

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

DOYLE BYRNES,
6702 W. 156th Terrace
Overland Park, KS 66223

Plaintiff,

vs.

Civil Action No. 10-2690-EFM-DJW
DEMAND FOR JURY TRIAL

JOHNSON COUNTY COMMUNITY COLLEGE,

Serve: President Terry Calaway
GEB 112 Box 1
12345 College Blvd.
Overland Park, KS 66210-1299

and

DR. CLARISSA CRAIG

in her individual and official capacities

Serve: Johnson County Community College
12345 College Blvd.
CLB 243B Box 52
Overland Park, KS 66210-1299

and

MS. JEANNE WALSH

in her individual and official capacities

Serve: Johnson County Community College
12345 College Blvd.,
CLB 117 Box 52
Overland Park, KS 66210-1299

and

MS. AMBER DELPHIA

in her individual and official capacities

Serve: Johnson County Community College
12345 College Blvd.
CLB 135 Box 52
Overland Park, KS 66210-1299

and

DR. MARILYN RHINEHART

in her individual and official capacities

Serve: Johnson County Community College
12345 College Blvd.,
SCI 128 Box 5
Overland Park, KS 66210-1299

and

DR. DENNIS DAY

In his individual and official capacities

Serve: Johnson County Community College
12345 College Blvd.,
SC 325B Box 53
Overland Park, KS 66210-1299

Defendants.

VERIFIED COMPLAINT

COMES NOW, Plaintiff Doyle Byrnes (“Byrnes”), by and through her counsel of record, brings this verified complaint against the above-named defendants, Johnson County Community College (“JCCC”), Dr. Clarissa Craig (“Dr. Craig), Ms. Jeanne Walsh (“Director Walsh”), Ms. Amber Delphia (“Delphia”), Dr. Marilyn Rhinehart (“Dr. Rhinehart”), and Dr. Dennis Day (“Dr. Day”), their employees, agents, servants, officers, and successors in office and all those persons in active concert or participation with them, and in support thereof alleges the following on information and belief:

INTRODUCTION

1. All facts alleged in this complaint are verified as true by Plaintiff by affidavit. *See* Affidavit of Doyle Byrnes (hereinafter referred to as “**Exhibit A**”).

2. This is a civil rights action to redress the deprivation by Defendants of rights secured to Plaintiff Byrnes by the Fourteenth Amendment to the United States Constitution.

3. Plaintiff Byrnes was a nursing student enrolled at Johnson County Community College (“JCCC”), but was recently dismissed for appearing in a photograph during her clinical course experience and posting that image to the website Facebook.com (“Facebook”).

4. Plaintiff was dismissed without being afforded any due process of law, in clear violation of JCCC’s disciplinary policies. *See* Johnson County Community College Student Rights and Responsibilities: Student Appeal of Disciplinary Action § 319.02 (hereinafter referred to as “**Exhibit B**”).

5. Defendants’ actions in this regard violate the Fourteenth Amendment to the United States Constitution, specifically the due process clause, both in terms of process and substance.

6. Defendants’ actions in dismissing the Plaintiff also constitute a common law breach of contract claim and a negligent misrepresentation claim.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331, as it arises under the Constitution and laws of the United States and presents a federal question, and pursuant to 28 U.S.C. §1343(a)(4), in that it seeks to secure equitable, monetary, and other relief under an Act of Congress, specifically 42 U.S.C. §1983, which provides a cause of action for the protection of civil rights.

8. Plaintiff’s claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§2201-2202, by Federal Rules of Civil Procedure 57 and 65, and by the general legal and equitable powers of this court, which empower this court to grant the requested relief.

9. Jurisdiction for Plaintiff's common law breach of contract claim properly lies with this Court pursuant to 28 U.S.C. §1367, as it shares a common nucleus of operative facts with the underlying federal claim, and would ordinarily be tried together.

10. Jurisdiction for Plaintiff's negligent misrepresentation claim properly lies with this Court pursuant to 28 U.S.C. §1367, as it shares a common nucleus of operative facts with the underlying federal claim, and would ordinarily be tried together.

