McKeenna’s suspension was unjust. [AR. 514 et. seq.]. Regardless, the DC upheld the McKenna suspension on May 16, 2022.

The Appellant sought relief in the Superior Court. Justice Nancy Mills ultimately reversed the KVCC decision, remanding the case. Mills found that “...Disciplinary Committee's May 16, 2022 email to plaintiff contains no findings of fact.” [App. at 106]. “Accordingly, the court orders the Disciplinary Committee to conduct a new hearing and to make a final decision that provides findings of fact based on a reviewable record.” [App. at 107].

After Justice Mills remanded the matter to KVCC, Dean McKenna wrote Appellant on July 6, 2023. [AR 3]. McKenna made no new allegations and once again prohibited Appellant from contacting Schryver or Leadbetter. *Id.*

¹¹ It seems that KVCC had this MGMC redacted email complaint in March of 2022, with Leadbetter noting at one point "On March 17, 2022.... Later in the day, Danielle and I received an email from the RT supervisor at Maine General Medical Center..." [AR 186]. Counsel assumes that is the MGMC email complaint in AR 178. Why Appellant did not receive this until May 13, 2022, just days before her hearing, is unclear and troubling.

The only dismissal findings counsel is aware of is contained in an email from August 9, 2023 from DC Chair Michael Tardiff. [AR 78-80]. Therein, Tardiff indicates the DC found it more probable than not that Appellant violated Sections 501, III, B16 of the COC. [AR 79]. The findings include incidents not previously noticed: November 2, 2021, and February 28, 2022 (which appear to be allegations of Appellant allegedly asking for better scores in the clinical setting, being slow at some tasks and asking for help in her clinical work). [AR 175]. Tardiff rejected the discrimination claim, noting that Hogan did not claim it previously. *Id.*

E. *The Court Action*

The operative complaint is the First Amended Complaint filed by Hogan. [App. at 29-36]. Therein, she alleges the following important facts:

- “Hogan was enrolled at KVCC from 2017 through 2022 and, for the final two years, was a student in KVCC's Respiratory Therapy program.” [App. at 29]. Her grade point average was 3.27.” *Id.*
- “...participated in the TRIO program offered by KVCC to provide academic support to students who were the first in their family to attend college.” [App. at 30].
- “During her clinical training in her final semester, Hogan was falsely accused of endangering patient safety at clinical sites on March 17, 2022, and April 12, 2022.” [App. at 30].
- “Following Hogan's shift on March 17, 2022, and April 12, 2022, Hogan immediately complained to KVCC about the preceptors being unprofessional and not following KVCC procedures. Hogan promptly

reported her experiences on these days to Hannah Leadbetter, the director of the Respiratory Therapy Clinical Program at KVCC.” [App. at 30].

- She reported to KVCC that she was unfairly targeted and falsely accused. [App. at 30].
- April 13, 2022, Leadbetter recommended dismissing her. [App. at 30].
- April 29, 2022, Dean McKenna accused her of violating the COC, and sanctioned a dismissal from the RT program. [App. at 30]. Hogan appealed to the DC.
- May 16, 2022 Dean presented evidence to the DC which had not been provided to Hogan, in violation of her due process rights. [App. at 31].
- May 16, 2022, Appellant was dismissed from RT Program. [App. at 31].
- July 31, 2023, Appellant had her remand hearing in front of the DC. [App. at 31]. The Hearing was in front of the same KVCC individuals and lasted fewer than 15 minutes. [App. at 31].
- On August 9, 2023, the DC made its findings and dismissed her. [App. at 31].
- Hogan brought three counts, Count 1, M.R.Civ. P. 80B, Count 2, 42 USC 1983 Claim, Count 3, discrimination in violation of 5 MRSA 4601.
- Appellant alleged “Dean McKenna and KVCC deprived Hogan of her constitutionally protected property interest in its educational program without procedural due process, as secured by the Fourteenth Amendment of the Constitution of the United States.” [App. at 32].
- Appellant alleged that “KVCC's decision to apply only the Student Code of Conduct rather than the proper academic policies to handle what was clearly only an academic issue was arbitrary, capricious, and in violation of KVCC policy, and of Hogan's right to due process.” [App. at 32].
- Appellant alleged that “KVCC applies its ‘Issues Arising at Clinical Affiliates’ and Respiratory Therapy Program academic policies when other students experience difficulty in KVCC's Respiratory Therapy Clinical

Program, rather than applying only the Student Code of Conduct.” [App. at 32].

