

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD & JEAN CLAUDE PIERRE,
Complainant

v.

DOCKET NO. 98-BED-1609

SALEM STATE COLLEGE,
Respondent

Appearances:

Andrew D. Myers, Esquire for the Complainant

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On May 14, 1998, Complainant Jean Claude Pierre filed a complaint with this commission charging Respondent Salem State College with discrimination in education on the basis of race, color and national origin, in violation of M.G.L. c.151C. The Respondent defaulted at all stages of the proceedings, and did not appear at the public hearing held before me on November 25, 2002. The Respondent's default was duly noted for the record and the hearing proceeded as a default hearing. Respondent was notified of the default by certified mail, return receipt requested and failed

within the time required by regulation to respond in any manner. After considering the entire record before me, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Complainant Jean Claude Pierre is a black man who was born in Port Au Prince, Haiti. He immigrated to the United States in 1983. Complainant currently resides in Salem, New Hampshire. In his native country, Complainant received the equivalent of a Bachelor's degree and taught math for a three-year period. Complainant obtained an Associate's degree in 1989 from New York City Technical College and took courses at Northeastern University, the Mass. College of Pharmacy and at North Shore Community College. Complainant received a teacher's certificate in Massachusetts in February 1996.

2. Complainant also earned a bachelor's degree in mathematics, cum laude, from Salem State College in 1996.

3. In the fall of 1996, Complainant continued his education at Salem State College, enrolling in its program

for a Master's Degree in Mathematics. During the same academic year, Complainant also taught mathematics at Winthrop High School. Complainant then applied to transfer into Respondent's graduate program in School Administration.

4. In a note dated July 30, 1997, Arthur Rosenthal, Complainant's undergraduate advisor, wrote to graduate school dean Marion Kilson: "I don't object if you grant Jean-Claude Pierre's request to transfer his application from Mathematics to the School Administration Program. Then, it would be up to the School Administration Coordinator and you to decide whether to admit him." Complainant testified that he then began to take the classes required for the degree in School Administration on the oral authority of Arthur Rosenthal. (C-11)

5. Complainant testified that he successfully completed the courses required for the School Administration program. Complainant testified that for some courses that were not on the required course list, he received approval to substitute these courses from the school's program coordinator, Henry Demboski.

6. In addition to completing the course work, students of the graduate course were required to take a comprehensive test. According to Complainant, he had received permission to take this test from Demboski. However, when he went to take the test on or about October 20, 1997, he testified that he was not permitted to do so.

7. Complainant testified that he was advised to retake the GREs, which he did in July 1997 and improved his scores.

8. On October 29, 1997, Complainant received a letter from Marian Kilson, dean of the graduate school, denying him admission to the program in School Administration. The letter stated, "I regret to inform you that your academic credentials did not meet our established admissions requirements." (C-2). Complainant testified that when he received the letter he was completing his classes. After receiving the letter, Complainant called Arthur Rosenthal as well as Professor Henry Demboski, whom he claims told him he deserved to be in the program because he was a good student.

9. On April 2, 1998, Marion Kilson wrote to Complainant stating that he would be admitted to the Master of Education-School Administration degree program provided he enroll in a course entitled Introduction to Graduate Research and Writing. Complainant testified that he received this letter after he had completed his graduate level classes. (C-4) The course consisted of six sessions costing \$275.00. The letter also stated that Complainant was "...required to meet with your graduate program coordinator to develop a plan of study which must be filed in this office within one month..." (C-5) Complainant did not take the class, nor did he develop a plan of study. Complainant did not explain why he did not take the course or develop a plan of study.

10. Complainant testified that of the approximately 40 persons enrolled in the graduate program he was the only black student. According to Complainant, none of the others received a conditional acceptance to the graduate program.

11. Complainant has not worked in the education field since 1998. At the time of the hearing he was employed as a clinical assistant at Winchester Hospital. Prior to this

position, Complainant worked as a psychiatric counselor at Holy Family Hospital, as a Mental Health Counselor at the Tewksbury State Hospital and as a mental health counselor at the Veterans Administration.

12. Complainant testified that his marriage failed and his career was derailed because of the additional class requirement imposed on him by Respondent. I do not credit this testimony.

III. CONCLUSIONS OF LAW

M.G.L.c.151C, §2(d) makes it illegal "To exclude, limit or otherwise discriminate against any person seeking admission to a program or course of study leading to a degree, beyond a bachelor's degree, because of race, religion, creed, color, age, sex or national origin, or to so discriminate against any student admitted to such program or course of study in providing benefits, privileges and placement services". Complainant contends that Respondent's refusal to grant him unconditional admission to its graduate program in School Administration

was discriminatory, as white students were not subjected to the same requirements.

There is no reported MCAD case setting forth the elements of a prima facie case of discrimination in education under G.L.c. 151C. However, the Commission has long held that a prima facie case will vary according to the facts of the case, and has applied the prima facie case model established for employment discrimination to housing cases, Unubum v. McGrath, 19 MDLR 81(1997), and cases of public accommodation; Bachner v. Charlton's, 9 MDLR 1287(1987). Accordingly, I hold that the elements of a prima facie case of discrimination in employment shall apply to a charge of discrimination in education pursuant to M.G.L.c.151C, where there is no direct evidence as follows: Complainant must show that he is member of a protected class, who met the educational qualifications for the program and that he was refused admission to the program and that similarly situated persons not of his protected class were admitted to the program.

In the present case, I conclude that Complainant has failed to establish a prima facie case of discrimination. While Complainant has established that he is a member of a

protected class by virtue of his race and color, he produced no credible evidence that he was treated differently from similarly situated white students, other than his own testimony which I do not credit. Complainant cannot establish a prima facie case by a mere recitation of his beliefs; he must produce some credible evidence in support of the allegation that he was subjected to more stringent requirements than white students or that race was the motivating factor in Respondent's decision to reject him for the program. The evidence submitted by Complainant showed that he proceeded to take classes toward the masters in education administration without having been admitted to that graduate program and without having met its requirements. The evidence he proffered also suggests that the reason given by Respondent was his failure to meet the academic requirements of the program. There was evidence that Complainant attempted to establish his eligibility for the program while he took courses, by retaking the GREs. There is simply no credible evidence that the additional class requirement was imposed on the basis of Complainant's race and color. ¹ Further, I found Complainant's testimony in general to lack credibility. I did not believe that his

¹. This ruling is not intended to condone Respondent's flagrant disregard for these proceedings. However, the Commission's rules require the Complainant to establish a prima facie case, notwithstanding the Respondent's default.

marriage failed and his career was derailed because of the additional class requirement. The evidence showed that Complainant had begun several different educational and career paths before changing his direction, and I conclude that his failure to pursue the masters in school administration resulted from reasons other than unlawful discrimination.

IV. ORDER

For the reasons stated above, this complaint is hereby dismissed. Any party aggrieved by this order may file a Notice of Appeal to the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

SO ORDERED, this 6th day of March, 2003.

JUDITH E. KAPLAN
Hearing Officer