11. This Court has the authority to award Plaintiff's attorney's fees and costs associated with this action pursuant to 42 U.S.C. §1988 and other applicable law.

12. Venue is proper within the Kansas City, Kansas judicial district and division, pursuant to 28 U.S.C. 1391(b)-(c) because Plaintiff resides within this judicial district and division, JCCC is located within this judicial district and division, and the events giving rise to Plaintiff's claims occurred in this judicial district and division.

13. Wherefore Plaintiff requests this action be heard in the Kansas City, Kansas judicial district and division.

PARTIES

14. Plaintiff Byrnes is a citizen of the United States and currently resides in of the State of Kansas, county of Johnson.

15. Defendant Johnson County Community College is a Community College located in Johnson County, and a political subdivision of the state of Kansas authorized, supervised, and funded by the State of Kansas pursuant to K.S.A. Chapter 71.

16. Defendant Dr. Clarissa Craig is Dean of the Health and Wellness Program at JCCC, and was partially or wholly responsible for the injuries to the Plaintiff as set forth below.

17. Defendant Jeanne Walsh is Director of Nursing at JCCC, and was partially or wholly responsible for the injuries to the Plaintiff as set forth below.

18. Defendant Amber Delphia is a Clinical Instructor of Nursing at JCCC, and was partially or wholly responsible for the injuries to the Plaintiff as set forth below.

19. Defendant Dr. Marilyn Rhinehart is Vice President of Instruction/Chief Academic Office at JCCC, and was partially or wholly responsible for the injuries to the Plaintiff as set forth below.

20. Dr. Dennis Day is Vice President of Student Services at JCCC, and was partially or wholly responsible for the injuries to the Plaintiff as set forth below.

ALLEGATIONS OF FACT

21. Plaintiff Byrnes has been enrolled at JCCC since the fall academic semester of 2006.

22. Plaintiff has been in good academic standing during the entirety of her tenure at JCCC. *See* Transcript of Doyle Byrnes (hereinafter referred to as “**Exhibit C**”).

23. Plaintiff Byrnes was on schedule to graduate from the JCCC Nursing Program (“JCCC Nursing”) in May, 2011.

24. On November 10, 2010, Plaintiff Byrnes attended a nursing lab at Olathe Medical Center for the purpose of examining a human placenta.

25. Under the supervision of Clinical Instructor Ms. Amber Delphia (“Delphia”), Plaintiff Byrnes, along with six other group members, was encouraged to touch and examine the placenta while the group engaged in a discussion of the functions of the particular organ.

26. During the discussion, one of the other members of the group asked Delphia’s permission to photograph the organ.

27. Delphia inquired into the purpose of the photographs, and the students informed her that they desired to share the experience with family and friends on Facebook.

28. Delphia explicitly approved the students' request to photograph the organ. Additionally, Delphia gave implied permission for the students to post their photographs to Facebook by inquiring as to the intended use of the photographs, and being advised that the students intended to post the photographs to Facebook. Upon being advised of their intention to post the photographs to Facebook, Delphia, acting on behalf of JCCC, merely responded "Oh, you girls."

29. Delphia also conditioned her approval of the students' request to photograph the organ on the condition that no identifying marks be present in the photo.

30. Four members of the lab group, including Plaintiff Byrnes, proceeded to photograph themselves with the organ. *See* photograph of Doyle Burns with organ (hereinafter referred to as "**Exhibit D**").

31. At the post-conference lab meeting, where the lab members and Delphia met to discuss the day's assignment, the members, along with Delphia, discussed their excitement about examining the placenta, and also discussed their intentions to post the photos on Facebook.

32. Delphia again impliedly consented to the students' actions by failing to warn or prohibit the conduct.

33. At no point in the Plaintiff's nursing program or on the day in question did JCCC or Delphia warn Plaintiff that this particular conduct was prohibited or could result in discipline.

34. After posting the photo onto Facebook, it remained on Plaintiff Byrnes' Facebook profile for approximately three hours.

35. After receiving a phone call from Delphia that evening instructing her to remove the picture, Plaintiff Byrnes immediately removed it from her Facebook account.

36. When Delphia called Plaintiff Byrnes to instruct her to remove the photo, Plaintiff Byrnes asked “am I in trouble” and Delphia responded “no.”