- Appellant alleged “On May 16, 2022, Dean McKenna violated Hogan's due process rights by presenting evidence in a hearing on the alleged violations by Hogan of the Student Code of Conduct that he had not notified and given to Hogan prior to the hearing.” [App. at 32].
- “ The Plaintiff is an Asian woman, is of Chinese national origin, and speaks with a Chinese accent.” [App. at 34].
- “...Plaintiff experienced discrimination and harassment because of her race and national origin.” [App. at 34].
- “KVCC staff and teachers told Plaintiff they could not understand her and ignored her questions or did not respond to her requests for help, while the same staff and teachers answered questions and responded to requests for help from Plaintiff's non-Asian, non- Chinese peers.” [App. at 34].
- “KVCC applied its policies differently to Plaintiff than to white American KVCC students, including on numerous occasions giving additional time for assignments or opportunities to re-submit work to improve grades to white American KVCC students while denying Plaintiff the same opportunities.” [App. at 34].
- “KVCC ignored Plaintiff's reports of harassment at clinical sites and instead faulted Ms. Hogan and disciplined her by dismissing her from the Respiratory Therapy program...” [App. at 35].
- “...non-Asian, and non-Chinese students did not experience dismissal when they reported similar clinical site issues.” [App. at 35].
- “The plaintiff filed her complaint with the Maine Human Rights Commission on June 22, 2022, and received her Right to Sue letter on October 10, 2023.” [App. at 35].
- “KVCC acted with malice, or its actions are so outrageous that malice can be implied.” [App. at 35].

- Appellant’s damages claims included exclusion from educational services, embarrassment, loss of reputation, economic harm, and emotional distress.” [App. at 35].

Despite these allegations, Justice William Stokes dismissed these complaints—ultimately in their entirety—on a M.Civ.P. 12(b)(6) motion. On January 22, 2024, Stokes dismissed the Section 1983 claims, finding it was duplicative of the 80B claim in Count 1. [App. at 6-9]. Justice Stokes reasoned that the Count 3 discrimination claim should not be dismissed, noting “It is at least arguable at this stage of the proceedings that Ms. Hogan is asserting a claim of discrimination while she was in the respiratory therapy program independent of and separate from the appeal of the dismissal decision. At this time, the court will deny the motion to dismiss Count III.” [App. at 8].

However, by August 12, 2024, Justice Stokes decided the entire action should be dismissed on M.R.Civ.P. 12(b)(6) grounds. [App. at 10-22]. He found that the Appellant’s argument that discipline should have been governed by the Respiratory Therapy Program Handbook (hereafter “RT Handbook”) as opposed to the COC unavailing. [App. at 18-19]. He rejected the Appellant’s Due Process challenge, ending the 80B claim in Count 1. [App. at 20]. As to Count 3, the educational discrimination claim, J. Stokes indicated that he reviewed entire

Administrative Record and found no evidence of racial bias¹². [App. at 20]. As a result, he also dismissed Count 3. *Id.*

This timely appeal followed.

¹² There seems to have been some confusion by Appellant's Trial Counsel. J. Stokes indicated that predecessor counsel did not address discrimination in her Rule 80B brief because she thought it was deferred until the 80B was resolved. [App. at 21]. Stokes dismissed Count 3 rather than requesting additional briefing on this issue. *Id.*

STATEMENT OF THE ISSUES

1. Was the Appellant's Educational Discrimination Claim in Count 3 unfairly dismissed on a M.R.Civ.P. 12(b)(6) motion when the Appellant clearly alleged that she was discriminated against in her Complaint and in her allegations to the KVCC Disciplinary Committee?

2. Was it an error to dismiss Appellant's Count 2 (Civil Rights) claim and Count 3 (Educational Discrimination) claim as duplicative of her Count 1 (M.R.Civ.P. 80B) claim?

3. Did the process employed by KVCC violate Appellant's Due Process rights?

SUMMARY OF THE ARGUMENT

Appellant presents several assignments of error below, all of which merit reversal. First, it was plain that Appellant's Educational Discrimination Claim was sufficiently plead, and yet it was dismissed on a M.R.Civ.P. 12(b)(6) motion where the Trial Court should have accepted the allegations as true. Second, the Court found Appellant's Educational Discrimination Claim (Count 3) to be duplicative of her M.R.Civ.P. 80B claim (Count 1), despite the fact that Count 3 alleged discrimination during the entire two years of her program. Third, the Trial Court dismissed Count 2 (Civil Rights Claim) as duplicative of Count 1, despite the fact that Dean McKenna suspended her without any process. Fourth, the M.R.Civ.P. 80B allegations established clear Due Process violations that should not have been ignored by the Court.

