IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

CHRISTOPHER RAYMOND JOSEPH, **CASE NO.: 23-CA-11740**

Petitioner, **DIVISION: C**

v.

UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES,

Respondent.
_____/

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Christopher Raymond Joseph, seeks certiorari review of a final decision made by Respondent, University of South Florida Board of Trustees, to expel Petitioner for violating its Student Code of Conduct. This Court has jurisdiction. Fla. R. App. P. 9.100; Fla. R. App. P. 9.030(c); Fla. R. App. P. 9.190(b)(3). Petitioner advances four arguments in support of the petition: 1) Respondent violated Petitioner's right to due process by imposing discipline without the appearance of witnesses at the formal hearing; 2) the lack of witnesses at the formal hearing "defeated the essential requirements of the law, namely to confront one's adverse witnesses,"; 3) Respondent lacked a rational basis for imposing the sanction of expulsion; and 4) Respondent lacked competent, substantial evidence to support its decision. After reviewing the petition, response, reply, all appendices and applicable law, the Court determines first that Respondent provided notice and opportunity to be heard, complied with the essential requirements of the law, and relied on competent substantial evidence in making its determination.

Procedural History

Petitioner enrolled as a student at the University of South Florida in August 2022. The University's Student Conduct and Ethical Development (SCED) office was notified that Petitioner was arrested on December 7, 2022, on two federal charges. Petitioner had been in communication with a person who planned a specific timeline to violently attack synagogues in New Jersey. He was charged with destruction of evidence and obstruction related to his communications when he deleted evidence from his cell phone and refused to cooperate with investigators. The facts related

to these charges were detailed in the Sworn Criminal Complaint, specifically in a sworn affidavit from an FBI agent assigned to the case.

As a direct result of the arrest, the University charged Petitioner with violating four provisions of the University's Code of Conduct:

1. USF Student Code of Conduct/Aiding and Abetting - The prompting, facilitating or encouraging of others to violate standards of behavior.
2. USF Student Code of Conduct/Complicity - To be associated with a violation of any University policy or regulation including, but not limited to, failure to remove oneself from the area or incident where a violation is being committed or attempted.
3. USF Student Code of Conduct/Failure to Comply - Failure to comply with an official request or directive of a University Official acting within the scope of their assigned duties. Failure to identify oneself or produce USF identification upon request by a University Official.
4. USF Student Code of Conduct/University Policy and/or Local Ordinance, State, or Federal Law (as determined by the University) - Failure to adhere or abide by policies, including but not limited to, local ordinance, state law or federal law. Adjudicating by an outside entity is not a prerequisite to a determination of responsibility by the University.

Petitioner was placed on an interim suspension out of concern for the safety of the campus and community. The University held an informational meeting on December 13, 2022, to explain the student conduct process, Petitioner's due process rights, the charges, and the allegations. At this meeting the hearing officer reviewed the available information, in part to determine whether the interim suspension would remain in effect. Petitioner attended this meeting, accompanied by his attorney. The hearing officer determined that there was sufficient information to uphold the interim suspension and Petitioner was notified of the decision the same day.

Petitioner was notified on January 20, 2023, that there would be a formal review hearing on February 9, 2023. This notice stated that the University had requested that two USF police officers attend the hearing as witnesses. Petitioner was also notified that he could call witnesses and submit records, exhibits, and written statements. The University also notified Petitioner of the information to be used at the hearing.

On January 31, 2023, Petitioner's attorney requested that the formal hearing be postponed. The University granted the request, notifying Petitioner on February 11, 2023 that the formal hearing had been rescheduled for February 16, 2023. This notice of rescheduling stated that the University intended to call one witness. That same day, the University notified Petitioner that the witness was unable to attend the formal hearing, due to the rescheduling from February 9 to February 16. The University provided Petitioner with the option to submit questions for the witness, which Petitioner chose not to do.

The formal hearing was held February 16, 2023, with Petitioner and his attorney in attendance. No witnesses appeared. The hearing officer identified the information to be considered during the hearing. Petitioner did not submit any additional information or call any witnesses. During the hearing, Petitioner was provided multiple opportunities to give statements and answer questions. Other than responding to two questions about his Twitter account, Petitioner declined to answer any questions or give any statements, citing the ongoing criminal case. Petitioner did not dispute the information given in the Sworn Criminal Complaint. The hearing officer explained to Petitioner that the final decision would be based solely on information presented at the hearing and that he could appeal the decision within five days.