37. On November 11, 2010, Jeanne Walsh, the Director of Nursing (“Director Walsh”), convened a meeting with the students who had posted photographs of the placenta on Facebook, where she verbally berated the students by screaming and crying at them.

38. During the meeting, Director Walsh’s emotional conduct precluded the students from defending themselves and adequately explaining the reasons for engaging in the conduct in question.

39. Director Walsh summarily dismissed Plaintiff Byrnes and three other members of the lab group from the nursing program, and exclaimed, “I don’t know if I would want you back.”

40. Plaintiff Byrnes was dismissed from JCCC Nursing prior to being afforded proper due process; Byrnes was not given written notice of the charges against her; she was not given a hearing at which she could testify on her own behalf; she was not given a hearing where she could call witnesses on her behalf; she was not given a hearing where she could call Delphia as a witness; and she was denied the right to appear at a hearing with the assistance of counsel.

41. At no point did Director Walsh inform the students of any available appeals process. Instead, Director Walsh informed the students that if they had any questions regarding the matter, they would need to direct them to Dr. Dennis Day.

42. All subsequent appeals by Plaintiff Byrnes occurred after her dismissal, while she was prohibited from attending class and lab, and also precluded from taking exams.

43. On November 16, 2010, Director Walsh notified Plaintiff Byrnes via letter that she could find the process for appealing on JCCC's website. *See* November 16, 2010 letter from Director Walsh to Plaintiff Byrnes (hereinafter referred to as "**Exhibit E**").

44. On November 17, 2010, Plaintiff Byrnes sent a written appeal to Director Walsh. *See* November 17, 2010 letter from Plaintiff Byrnes to Director Walsh (hereinafter referred to as "**Exhibit F**").

45. On November 30, 2010, Director Walsh rejected Plaintiff Byrnes' written appeal, and informed Plaintiff Byrnes that if she wished to continue in her appeal, she must contact Dr. Clarissa Craig ("Dr. Craig"), Dean of Health Care Professions and Wellness. *See* November 30, 2010 letter from Director Walsh to Plaintiff Byrnes (hereinafter referred to as "**Exhibit G**").

46. On December 2, 2010, Plaintiff Byrnes' attorney contacted Dr. Craig regarding the appeals process, and informed Dr. Craig of Plaintiff Byrnes' due process rights. Plaintiff's attorney informed Dr. Craig by letter that the suggested academic appeals process appeared inappropriate for an action resulting in a disciplinary sanction of dismissal from JCCC Nursing Counsel's letter argued that JCCC had a published disciplinary appeal process that should be followed. *See* December 2, 2010 letter from Plaintiff Byrnes' attorney, Clifford A. Cohen to Dr. Craig (hereinafter referred to as "**Exhibit H**").

47. In spite of Dr. Craig's receipt of Plaintiff's attorney's letter of December 2, 2010, Dr. Craig contacted Plaintiff without the knowledge or consent of her counsel, and demanded that she appear for an informal interview on December 8, 2010. On December 7, 2010, Plaintiff's attorney sent Dr. Craig an email confirming the informal nature of the meeting scheduled with Plaintiff Byrnes and Dr. Craig on December 8, 2010. *See* December 7, 2010 e-

mail from Plaintiff Byrnes' attorney, Clifford A. Cohen, to Dr. Craig (hereinafter referred to as "**Exhibit I**").

48. On December 8, 2010, Plaintiff Byrnes informally met with Dr. Craig to discuss the facts that led to Plaintiff's dismissal.

49. On December 8, 2010, Dr. Craig sent a letter to Plaintiff Byrnes informing her that she would render a decision on Plaintiff Byrnes' appeal no later than December 17, 2010. *See* December 8, 2010 letter from Dr. Craig to Plaintiff Byrnes (hereinafter referred to as "**Exhibit J**").

50. On December 9, 2010, Plaintiff's attorney again sent Dr. Craig a letter, evidencing his continued effort to make JCCC aware of the due process rights guaranteed to Plaintiff Byrnes. *See* December 9, 2010 letter from Plaintiff Byrnes' attorney, Clifford A. Cohen, to Dr. Craig (hereinafter referred to as "**Exhibit K**").