ARGUMENT

I. COUNTS 2 AND 3 OF THE AMENDED COMPLAINT WERE PREMATURELY DISMISSED BEFORE THE APPELLANT WAS GIVEN THE CHANCE SHE DESERVED TO DEVELOP A FURTHER RECORD OF HER ALLEGATIONS

A. This Court Applies De Novo Review To Challenges to a M.R.Civ.P. 12(b)(6) Dismissal

The Law Court should review the Superior Court's dismissal under M.R.Civ.P. 12(b)(6) *de novo* for errors of law. *Hathaway v. City of Portland*, 2004 ME 47, ¶ 9, 845 A.2d 1168, 1171; *Persson v. Dep't of Human Servs.*, 2001 ME 124, ¶ 8, 775 A.2d 363, 365 ("The legal sufficiency of a complaint challenged by a motion to dismiss is a question of law subject to *de novo* review by this Court.") (internal quotations omitted).

B. Count 3, the Education Discrimination Claim, Should Not Have Been Dismissed At the M.R.Civ.P. 12(b)(6) Stage Because, After Taking the Facts In the Complaint and the Record As True, There Were More Than Adequate Facts To Allow the Appellant To Generate A Further Record

A motion to dismiss under Rule 12(b)(6) "tests the legal sufficiency of the complaint and does not probe the merits of the underlying case." *Carey v. Ed. of Overseers of the Bar*, 192 A.3d 589 (Me. 2018) (internal quotation marks omitted). In reviewing a motion to dismiss, courts must "consider the facts in the complaint as if they were admitted." *Bonney v. Stephens Mem. Hosp.*, 17 A.3d 123 (Me. 2011), *citing Saunders v. Tisher*, 902 A.2d 830 (Me. 2006). The complaint is viewed "in the light most favorable to the plaintiff to determine whether it sets

forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory." *Id.* (quotation marks omitted). "Dismissal is warranted when it appears beyond a doubt that the plaintiff is not entitled to relief under any set of facts that he might prove in support of his claim." *Id.* (quotation marks omitted). A complaint, therefore, is sufficient if it "alleges facts that would entitle the plaintiff to relief upon some theory, or if it avers every essential element of recovery." *Richards v. Soucy*, 610 A.2d 268, 270 (Me. 1992).

The Court dismissed Count 3 of the Appellant's First Amended Complaint, alleging violations of 5 MRSA §4601, whereby "the opportunity for an individual at an educational institution to participate in all educational (and) vocational guidance...programs...without discrimination because of...ancestry, national origin, race, color (is)...declared to be a civil right¹³." Resultingly, "It is unlawful educational discrimination (to)...subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity." 5 MRSA §4602(1)(A).

Appellants's First Amended Complaint ("FAC") alleges more than adequate allegations of racial discrimination. Notably, the FAC alleges that:

- Appellant alleged that she was targeted and falsely accused. [App. at 30].

¹³ In 2021, the Maine Legislature edited and expanded this statute, adding (as is relevant here) ancestry and color as protected rights. Laws 2021, c. 366, § 18.

- That the Appellant is an Asian woman, is of Chinese national origin, and speaks with a Chinese accent. [App. at 34].
- That the Appellant experienced discrimination and harassment because of her race and national origin.” [App. at 34].
- That the Appellee’s staff and teachers told Appellant they could not understand her and ignored her questions or did not respond to her requests for help, despite answering questions and responding to requests for help from her non-Asian, non-Chinese peers. [App. at 34].
- That the Appellee applied its policies differently to Appellant than to white American students. This includes giving white, non-Chinese students additional time for assignments or opportunities to re-submit work to improve grades while denying Appellant the same opportunities. [App. at 34].
- That Appellant reported harassment at clinical sites, which was ignored by Appellee. Instead, Appellee, faulted Ms. Hogan and disciplined her by dismissing her from the Respiratory Therapy program. [App. at 35].
- That non-Asian, and non-Chinese students did not experience dismissal when they reported similar clinical site issues. [App. at 35].

Regardless of these more than sufficient allegations, the Trial Court dismissed Count 3. The Court indicated it had “...reviewed the Administrative Record in detail and can find no evidence of any kind that racial bias played any part in the proceedings below, or the events giving rise to those proceedings.” [App. at 20].

In addition to the Complaint’s clear discrimination claims, the Appellant plainly voiced the same to the Disciplinary Committee. In a letter dated July 31,

2023 to the Disciplinary Committee, Ms. Hogan clearly explained her claims of discrimination, alleging:

