

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

SCOTT DION,)	
CHARGING PARTY,)	
)	CASE NO. 9804008493
vs.)	
)	Order Affirming Final Agency
COMMISSIONER OF HIGHER EDUCATION)	Decision Regarding Prevailing Party
MSU COLLEGE OF TECHNOLOGY,)	and Providing Clarification of
RESPONDENT.)	the Relief Ordered

The above-captioned matter came before the Montana Human Rights Commission (Commission) on September 20, 1999. The matter was before the Commission for consideration of the respondent's appeal from the final agency decision. Appearing before the Commission were LeRoy Schramm, attorney for the respondent, and Michael Dahlem, attorney for the charging party.

After consideration of the record and the arguments of the parties, the Commission concludes that the Hearing Officer did not err in concluding that the charging party was the prevailing party. The parties have advocated different standards for determining who is the prevailing party. In considering the matter, the Commission believes that a prevailing party is one who "has succeeded on 'any significant issue in the litigation which achieve[d] some of the benefit the parties sought in bringing suit...'" *Texas State Teachers Association v. Garland Independent School District*, 489 U.S. 782, 791-792, 109 S.Ct. 1486 (1989).

The Hearing Officer specifically found that the charging party was subjected to sexual intimidation. The Hearing Officer also concluded that the sexual intimidation deprived the charging party of the opportunity to complete the Practicum III portion of his education in a discrimination free environment. The result was the conclusion that the respondent unlawfully discriminated against the charging party. The Hearing Officer then ordered the respondent to purge the failing grade from the charging party's record in addition to other relief. The finding that illegal discrimination occurred and the relief ordered causes the Commission to conclude that the charging party succeeded on a significant issue in the litigation and provides some of the benefit sought. Significantly, the charging party now has the opportunity to avail himself of a career that was removed by the failing grade. That result is neither de minimis or insignificant.

The Commission agrees with the relief ordered, however, it also believes it is appropriate to clarify the relief ordered by the Hearing Officer. Particularly, if the charging party elects to continue his education and repeat Practicum III, the charging party can elect to repeat that segment of the Practicum that he failed rather than the entire Practicum III. In addition, if the charging party elects to repeat all or the failed portion of Practicum III, the evaluator must be a qualified independent evaluator not associated with the present matter. The independent evaluator is necessary to ensure that the past acts of discrimination are not repeated and that the apprehension or fear of failure caused by the discriminatory acts does not continue to be present in the educational setting.

It is hereby ordered, that the final agency decision is affirmed including the designation of the charging party as the prevailing party.

If is further ordered, that the relief ordered in the final agency decision is clarified to indicate that in addition to the other relief contained in the final agency decision, the charging party can choose to repeat only that portion of Practicum III that he previously failed and that any evaluation of the charging party's performance in repeating all or part of Practicum III must be performed by a qualified independent evaluator.

A party may appeal from this order by filing a petition for judicial review with the district court no later than thirty (30) days from the service of this order pursuant to Section 2-4-701, et seq., MCA.

Dated this __ day of December, 1999.

Gloria "Patt" Etchart, Chair, Montana Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the foregoing **Order Affirming Final Agency Decision Regarding Prevailing Party and Providing Clarification of the Relief Ordered** was served on the following persons by U. S. Mail, postage prepaid on the _____ day of December, 1999.

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