51. On December 9, 2010, Plaintiff requested to take the exams she had missed during her dismissal so that in the event her appeal successfully resulted in her reinstatement, she would not be irreparably harmed from the suspension.

52. Plaintiff's request to take her exams was denied.

53. On the eve of the release of Dr. Craig's decision on Plaintiff Byrnes' appeal, Plaintiff's attorney informed JCCC that Plaintiff Byrnes would be out of town on the day the decision was to be released, and Plaintiff further informed JCCC that it had her permission to release the findings of Dr. Craig directly to Plaintiff's attorney.

54. Knowing that Plaintiff Byrnes was out of town, JCCC refused to release to decision to Plaintiff's attorney, and instead insisted on sending it via certified mail directly to Plaintiff Byrnes.

55. JCCC had previously released information directly to Plaintiff Byrnes.

56. JCCC's insistence on sending the decision via certified mail further delayed the process and resulted in irreparable harm to the Plaintiff.

57. On December 16, 2010, Dr. Craig sent via certified mail her affirmation of Director Walsh's decision to dismiss Plaintiff Byrnes from JCCC Nursing. *See* December 16, 2010 letter from Dr. Craig to Plaintiff Byrnes (hereinafter referred to as "**Exhibit L**").

58. Spring Semester classes at JCCC Nursing resume January 19, 2011, therefore time is of the essence for resolution of this matter.

59. Plaintiff Byrnes has scheduled an August 12, 2011 wedding in Virginia and has declared her intent to reside in Virginia with her husband next fall and therefore will be unable to resume her education at JCCC at that time.

60. Plaintiff has suffered irreparable harm through her extended absence from instruction.

ALLEGATIONS OF LAW

61. 42 U.S.C. § 1983 imposes civil liability upon any person who, acting under the color of state law, deprives another individual of any rights, privileges, or immunities secured by the Constitution or law of the United States. To establish a valid claim under §1983, the Plaintiff must demonstrate that Defendants, acting under color of state law, deprived her of a right secured either by the Constitution or laws of the United States.

62. Defendants are "persons" for purposes of the claims set forth in this complaint, as that term is used in 42 U.S.C. §1983.

63. Defendants are “state actors” and all of the conduct of Defendants, as set forth in this complaint constitutes conduct “under color of state law” as that phrase is used in 42 U.S.C. §1983.

64. For the purposes of the constitutional claims, Plaintiff Byrnes at all times relevant owned a constitutionally recognized personal property right in her ongoing education and a liberty interest in her name and reputation, each of which are protected by the Fourteenth Amendment to the Constitution. Each of these rights is constitutionally protected both by the substantive and procedural safeguards of the Due Process clause of the Fourteenth Amendment.

65. All of the actions of Defendants as set forth in this complaint were done with malice and with reckless indifference to the Constitutional rights of Plaintiff.

COUNT I—VIOLATION OF PROCEDURAL DUE PROCESS
PURSUANT TO 42 U.S.C. §1983

66. Plaintiff repeats and realleges the allegations in paragraphs 1 through 65 above and incorporates those allegations herein by reference.

67. At all times relevant herein, Plaintiff had a right under the Due Process clause of the Constitution not to be deprived of life, liberty and property. U.S.C. Amend. 14.

68. Plaintiff has been deprived both of her property interest and liberty interest by and through her dismissal from JCCC without adequate due process.

69. Defendants, in their individual and official capacities, violated Plaintiff Byrnes’ procedural due process rights under the Constitution by:

- a. Failing to provided Plaintiff Byrnes with the proper disciplinary appeals process;
- b. Failing to afford Plaintiff a fair and reliable method for determining the factual foundation of Plaintiff’s dismissal;