- “During my time at KVCC's Respiratory Therapy program, I have sometimes felt that people treat me differently, and for a long time, I did not understand why. During the spring semester of 2022, I began to understand why. I experienced treatment by several preceptors at clinical sites throughout central Maine that I can only understand when I think about them through the lens of racism.”
- “I heard some comments from people at KVCC and at clinical sites about how they did not understand me when I speak.”
- “Sometimes the preceptors at my clinical sites would not give me any feedback or explanation for giving me low evaluation scores. Any time I spoke up for myself was accused of being angry or unprofessional, when I was simply trying to learn how to improve.”
- “The reason I requested to have a chaperone at clinical sites with me was because I started to notice that the preceptors would sometimes report things that were not true.”
- “However, I now feel that certain staff in the respiratory therapy program also exaggerate or misrepresent what actually happened. You can see in this packet of information that I have had hundreds of safe and professional patient interactions at clinical sites. I was not performing differently from other students, but I was treated differently.”
- “I am not asking to be given special treatment, I am trying to point out to you that I HAVE been treated differently, and I am simply asking for the same second chance that my peers and classmates are given. I am asking for the college to apply its policies the same way to all students regardless of race or national origin, or whether or not someone speaks with an accent, or is older than other students. Whatever the reason someone might be different from other students, that should not be a reason for that student to be treated differently by the college.”

[AR126-127].

Importantly, when J. Stokes dismissed Count 3, it was merely at the 12(b)(6) stage. [App. at 10-22] Regardless, the discrimination allegations are plainly in the FAC, and are found elsewhere in the Administrative Record.

The Disciplinary Committee hearing on July 31, 2022 was, according to the FAC, less than 15 minutes. [App. at 34]. It is hard to imagine what the Trial Court expected for a record so that Appellant could survive 12(b)(6) on her discrimination claim. There were plain allegations of educational discrimination based on race and national origin both in the FAC and in the Administrative Record. Taking them as true as alleged, they plainly stated a claim upon which relief may be granted¹⁴.

C. Count 3, the Discrimination In Education Claim, Was Not Limited To Appellant's Dismissal From the Respiratory Therapy Program and Was Not Duplicative of the 80B Claim

J. Stokes found that Count 2 was duplicative of Count 1, therefore dismissing it. [App. at 10-22]. Subsequently, he decided that “Based on the Court's comprehensive review of the Administrative Record, it concludes that Count III is duplicative of Count I,” dismissing Count 3 as well. [App. at 21].

However, even a cursory review of the FAC shows that the scope of Count 3 greatly exceeds that of Counts 1 and 2. Counts 1 and 2 merely allege actions based

¹⁴ Ironically, the Trial Court knew this, noting “Any claim of racial bias on the part of the decision-maker or that the decision was based on racially biased information, would most certainly be grounds for a reviewing court to vacate that decision, and would provide the Plaintiff with the precise relief she is seeking.” [App. at 20].

upon the actions of Dean McKenna and the DC. Count 3, contrarily, alleges discrimination based on Appellant's national origin. Importantly, Appellant alleged in Count 3 that she was discriminated against during the *entirety* of her time in the KVCC RT Program, not just during the disciplinary proceedings¹⁵. [App. at 33-35]. While these claims dovetail with her ultimate dismissal from the program, these claims are not limited to the actions taken to remove her. In fact, the scope of discrimination claims include Hogan's entire two years in the RT Program. [App. at 29; 34].

The claims in Count 3 cannot be duplicative of the Count 1 claims, which are limited to the disciplinary action. Count 3 should not have been dismissed as duplicative.

D. *Count 2, the 42 USC s. 1983 Civil Rights Claim, Is Not Duplicative of Count 1*

¹⁵ Appellant alleged in Count 3, "While attending the KVCC Respiratory Therapy program, Plaintiff experienced discrimination and harassment because of her race and national origin." [App. at 34]. She complained about the treatment of white, American counterparts with assignments ("KVCC applied its policies differently to Plaintiff than to white American KVCC students, including on numerous occasions giving additional time for assignments or opportunities to re-submit work to improve grades to white American KVCC students while denying Plaintiff the same opportunities."); she complained she was left out of examination preparation meetings ("KVCC staff failed to include Plaintiff in assignment grades and in exam preparation meetings...") and that her requests for help and assistance were ignored due to her national origin ("KVCC staff and teachers told Plaintiff they could not understand her and ignored her questions or did not respond to her requests for help, while the same staff and teachers answered questions and responded to requests for help from Plaintiff's non-Asian, non-Chinese peers.") [App. at 34]. Appellant was in the RT Program for two years. [App. at 29].

It is well established that Due Process claims brought as independent claims pursuant to M.R. Civ. R. 80B(i) may be dismissed as duplicative. *See Fair Elections Portland, Inc. v. City of Portland*, 2021 ME 32, 252 A.3d 504. However, this is only the case when the deprivation of the property occurred at the same time as the action in which an 80B appeal can be sought. In cases where the deprivation occurs at another time, or in a way in which 80B review is not available, then that Due Process claim must survive as an independent claim. *Gorham v. Androscoggin County*, 2011 ME 63, 21 A.3d 115.

