

Federal court denies ADHD disability claim against Loyola

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A former Loyola University Maryland psychology doctoral candidate who claimed he was kicked out of the program because of his ADHD has lost his federal discrimination claim on summary judgment.

U.S. District Judge Richard D. Bennett granted the university's motion for summary judgment, holding that Timothy Herzog was not disabled. He was expelled from the program because of behavioral problems not related to a disability, including making overtures to one of his undergraduate students, the court held.

"It is well within Loyola's discretion to dismiss a student who has problems with authority, difficulty understanding the impact of his conduct on others and who has conceded to breaching ethical standards promulgated by the school," Bennett wrote in an opinion earlier this month.

Herzog's lawyer, James S. Maxwell of Maxwell & Barke LLC, said he is considering an appeal.

"[Bennett] made it... virtually impossible for a person with a disability such as ADHD to be considered as disabled where the person has had any level of academic achievement which compares favorably to the average person, regardless of the effort involved or the circumstances," Maxwell said.

Maxwell said Bennett should have considered the testimony of Herzog's ADHD expert, who compared Herzog's dismissal to "a lynching."

According to the opinion, Herzog enrolled in Loyola in 2002. After his first semester, he was diagnosed with Attention Deficit Hyperactivity Disorder and put on medicine.

The only accommodation Herzog received for his ADHD was extra time on two comprehensive exams.

He got good grades, but faculty members expressed concern about his behavior. Maxwell said Herzog's ADHD meant he lacked an "editing process" and would leave class when he got bored, saying things like, "I think I would get more out of doing my laundry than this class."

WHAT THE COURT HELD

Case: Herzog v. Loyola, U.S. Dist Ct. No. RDB-07-02416. Unpublished. Opinion by Bennett, J. Filed Oct. 9, 2009.

Issue: Should the court grant summary judgment to defendant on plaintiff's claims that he was dismissed because of his disability?

Holding: Yes. Plaintiff is not disabled and, in any event, was dismissed because of his behavior.

Counsel: James S. Maxwell for plaintiff; Brian Tucker for defendant.

As part of his doctoral training, Herzog participated in an internship program at Montana State University in 2006. He served as a teaching assistant for a counseling skills class and asked one of his students out for drinks. She told the professor.

Montana State notified Loyola of the problem and said it was part of Herzog's larger issues with "power in relationships." Loyola's student handbook forbids romantic relationships between graduate teaching assistants and undergraduates, and Loyola dismissed Herzog from the program.

Herzog sued Loyola in 2007, claiming discrimination under the Americans with Disabilities Act.

On a new employee form for Montana State, Herzog checked "no" in response to a question about whether he was disabled, Bennett noted.

Bennett ruled that Herzog had not proven that his ability to learn is "substantially limited." What impairment he did have was mitigated by medication and changing his study habits.

Loyola's attorney praised Bennett's decision.

"I think if you look at it, what Loyola said all along is, it dismissed Mr. Herzog because he had breached ethical standards promulgated by the school, and the court's opinion just really backs that up," said Brian Tucker of Gallagher, Evelius & Jones LLP.