On February 23, 2023, the hearing officer sent a letter notifying Petitioner that the University had found, based on a preponderance of the evidence, that Petitioner had violated two of the above listed Code of Conduct provisions. The hearing officer explained that the information contained in the Sworn Criminal Complaint was sufficient to support a finding that Petitioner had violated the Code of Conduct related to Complicity. Petitioner had been in communication for approximately 18 months with a person who intended to conduct a terrorist attack, had knowledge of this intent, and had used the University's computer network to engage in these communications. The hearing officer also notified Petitioner that there was sufficient support to find a violation of the Code of Conduct provision on University Policy and/or Local Ordinance, State, or Federal Law (as determined by the University), because Petitioner was specifically told by FBI agents not to delete any messages from his phone, and Petitioner deleted messages anyway. The University found that there was insufficient evidence to support a finding that Petitioner had violated the other two Code of Conduct Provisions listed above. Based on these two violations, the hearing officer notified Petitioner that he was permanently and immediately expelled from the University. Petitioner was again notified that he had five days to appeal the decision.

On February 27, 2023, Petitioner appeared before the Dean of Students to appeal his expulsion. Petitioner did not challenge the finding that he had violated the Code of Conduct, only the expulsion. Petitioner argued that he could not speak in his own defense because of the ongoing criminal investigation, and requested that he be placed on suspension until the criminal case was concluded. The Dean of Students notified Petitioner on March 10, 2023, that there was sufficient information to warrant a sanction of expulsion and that the decision was sustained. At this point, Petitioner was notified of his right to seek judicial review under Florida Rule of Appellate Procedure 9.190(b)(3).

Standard of Review

This Court has jurisdiction pursuant to rules 9.100 and 9.030(c)(2) of the Florida Rules of Appellate Procedure. The standard of review to be applied by a circuit court in a certiorari proceeding involves a determination of the following three components: (1) "whether procedural due process is accorded," (2) "whether the essential requirements of the law have been observed," and (3) "whether the administrative findings and judgment are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982); *Department of Highway Safety and Motor Vehicles v. Snelson*, 817 So. 2d 1045, 1047 (Fla. 2d DCA 2002). "[I]n such review the circuit court functions as an appellate court, and, among other things, is not entitled to reweigh the evidence or substitute its judgment for that of the agency." *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

Due Process

Petitioner argues that his due process rights were violated because the University stated in the initial notice that it would call two witnesses, then later informed Petitioner that no witnesses would appear at the formal hearing. The Fourteenth Amendment of the United States constitution, and Article I, Section 9 of the Florida Constitution, require that individuals be given fair notice and a reasonable opportunity to be heard before they are deprived of a right. What constitutes fair notice and a reasonable opportunity to be heard depends on the type of proceeding and the right at stake. University disciplinary hearings must afford due process, but universities are largely permitted to structure hearings and procedures as they deem fit, so long as the proceedings are essentially fair. *Hess v. Bd. of Trustees of S. Illinois Univ.*, 839 F.3d 668, 677 (7th Cir. 2016) ("In addition to notice, the Constitution requires only that students facing expulsion receive a meaningful opportunity to be heard."). In cases where students are given notice, permitted to call

witnesses, question testifying witnesses, testify on their own behalf, and have counsel present, constitutional due process safeguards are satisfied, even when a student faces expulsion. *Id.*

Notably, Petitioner does not argue that he was denied fair notice with regard to the proceeding. Petitioner appears to argue, albeit indirectly, that the University's ultimate decision not to call witnesses amounted to an abridgement of Petitioner's right to an opportunity to be heard. As a general matter of law, however, due process does not require the University to call witnesses in order to provide Petitioner with an opportunity to confront his accusers. *Compare Heiken v. Univ. of Cent. Fla.*, 995 So. 2d 1145, 1146 (Fla. 5th DCA 2008) (finding that, where a university's student conduct code does not guarantee the right to hear and question adverse witnesses, due process does not require that the university provide witnesses), *with Morfit v. Univ. of So. Fla.*, 794 So. 2d 655, 656 (Fla. 2d DCA 2001) (determining "that in school suspension cases, a relaxed due process standard is followed . . . . However, the school's own code guaranteed" the right to have witnesses testify directly to the hearing officer). *See generally United States v. Ward*, 448 U.S. 242, 248 (1980) (stating that Sixth Amendment protections apply only in criminal prosecutions).

In this case, Petitioner was notified of the allegations against him and afforded the opportunity to review the information that would be considered at the formal hearing. Petitioner requested that the formal hearing be postponed, and the University complied. Petitioner was notified that he could present his own information and witnesses. Petitioner was represented by counsel at both the informational meeting and the formal hearing. Twice at the formal hearing, Petitioner was asked if he would like to provide a statement and he declined.