Here, Appellant had a right to participate in the Respiratory Therapy Program, including the participation in clinical visits to the participating hospitals, in furtherance of her education. On April 15, 2022 (only two weeks before the end of her final semester), KVCC Assistant Dean C.J. McKenna emailed Appellant that she violated the Student COC, Section 501, III, B16. [App. at 108; AR 1]. McKenna placed Appellant on interim suspension and prohibited her from contacting Schryver or Leadbetter or from having anyone else contact them. *Id.* McKenna stated that the interim suspension was based on the April 12, 2022 incident. McKenna deprived Appellant of access to her education and her property interest in attending the final clinical visits without first affording her the opportunity to defend herself and provide her side of events. *Id.*

Thus, KVCC acted unilaterally in determining that misconduct occurred, in violation of the Appellant's Due Process rights. "It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution." *Goss v. Lopez*, 419 U.S. 565, 574-75 (1975). Further, the Appellant was deprived of the right to attend clinical visits before she was ever afforded the opportunity to defend herself from the accusations of misconduct. This is a clear violation of due process as noted in *Goss*. The right to be heard must occur *before* the suspension unless there is a significant risk to others, especially since accusations of misconduct that will result in suspension from classes can often be heard immediately. *Goss v. Lopez*, 419 U.S. 565, 582-83 (1975) ("Since the hearing may occur almost immediately following the misconduct, it follows that as a general rule notice and hearing should precede removal of the student from school).

It is undisputed that Dean McKenna's suspension occurred *before* the Appellant was dismissed and before she was able to defend herself against the allegations. It is also undisputed that this suspension was *not* reviewable under rule 80B as the suspension at this time was temporary.¹⁶ It was not until the April

¹⁶ The fact that the suspension was temporary does not matter as "the length and consequent severity of a deprivation, while another factor to weigh in determining the appropriate form of hearing, "is not decisive of the basic right" to a hearing of some kind." *Goss v. Lopez*, 419 U.S. 565, 576 (1975) *citing Fuentes v. Shevin*, 407 U.S. 67, 86 (1972).

29, 2022 email dismissing the Appellant from the RT Program that the Appellant had anything which she could appeal. Therefore the suspension was not reviewable under Rule 80B.

In *Gorham v. Androscoggin County*, 2011 ME 63, 21 A.3d 115, the Law Court found that the lower court had erred in dismissing the appellant's 1983 claim for due process violations as duplicative. In *Gorham*, the appellant had been suspended from duty without pay leading to his eventual termination. The Court held that Appellant's due process claims related to his termination were duplicative. However, the Appellant had a valid independent 1983 claim for due process violations related to the suspension without pay leading up to the dismissal.

Similarly, the Appellant was deprived of her right to continue to participate in clinical visits without any hearing, violating her due process rights. This deprivation occurred before the Appellant's dismissal and was not reviewable under Rule 80B. As the deprivation occurred before the dismissal and was not reviewable under Rule 80B, it is a valid independent claim and is not duplicative.

Therefore the Superior Court erred in dismissing Count 2 of the Appellant's First Amended Complaint for being duplicative of Count 1.

E. *The Claims of Discrimination Were Obvious, And the Court Should Not Have Dismissed Count 3 Because of Appellant's Counsel's Misunderstanding*

The Court erred when it dismissed Count 3 before providing the Appellant

the opportunity to plead the specific facts related to the continued discrimination during her attendance at KVCC. In the Court's January 22, 2024 Order on KVCC's Motion To Dismiss, the Court explicitly stated that there were sufficient allegations of racial discrimination to survive a 12(b)(6). [App. at 8]. Specifically, the Court stated that “[i]t is at least arguable at this stage of the proceedings that Ms. Hogan is asserting a claim of discrimination while she was in the respiratory therapy program *independent of and separate from the appeal of the dismissal decision*. At this time, the court will deny the motion to dismiss Count III,” and that “[f]urther action on Count III is deferred until after the court resolves Count I of the First Amended Complaint.” [App. at 8].

Relying on the Court's specific instruction that Count 3 would continue following the court's resolution of Count 1, predecessor counsel focused her 80B Brief on KVCC's errors in dismissing her from the program. She did not address the discrimination she was subjected to during her education at KVCC.

In an action contrary to the court's January 22, 2024 Order, the Court then dismissed Count 3 contemporaneously with its dismissal of Count 1, before the Appellant had been allowed to properly present her facts and arguments that her civil liberties had been violated. [App. at 21]. The Court notes “...it should have been clear that the court was uncertain as to what to do with Count III. Thus, it would have been helpful to the court had the Plaintiff identified where, in the

administrative record, there was evidence of racial bias." [App. at 21]. However, this is incorrect. The order was extremely clear, there were allegations of discrimination independent of the dismissal, and that there would be no further action on Count 3 until *after* the Rule 80B was decided upon. [App. at 8]. It was manifestly unfair for the Trial Court to dismiss Count 3 before any discovery on the discrimination claims had been done.

