



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

MHRC No. ED/PA18-0419

January 30, 2020

Joan Gramer (Augusta)

v.

Kennebec Valley Community College (Fairfield)

I. Summary of the Case:

Complainant alleged that Respondent discriminated against her based on her disability when she was denied a reasonable modification after she was accepted into the Culinary Arts Program ("Program") at Kennebec Valley Community College ("College"). Respondent denied discrimination and posited that Complainant's requested modification would alter the fundamental nature of the Program. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, and Issues and Resolution Conference ("IRC"), and requests for information. Based upon this information, the Investigator recommends a finding that there are no reasonable grounds to believe that Respondent discriminated against Complainant based on her disability.

II. Jurisdictional Data:

- 1) Date(s) of alleged discrimination: August 24, 2018 – Present
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): October 26, 2018
- 3) Respondent is a public secondary school, which is a place of public accommodation and an educational institution within the meaning of the Maine Human Rights Act ("MHRA"). *See* 5 M.R.S. §§ 4553(2-A)&(8)(J). Respondent is therefore covered by the MHRA, the Americans with Disabilities Act, as well as state and federal regulations.
- 4) Complainant is represented by Kristin Aiello, Esq. Respondent is represented by Melissa A. Hewey, Esq.

III. Development of Facts:

- 1) Complainant provided the following in support of her claim:

Complainant is a qualified person with a disability.¹ Complainant applied to the Program and was accepted. Complainant requested reasonable modification to participate in the Program. The requested modification was permission for her husband ("Husband") to help Complainant with certain physical tasks, like moving and lifting. During the reasonable accommodation meeting, Respondent expressed concern about Husband acting as a personal aide because the courses are graded. In response, Complainant offered to audit the course. Respondent did not contact Complainant's physician and denied Complainant's request for reasonable modification.

2) Respondent provided the following in support of its position:

Respondent admits the Complainant was admitted to the Program and that her reasonable modification request was denied. However, Respondent denies discrimination on the basis of Complainant's disability. Respondent could not grant Complainant's requested modifications because they would fundamentally alter the nature and integrity of the Program. In effect, Husband would be performing the essential functions of the Program, not Complainant. Furthermore, even with a personal aide, Complainant would not be able to safely use knives and/or other potentially dangerous equipment. Complainant also lacks adequate mobility to safely work in the kitchen.

3) The Investigator made the following findings of fact based on the submissions and IRC:

- a) In May 2018, Complainant applied to the Program. On or around August 3, 2018, Complainant was accepted into the Program.
- b) The Program has a set of essential skills that every student must be capable of performing, with or without reasonable modification: (1) move culinary equipment and supplies in a timely and effective manner; (2) maintain mobility for extended periods of time; (3) withstand high and low temperature environments; (4) understand and effectively respond to equipment signals and gauges; (5) safely use knives and other potentially dangerous equipment; (6) perform certain math calculations common in food service; (7) comply with instructions and designated safety standards; (8) tolerate exposure to allergens, dyes and chemicals common in the kitchen; and (9) function effectively in a team environment.
- c) On or around August 8, 2018, Complainant requested a reasonable modification to participate in the Program. Complainant requested permission for Husband to act as a personal aide and/or permission to audit the classes.
- d) On or around August 22, 2018, Complainant met with Respondent's Counseling and Disability Services Coordinator ("Coordinator") and the Program Director ("Director") to discuss reasonable modifications.
- e) On August 24, 2018, Respondent notified Complainant that her request for reasonable modification was denied, stating: "[A]fter careful review of your request . . . we have determined that your physical limitations do not allow you to perform the essential functions of the program. . . . [and] having a personal aid[e] perform skills on which students are graded fundamentally alters the nature of the program and is therefore not a reasonable accommodation."

¹ [REDACTED], are per se disabilities under the MHRA. 5 M.R.S. § 4553-A(1)(B).

IV. Analysis:

- 1) The MHRA requires the Commission to “determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 M.R.S. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA defines unlawful educational discrimination, in part, to “on the basis of ...disability...[e]xclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity.” 5 M.R.S. § 4602(3)(A). Moreover, a public school is a “place of public accommodation” under the MHRA. 5 M.R.S. § 4553(8)(J). It is unlawful public accommodations discrimination to “withhold from or deny the full and equal enjoyment to any person, on account of race or color...any of the accommodations, advantages, facilities, goods, services or privileges of public accommodation, or in any manner discriminate against any person in the price, terms or conditions upon which access to accommodation, advantages, facilities, goods, services and privileges may depend.” 5 M.R.S. § 4592.
- 3) Unlawful discrimination includes a “failure to make reasonable modifications in policies, practices or procedures, when modifications are necessary to afford the goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless, in the case of a private entity, the private entity can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations.” 5 M.R.S. § 4592(1)(B).
- 4) To establish a denial of reasonable modification by a public accommodation/educational institution, Complainant must show that:
 - a) She comes within the protections of the MHRA as a person with a disability;
 - b) Respondent operates a public accommodation/educational institution under the MHRA;
 - c) Respondent has in effect a policy, practice, or procedure that, directly or indirectly because of Complainant’s disability, results in Complainant’s inability to access Respondent’s goods, services, facilities, advantages, or accommodations;
 - d) Complainant requested a reasonable modification in that policy, practice, or procedure, which, if granted, would have afforded her access to the desired goods, services, facilities, privileges, advantages or accommodations;
 - e) The requested modification—or modification like it—was necessary to afford the access; and
 - f) The Respondent nonetheless refused to modify the policy, practice, or procedure.