Regarding the University's ultimate decision not to call witnesses at the formal hearing, the Court notes that the University's Code of Conduct has been updated since the Second District's *Morfit* decision in 2001. In Section VII, under the Due Process subheading, the Code now states that students have the right "to present relevant information and witnesses at the Formal Hearing," and an "opportunity to question witnesses and in specific cases, complainants in accordance with the Formal Hearing procedure." This updated version of the Code is similar to the code in *Heiken*; students have a right to call their own witnesses and confront any witnesses called, but the University does not guarantee that it will present live witness testimony at the Formal Hearing. The University did initially indicate its intent to call two witnesses at the formal hearing. When the University granted Petitioner's postponement, however, it first notified him that it would only

call one witness, then later that same day notified him that the witness would not testify due to a schedule conflict with the new hearing date. Petitioner was informed that he could submit questions for the absent witness ahead of time and Petitioner declined to do so. Petitioner was permitted to call his own witnesses and declined to do so.

Given that due process did not require the University to present live witness testimony at the hearing, that Petitioner was afforded ample notice in writing, that Petitioner was represented by counsel at the informational meeting and formal hearing, and that Petitioner was given multiple opportunities to speak and submit evidence in his defense, the Court finds that the University did not violate Petitioner's right to due process.

Essential Requirements of the Law

Petitioner argues that the University failed to comply with the essential requirements of the law because he was deprived of the opportunity "to confront one's adverse witnesses." A departure from the essential requirements of the law is more than a simple legal error. *Fassy v. Crowley*, 884 So. 2d 359, 363–64 (Fla. 2d DCA 2004). "There must be a violation of a clearly established principle of law resulting in a miscarriage of justice . . . A failure to observe the essential requirements of the law has been held synonymous with a failure to apply 'the correct law.'" *Id.* (citing *Combs v. State,* 436 So. 2d 93, 95–96 (Fla.1983); *Haines City Cmty. Dev. v. Heggs,* 658 So. 2d at 530).

Petitioner offers the same argument for deprivation of due process and failure to comply with essential requirements of the law; namely, the University initially indicated its intent to present witnesses at the hearing and ultimately did not do so. Due process in the context of a school disciplinary hearing is extremely broad. Petitioner has not identified or cited to a clearly established principle of law that requires a university to provide witnesses at a formal disciplinary hearing. Even if the Court were to assume that Petitioner is alleging that the University failed to comply with the essential requirements of its Code of Conduct, this argument would fail because, as previously discussed, the current version of the Code only requires the University to allow students to call witnesses and question witnesses that testify—the Code conspicuously *does not* require the University to call witnesses.

Competent, Substantial Evidence

Petitioner argues that the University lacked competent, substantial evidence to support the sanction of expulsion because it did not call witnesses at the formal hearing, stating that "[t]he bare

minimum requirements of due process cannot plausibly be satisfied if a public University imposes the most severe disciplinary sanction, expulsion, without calling a single witness." Petitioner argues that the University lacked a rational basis for imposing the sanction of expulsion.

When reviewing an agency decision, the Circuit Court is limited to determining whether the agency relied on competent, substantial evidence. The Court may not reweigh evidence. The Florida Supreme Court has clarified the difference between weight and sufficiency of evidence stating that "sufficiency tests the adequacy and credibility of the evidence, whereas weight refers to the balance of the evidence." *Wiggins v. Fla. Dep't of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1173 (Fla. 2017). Additionally, agency proceedings, even formal hearings, are not bound by the same rules of evidence as a trial court. *See Henson v. Honor Comm. of U. Va.*, 719 F.2d 69, 74 (4th Cir. 1983) (finding that "disciplinary proceedings require more stringent procedural protection than academic evaluations" but that "does not mean that complete adherence to the judicial model of decision making is required"). A University may rely on hearsay evidence, like a sworn affidavit from a law enforcement officer, where the evidence is competent. *Heiken v. Univ. of So. Fla.*, 995 So. 2d at 1146.

Petitioner has not, at any point, challenged the competency or credibility of any of the evidence relied on at the hearing. There is nothing in the petition or appendix to indicate that the Sworn Criminal Complaint was not competent or credible. Petitioner thus appears to argue that the University lacked substantial evidence to support its finding because it did not call witnesses at the formal hearing. As previously stated, the University is not required to call witnesses at a formal hearing for its decision to be valid, so the Court cannot say that a lack of live witness testimony amounts to a lack of substantial evidence. Additionally, the University did not rely on the Sworn Criminal Complaint alone, but also considered an incident report prepared by University staff, and a news article detailing Petitioner's arrest, all of which supported the same conclusion.

Conclusion

All of Petitioner's arguments rest on the fact that the University did not call witnesses to provide live testimony at Petitioner's formal hearing. In a formal disciplinary hearing for a student facing expulsion, there is no general due process requirement, or essential requirement of the University's Code of Conduct, that the school call its own witnesses. Because the University is not required to call its own witnesses to present live testimony at the formal hearing, the Court cannot say that the absence of live witness testimony constitutes a lack of competent substantial evidence.

Based on the foregoing, it is therefore **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is hereby **DENIED.**

DONE AND ORDERED in Chambers, at Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

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HONORABLE MELISSA M. POLO
Circuit Court Judge

Copies to:

Petitioner

Respondent