II. KVCC'S APPLICATION OF THE STUDENT CODE OF CONDUCT VIOLATED APPELLANT'S DUE PROCESS RIGHTS

While the Supreme Court has not explicitly recognized the constitutionally protected property and/or liberty interests implicated by university disciplinary proceedings, courts have found that there are protected liberty interests and protected property interests in the educational context. *Gorman v. Univ. of R.I.*, 837 F.2d 7, 12 (1st Cir. 1988) (“[A] student facing expulsion or suspension from a public [post-secondary] educational institution is entitled to the protections of due process.”); *Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150, 157 (5th Cir. 1961) (“Surely no one can question that the right to remain at the college in which the plaintiffs were students in good standing is an interest of extremely great value.”).

The Supreme Court has distinguished between academic sanctions and disciplinary proceedings, with more due process and procedural safeguards owed to the latter. *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 86-87 (1978). In the case of even a short term disciplinary suspension, “[a]t the very minimum...students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing.” *Goss v. Lopez*, 419 U.S. 565, 579 (1975).

A. *Due Process Applies To A Student's Interest In A Program of Study*

The question of whether an individual has a property interest in an educational program is one of first impression. As mentioned above, it is well

established that individuals have a property interest in their secondary education and their opportunity to obtain their degree. However, this unsettled law creates confusion in the modern college environment, where specialized programs seem the rule rather than the exception.

In examining the Supreme Court rulings granting Due Process protections to individuals' right to their secondary education, it is clear that the protections should be extended to include not just the degree sought by the individual, but also to the programs they intend to obtain degrees in. The property interests protected by the Fourteenth Amendment are created by independent sources of statutes and rules giving certain benefits to individuals. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

Similar to the right students have to continue their education at a state-funded university, so do they have a right to continue their studies in whichever educational program they are enrolled in. To suggest that there is a significant difference between the two is to ignore the significance of the various programs offered at the universities. Similar to the student's attendance at the universities, participation in their programs is set forth in a series of rules and requirements. Should students abide by these rules and requirements they will be granted a degree from that specific program. It is these requirements and the benefits conferred on to the individuals that follow them, that create a property

interest protected by the Fourteenth Amendment. *See Board of Regents, supra; see also Goss supra, 574.*

In the present case, these rules and requirements are clearly detailed in the RT Handbook. KVCC's delineation of specific procedures, rules, and processes that must be followed to by program participants establishes Due Process protections for those students. Once the student has an expectation of continued education in the program and maintains their good standing, the school cannot remove the student from that program, whether temporarily or indefinitely, without affording them the necessary Due Process right to a hearing. *Goss at 576.*

Further, just as obtaining a secondary educational degree provides career opportunities, each program offers specific opportunities unique only to that program. Consider the difference between a Bachelor of Arts degree in English Literature and one in Economics. Both degrees include very different courses of study, and, likely, equally different post-graduate opportunities. However, both are Bachelor of Arts degrees, separated only by the programs the student is a part of.

Put another way, the Appellant attended KVCC for the purpose of being part of the Respiratory Therapy program and obtaining a degree from this program so that she could find future employment in that specific field. Obtaining a degree from KVCC that is not from the Respiratory Therapy program has a seriously diminished value to the Appellant. As such, just as the Supreme Court has found

that students have a protected property right to continue their education uninterrupted, so do those students have the same right to remain within the educational programs they are admitted to.

B. It Was Fundamentally Unfair For KVCC To Use the Code of Conduct To Remove Appellant From the Respiratory Therapy Program Days Before Her Graduation

KVCC has an obligation to conduct its hearings in a manner consistent with the terms of its Handbook. KVCC has both a RT Handbook and a COC for its students. KVCC chose to deploy the COC to remove Appellant from the RT Program.

The Code of Conduct provision used to remove Appellant from the RT Program is found at Section 501(III)(B16), which includes: “Conduct that disregards the welfare, health or safety of the College community, which includes but is not limited to... any other conduct that threatens or endangers the health or safety of one’s self or others.” [AR 81-87].

Contrarily, KVCC ignored the RT Program 2021-2022 Handbook, which reads:

Academic Dismissal

A grade of "C" or higher or "P" must be maintained in all classes. Students who receive less than a "C" or a "F" in a pass/fail course will be academically dismissed from the program. Students may appeal once to re-enter the program on a probationary status. The appeal must occur immediately after the dismissal for probationary status in the next semester. If a student is academically dismissed a second time they are not eligible for probationary status in the Respiratory Therapy

program or to return to the Respiratory Therapy program at a later date. Probationary status reinstatement is based on space availability.

[AR 112].