- c. Failing to advise Plaintiff of the grounds of the charges against her and the nature of the evidence against her;
- d. Failing to give Plaintiff Byrnes an opportunity to be heard in her own defense,
- e. Failing to give Plaintiff Byrnes an opportunity to cross-examine witnesses in support of Defendants' position to dismiss Plaintiff from JCCC.
- f. Failing to afford Plaintiff Byrnes the opportunity to call witnesses, including, but not limited to her Clinical Instructor, who explicitly and impliedly consented to the conduct that Plaintiff was ultimately dismissed for.
- g. Failing to allow Plaintiff meaningful assistance of counsel prior to her dismissal;
- h. Failing to make an administrative hearing record sufficient to permit meaningful judicial review;
- i. Failing to specify which of the University's rules, policies or laws Plaintiff violated;
- j. Imposing a punishment that was not based on substantial evidence, and which is disproportional to the violation alleged.
- k. Failing to appoint an impartial arbiter to preside over Plaintiff Byrnes' petition for review.
- l. Failing to afford Plaintiff Byrnes a proper disciplinary appeal, which affords the appellant a chance to appeal to the Campus Appeals Board.

70. Plaintiff Byrnes was not afforded the full disciplinary appeals procedure mandated by JCCC's Student Code of Conduct, nor the JCCC Nursing Code of Conduct.

71. The JCCC Nursing Code of Conduct is impermissibly vague, and gives insufficient warning to students about actions considered to be improper.

72. The JCCC Nursing Code of Conduct is impermissibly vague, as it fails to describe disciplinary procedures.

73. The decision to dismiss Plaintiff Byrnes was not made by an impartial decision maker. Instead, the director of the nursing program unilaterally made the decision. The Dean of Health Care Professions and Wellness ratified said decision. Both of these decision makers were and continue to be biased.

74. The “review” of Plaintiff Byrnes’ dismissal conducted by JCCC Administration simply did not rise to the level of protection necessitated by the Fourteenth Amendment.

75. Defendants intentionally, willfully, wantonly, oppressively and maliciously violated Plaintiff’s due process rights.

76. Plaintiff’s attorney, by letters dated December 2, 2010, and December 9, 2010, specifically and in extensive detail informed JCCC of the legal requirements necessary to afford Plaintiff Byrnes with due process.

77. JCCC acted in wanton disregard of those standards that were provided to them by failing to afford Plaintiff the requisite due process.

78. The decision to dismiss Plaintiff Byrnes was not reasonably calculated to be fair to the student, nor did it lead to a reliable determination of the factual issues involved.

79. Notice and a fair hearing are fundamental to achieve due process in a university setting.

80. A state actor may not deprive a person of constitutionally protected interests without fair notice and an opportunity to be heard.

81. Plaintiff Byrnes has suffered substantial monetary damage due to her dismissal and also has suffered damage to her reputation.

82. Plaintiff Byrnes is entitled to punitive damages against JCCC, Dr. Craig, and Dr. Day because of the intentional disregard by Dr. Craig and Dr. Day to provide her with adequate due process rights. Dr. Craig continues to insist that she could use the academic appeal procedure when JCCC had a qualified disciplinary procedure that Plaintiff Byrnes' attorney brought to Dr. Craig's attention as evidenced by Exhibit I and Exhibit K.

83. Wherefore Plaintiff requests the relief as set forth below in the prayer for relief.

COUNT II—VIOLATION OF SUBSTANTIVE DUE PROCESS
PURSUANT TO 42 U.S.C. §1983

84. Plaintiff repeats and realleges the allegations in paragraphs 1 through 83 above and incorporates those allegations herein by reference.

85. Plaintiff Byrnes was dismissed on the grounds of her "demeanor and lack of professional behavior."

86. Director Walsh referred to Plaintiff Byrnes' behavior as a "disruption to the learning environment."

87. These statements reflect directly on Plaintiff Byrnes' good name, reputation, honor and integrity.

88. Plaintiff Byrnes' dismissal from the program resulted in the taking of a constitutionally protected property interest in her continued education, in violation of her substantive due process rights, as guaranteed by the Fourteenth Amendment.

89. Defendants in their individual and official capacities violated Plaintiff Byrnes' substantive due process rights under the Constitution by depriving Plaintiff Byrnes of her property and liberty interests by arbitrarily dismissing Plaintiff from JCCC Nursing.

90. The dismissal of Plaintiff Byrnes from JCCC was without any reasonable justification and does not serve any legitimate governmental objective.