See 5 M.R.S. § 4592(1) & (1)(B); *Dudley v. Hannaford Bros. Co.*, 333 F.3d 299, 307 (1st Cir. 2003). In proving that a modification is “reasonable,” Complainant must show, at least on the face of things, it is feasible for the public accommodation under the circumstances. *See Reed v. LePage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001) (employment case). Upon such a showing, Respondent must make the modification unless it proves that doing so would alter the fundamental nature of its goods, services, facilities, privileges, advantages or accommodations; would impose an undue financial burden; or that the requested modification poses a direct threat to the health or human safety of others. *See* 5 M.R.S. § 4592(1) & (1)(B); *Maine Human Rights Comm’n v. City of*

South Portland, 508 A.2d 948, 955 (Me. 1986); *Dudley v. Hannaford Bros. Co.*, 333 F.3d at 308; *Halpern v. Wake Forest University Health Services*, 669 F.3d 454, 464 (4th Cir. 2012).

- 4) Complainant has established her prima facie case by showing: (1) she is a person with a disability; (2) Respondent is a place of public accommodation/educational institution; (3) Complainant is unable to access Respondent's Program; (4) Complainant requested that her husband act as a personal aide and/or to audit the courses as a reasonable modification, which would allow her access to the Program; (5) the requested modification was necessary to afford access to the Program; and (6) Respondent refused to accommodate Complainant's request for modification. Complainant has also shown that her requested modifications appeared reasonable on their face in that they would be at no cost to the Respondent and were therefore feasible to make.
- 5) Complainant's claim fails nonetheless, because Respondent has established that Complainant's request for a personal aide and/or to audit the class would fundamentally alter the nature of the Program², with reasoning as follows:
 - a) The Program has a set of essential skills that every student must be capable of performing, with or without reasonable accommodation. Students must be able to perform the essential skills of the Program courses to progress to later courses.³ In this case, Complainant's personal aide would be performing the essential functions of the Program, not the Complainant herself.
 - b) Complainant and Husband readily admitted that Complainant would not be able to perform many of the required skills on her own. When Respondent asked her about performing skills like breaking down a chicken, Complainant responded that Husband would be helping her. In fact, Husband applied to and gained acceptance to the Program solely intending to participate as Complainant's personal aide. Complainant and Husband appeared to consider themselves a "team" in the kitchen. While culinary students do work in teams of two, those teams are intended to rotate regularly so students learn to work with a variety of individuals, as they will in the culinary profession.
 - c) Respondent also provided that auditing is not permitted for skills-based courses because students need to demonstrate their abilities to perform the essential functions of the Program.⁴ Spots in the culinary arts program are limited only to degree-seeking students; the Program accepts less than 20 students to each new class.

² Respondent also alleged that Complainant posed a potential safety risk to herself and the other students due to her lack of mobility and inability to safely use knives. However, this was not the crux of Respondent's position. Rather, Respondent properly showed that Complainant's requested accommodations would fundamentally alter the nature of the Program.

³ All required Program courses must be taken in a predetermined sequence, with each level of courses building on skills required for future courses and the culinary profession.

⁴ Respondent demonstrated during the IRC that this was an extraordinary case; it had never denied a request for reasonable accommodation before. However, given the extraordinary facts of Complainant's situation and her requested modifications, Respondent was unable to accommodate her needs without fundamentally altering the nature of the Program.

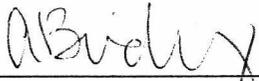
d) Complainant argued that Respondent failed to engage in good faith in the interactive process by exploring other possible accommodations for Complainant. Respondent credibly explained that in its discussions with Complainant about accommodations, it was clear that she only wanted to participate with Husband to assist her. Complainant and Husband stated that they enjoy cooking together and wanted to participate in Program together as a therapeutic activity for Complainant.

6) Discrimination on the basis of disability is not found.

VI. Recommendation:

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

1. There are **No Reasonable Grounds** to believe that Kennebec Valley Community College discriminated against Joan Gramer on the basis of disability; and
2. The complaint should be dismissed in accordance with 5 M.R.S. § 4612(2).



Alexandra R. Brindley, Investigator