Under the RT Handbook a number of alternatives were available as discipline, including revoking Appellant's ability to perform the procedures with indirect supervision, having Appellant make a second attempt at the failed procedure, giving Appellant a clinical warning, or filing a "critical incident report."

[AR 122-123].

Instead, Appellant was simply given lower scores on her assessments. An incident report was filed, accusing Appellant of unprofessional conduct when she asked staff members to ensure that her required assessments were completed. [AR 48-52]. It is illogical to use this incident to somehow prove that patient safety was put at risk, because Appellant was not stopped from continuing the procedure, and was allowed to finish her shift working directly with patients. In addition, Appellant was allowed to continue working directly with patients for nearly a month following this allegation. [AR 61-65].

The incident report was certainly not a "critical incident report" and does not appear to constitute a "clinical policy infraction" to warrant an incident report at all. [AR 047, 068]. Dismissal from the program was not a proper consequence under the RT Handbook procedure. At worst, these alleged incidents should have resulted in Appellant's grade reflecting the poor assessment, and perhaps

revocation of her ability to perform the procedures without direct supervision. KVCC did not take either of these actions, opting instead to dismiss Appellant from the program without affording her the chance to be on probation and re-enter the RT Program for the following semester to re-take her clinical program, which would have been consistent with the RT Program policy and procedure. [AR 107-125]. Appellant was given no grade for the class prior to her suspension, and it is not clear from the record whether receiving low scores on the assessment for this date would have negatively impacted her grade sufficiently to trigger academic discipline processes¹⁷.

Plainly, from both KVCC and Appellant's perspectives, the March 17, 2022 incident had been resolved, with Appellant being allowed to continue in the program without being dismissed or placed on probation, and Appellant was both allowed and encouraged to continue interacting with patients for nearly a month following this incident. For example, on April 5, 2022, Appellant and Leadbetter worked a shift together, after which Leadbetter told Appellant that she had done a great job and had shown good interpersonal relations. [AR 226].

KVCC's COC is designed to serve the following purposes:

¹⁷ Not to mention the fact that Appellant's view as to what occurred on March 17, 2022, which she nearly contemporaneously documented to her supervisors, is very different. Moreover, Appellant was later able to correctly perform the same procedures with Leadbetter to obtain passing marks for that portion of her coursework. [AR 61-63].

- 1) ensure the orderly administration of the College's academic, athletic and social offerings;
- 2) secure the opportunity of all students to pursue peacefully their educational objectives;
- 3) protect the health, safety and welfare of the College and the members of its community;
- and 4) maintain and protect the real and personal property of the College and the members of its community.

[AR 81].

KVCC suspended and removed Appellant from the RT Program based on the school's COC. Yet it is very plain that the provisions of the COC employed do not relate to the facts at hand. The provisions of the COC employed against Appellant by the school—Sections 501, III, B16—apply only to “Conduct that disregards the welfare, health or safety of the College community...” [AR 82].

Such conduct is described as:

- 1) assault, harassment or intimidation;
- 2) false reports of fire or other dangerous conditions;
- 3) unauthorized use or possession of weapons, explosive components or chemicals, including fireworks, firearms, explosives, gas or compressed air;
- 4) disturbing authorized activities or the peaceful operation of the College;
- 5) use, possession, sale or distribution of alcoholic beverages or drugs as prohibited by law or College policy;
- 6) being under the influence or knowingly in the presence of drugs or alcohol while on College property or at College related events;
- 7) action prohibited by health or safety regulations;
- 8) creation of a fire hazard or other dangerous condition;
- 9) restriction of vehicular or pedestrian traffic flow into or out of College property or facilities;
- 10) action that produces mental or physical discomfort, embarrassment, harassment or ridicule to any member of the College community;

- 11) intentionally placing a person or persons in reasonable fear of physical harm;
- 12) lewd or indecent behavior;
- 13) tampering with fire or safety equipment;
- 14) parking violations;
- 15) disobeying the lawful order of College personnel; and/ or
- 16) any other conduct that threatens or endangers the health or safety of one's self or others.

[AR 82].

Plainly, the non-exhaustive examples all apply to the “College community” as the section prefaces. Otherwise, the list is nonsensical. For example, it makes no sense for parking violations off campus to result in dismissal. Otherwise, a student from California on Winter break who gets a parking ticket in Los Angeles could be dismissed from the school¹⁸. More sensibly, these prohibitions apply as they state, to the “welfare, health or safety of the College community...” [AR 82].

Further, it is clear that this list is to exemplify students' activities outside of their academics that are against the rule of law and public policy. Nothing suggests any correlation between a student engaged in the learning process, who fails to meet the necessary standards, and the actions listed in the COC Section 501, III, B-16. It is illogical then to suggest that a struggling student and a student who is acting against the rule of law and public policy should be treated identically.