91. The dismissal of Plaintiff Byrnes was arbitrary and capricious, and sufficient to shock the conscience of a reasonable person.

92. Wherefore Plaintiff requests the relief as set forth below in the prayer for relief.

COUNT III—BREACH OF CONTRACT

93. Plaintiff repeats and realleges the allegations in paragraphs 1 through 92 above and incorporates those allegations herein by reference.

94. As an enrolled student at JCCC, an implied contract between Plaintiff Byrnes and JCCC governed each party's conduct as against the other.

95. JCCC created an implied contract through its written policies, recruitment, information and custom.

96. Plaintiff Byrnes accepted this contract by enrolling at JCCC.

97. The JCCC Code of Student Rights and Responsibilities is incorporated into the contract.

98. Implied in every contract is the requirement of good faith and fair dealing.

99. By failing to afford Plaintiff Byrnes due process before she was dismissed, JCCC breached its duty of good faith and fair dealing.

100. Plaintiff has suffered damage as a result of the breach of contract.

101. Wherefore Plaintiff requests the relief as set forth below in the prayer for relief.

COUNT IV—MISREPRESENTATION

102. Plaintiff repeats and realleges the allegations in paragraphs 1 through 101 above and incorporates those allegations herein by reference.

103. Ms. Amber Delphia was the Clinical Lab Instructor on the night the conduct occurred which caused Plaintiff Byrnes to be dismissed from JCCC.

104. Delphia, as Clinical Lab Instructor, was acting as an agent of JCCC.

105. Acting within the scope of her roles as a professional and an educator, Delphia negligently supplied false information to Plaintiff Byrnes by explicitly and impliedly authorizing Plaintiff Byrnes to post pictures taken during the lab to Facebook.

106. Delphia failed to exercise reasonable care in authorizing Plaintiff Byrnes to share the photos online.

107. Plaintiff Byrnes reasonably relied on Delphia's authorization when she posted the images to Facebook.

108. Plaintiff Byrnes has suffered damages, both monetary and to her reputation, for which she is entitled to relief.

109. Wherefore Plaintiff requests the relief as set forth below in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Byrnes prays for judgment against Defendant JCCC on Counts I, II, III, and IV of Plaintiff's Complaint as follows:

- A. Declare that Defendants' actions in dismissing Plaintiff Byrnes from JCCC Nursing without due process of law violates the Fourteenth Amendment to the United States Constitution;
- B. Declare that JCCC had no actionable basis to dismiss Plaintiff Byrnes;
- C. Immediately issue a temporary restraining order, preliminary, and permanent injunction ordering defendants to: (i) reinstate Plaintiff to full student status, retroactive to November 10, 2010; (ii) permit her to take her final examinations on

the subjects in which she was enrolled at the time of her dismissal; and (iii) permit her to make up her clinical coursework under proper supervision.

D. In the alternative to (C), immediately declare JCCC's actions were pursuant to a disciplinary action rather than academic, and order that the Plaintiff is entitled to a full hearing on the merits, presided over by an unbiased judge or judging panel, and further, immediately issue a temporary restraining order and preliminary ordering defendants to: (i) reinstate Plaintiff to full student status, retroactive to November 10, 2010; (ii) permit her to take her final examinations pending a full disciplinary hearing; (iii) permit her to make up her clinical coursework under proper supervision.

E. Award compensatory damages against the proper Defendants in an amount exceeding the jurisdictional minimums of this Court;

F. Award punitive damages for the willful, wanton, oppressive, malicious, and/or grossly negligent unlawful conduct of Defendants JCCC, Dr. Craig, and Dr. Day, as set forth above.

G. Award costs and attorneys fees, plus interest, in bringing and maintaining this action pursuant to 42 U.S.C. §1988.

H. Retain jurisdiction over this action for the enforcement of its orders and final judgment; and

I. Grant any other and further relief as this court deems equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues.

DESIGNATION OF PLACE OF TRIAL

Plaintiff Doyle Byrnes respectfully requests that the trial in this matter be held in Kansas City, Kansas.

Respectfully submitted,

COHEN McNEILE & PAPPAS, P.C.

/s/ Clifford A. Cohen

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