¹⁸ The COC seems to adopt the same analysis, in fact, providing that “A student violation of a rule governing a moving, parked or standing vehicle on property owned, operated or under the control of the M CCS shall be processed under this Code only if the sanction sought by a college is suspension or expulsion from college for that violation.” [AR 86].

Read in such a way, conduct that endangers the health or safety of others must mean others in the College community. On its face then this cannot apply to patients in the clinical setting.

This is reiterated elsewhere in the COC, where the “College community” is defined as “any person...that attends, performs services for, is employed by, visits or otherwise uses the College...” [AR 86]. While Appellant herself was a member of the “College community,” any patients in the clinical setting plainly are not. The patients are seen off-campus in a hospital setting¹⁹.

Moreover, the COC seems to allude to the supremacy of program rules when it comes to academic discipline. Specifically, the COC provides that “...other forms of academic misconduct shall first be handled pursuant the MCCS policies on academic misconduct and/or student issues arising at clinical affiliates which provide(s) for specific procedures and sanctions. Once the procedures and sanctions of those policies have been applied, the provisions of this Code shall apply.” [AR 82]. Accordingly, the RT Handbook should have applied here.

KVCC is bound to provide students with the procedural safeguards that it has promised. It was fundamentally unfair, arbitrary and capricious for KVCC to apply the COC to remove Appellant from the RT Program.

¹⁹ Moreover, KVCC found “arguing with site staff about clinical evaluations and scores” to have violated the COC. [AR 79]. It is hard to imagine how arguing about grades, if true, could threaten the health or safety of anyone, so as to violate the COC.

C. The Procedures Used Here Lack of Any True Process And Were Fundamentally Unfair

Appellant is a Chinese born student, for whom English is a second language. It is hard to grasp how KVCC can argue that it provided her any real process or protection.

KVCC issued an interim suspension of the Appellant. [AR 1]. This interim suspension was explicitly based on the April 12, 2022 incident, and no mention of the March 17, 2022 incident was included in the notice to Appellant. *Id.*

April 29, 2022, Dean McKenna emailed Appellant that he determined it was more probable than not that she endangered patient safety and violated Sections 501, III, B16 of the COC. [AR 1]. Under Section IV of the COC, Appellant was dismissed from the RT program. *Id.* She was permitted to request a Disciplinary Committee (hereafter “DC”) hearing. *Id.* She was prohibited from contacting Schryver or Leadbetter or from having anyone contact them (meaning she could not contact the primary witnesses against her). *Id.* Notably, McKenna added the March 17, 2022 incident as grounds for her suspension in his April 29, 2022 letter. *Id.*

On May 1, 2022, Appellant requested an appeal to the DC. [AR 169]. She followed that with a simple request of the DC, notably, “Will you please send me a description of all the evidence that will be presented against me so that I will know...” [AR 172-173].

KVCC made it exceedingly clear that the Appellant could not have representation assist her in these disciplinary proceedings. First, Dean McKenna told Appellant that she could not contact the witnesses against her, including KCVV employees Schryver or Leadbetter. [AR 1; 2]. Now suspended with the Disciplinary Committee pending (the first time around), the Appellant was told no one could assist her. [AR16].

Further, Dean McKenna informed the Appellant

I need to share one clarification I was notified of earlier this week. My decision on the violation the Student Code of Conduct as to dismissal from the Respiratory Therapy program. If the appeal committee agrees with my decision you cannot appeal to the President. If I would have decided you should be expelled from the college you would have the ability to appeal to the President if the committee agreed with my decision.

[AR 16].

So, in sum, Dean McKenna suspended Appellant for a COC violation based on April 12, 2022 incident. [AR 1]. Later, he added the grounds of the March 17, 2022 incident. [AR 2]. And yet, it was not until May 13, 2022 that Appellant received even any scant evidence of the allegations against her. [AR 174; 178]. Moreover, Dean McKenna informed her that the DC decision was unreviewable by the President of KVCC because he only expelled her from the program she worked so hard in, rather than from the college. Ironically, McKenna used the College's rules—the COC—not the Program's rules—the RT Handbook— in making this

decision. This entire process as applied to Appellant reeks of fundamental unfairness.

CONCLUSION

For the reasons stated herein, the Appellant asks this Court to reverse the Judgment of the Superior Court.

Dated this 10th day of December, 2024 in Portland, Maine.

Respectfully Submitted,
ZERILLO LAW FIRM, LLC

A handwritten signature in blue ink, appearing to read 'Tim Zerillo', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Timothy E. Zerillo, Esq., attorney for Appellant, hereby certify that I forwarded 2 copies of the within Brief of the Appellant to the counsel of the Appellee, by U.S. Mail and email, at the following addresses:

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Dated this 10th day of December, 2024 in Portland, Maine.

Respectfully Submitted,
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