

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING, AND IF FILED, DETERMINED

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

JASON M. RIVERA,
Petitioner,

v.

UNIVERSITY OF SOUTH FLORIDA,
Respondent.

Ref. No.: 15-000065AP-88B

UCN: 522015AP000065XXXXCI

ORDER AND OPINION

Petitioner challenges a final determination by the University of South Florida (“USF”) to revoke his provisional admission for the Spring 2015 semester. Petitioner asserts, among other things,¹ that he should have been afforded an appeals process under Florida’s Administrative Procedure Act (“APA”), chapter 120, Florida Statutes. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

On October 23, 2014, Petitioner applied for readmission to USF. He had been suspended in 2011 after being found guilty of disorderly conduct and violation of probation, both violations of the USF Code of Student Conduct. Petitioner’s appeal of the suspension to USF was ultimately dismissed.

Based on Petitioner’s application for readmission, USF provisionally admitted him on October 31, 2014. However, after reviewing its records, USF revoked his admission because he had not disclosed his previous disciplinary history. Notice of the revocation was sent to Petitioner on November 18, 2014. Petitioner sent two written appeals to USF, the first in December 2014, and the second in January 2015. The appeals were reviewed first by USF’s Faculty Committee, then by the Dean of Admissions. The revocation was ultimately affirmed through this process. Notice of this final affirmance was sent to Petitioner on January 8, 2015.

¹ See footnote 2.

Petitioner filed an initial brief with the Second District Court of Appeals on February 26, 2015. The DCA transferred the case to this Court on November 24, 2015, for review as a petition for writ of certiorari, because USF is acting pursuant to its authority under article IX, section 7(d) of the Florida Constitution, and not as an agency under the APA. In his initial Petition for Writ of Certiorari, which this Court ordered Petitioner to file, he attached an untimely letter as the order to be reviewed, and this Court therefore dismissed the Petition on January 13, 2016. Thereafter, Petitioner filed a motion for rehearing, which this Court granted. Petitioner then filed the “Brief of Appellants [sic] Amended Record Re-Hearing” which this Court accepted as an amended Petition for Writ of Certiorari.

Standard of Review

The standard of review for administrative action in circuit court requires the court to determine “(1) whether procedural due process was accorded; (2) whether the essential requirements of the were observed; and, (3) whether there was competent, substantial evidence to support the administrative findings and judgment.” *McDougall v. Van House*, 801 So. 2d 118, 121 (Fla. 2d DCA 2001).

Discussion

The Florida Constitution establishes a single state university system governed by the Board of Governors (“BOG”), which has the power to “operate, regulate, control, and be fully responsible for the management of the whole university system.” Art. IX, § 7, Fla. Const. This includes the power to regulate state university admissions. *Rivera v. Univ. of S. Fla. St. Petersburg*, 176 So. 3d 363, 363 (Fla. 2d DCA 2015). The BOG must “establish rules and guidelines ensuring fairness and due process in judicial proceedings involving students in the state university system.” *Morfit v. Univ. of S. Fla.*, 794 So. 2d 655, 656 (Fla. 2d DCA 2001).

In relevant part, the BOG regulations require each university’s board of trustees to establish “criteria, policies, and procedures” for student admissions, which must be posted on the university’s website and catalogs. Fla. Bd. of Governors, Regulations, § 6.001(1), *available at* <http://www.flbog.edu/about/regulations/regulations.php>. Universities may deny admission or may provide other disciplinary action to individuals whose admissions documents contain “false, fraudulent, or incomplete statements.” *Id.* at § 6.001(8).

Here, Petitioner contends, among other arguments,² that he should be afforded an appeals process pursuant to the APA to appeal USF's rescission of his admission. However, the APA does not apply because USF is acting pursuant to its powers derived from the state constitution and the powers given to the BOG. Pursuant to BOG regulations, USF has created a Student Code of Conduct, which establishes criteria, policies, and procedures for the admission of students, and has posted this information on its website and in its admission catalogs. Univ. of S. Fla. Sys., Regulations, USF6.0021, *available at* <http://regulationspolicies.usf.edu/regulations>. Policy 3.018, section (3)(a)(6) provides “[a]n application for admission. . . submitted by or on behalf of a student containing false, fraudulent, or incomplete information may result in the denial of admission, or future semester registration and/or **rescission of admission**, credit or degrees awarded by USF System institutions.” *Id.* (emphasis added).

Although there is no USF regulation specifically providing for appeal after rescission of admission, USF has afforded Petitioner due process by allowing him to appeal his revoked admission, first to the USF Faculty Committee, and then to the Dean of Admissions, both of which affirmed the revocation.

Furthermore, competent, substantial evidence supports USF's revocation of Petitioner's provisional admission. Competent and substantial evidence is evidence that is “sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.” *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). Petitioner's application for readmission, completed on October 23, 2014, contained a false statement when he answered “no” to the question:

Are you currently, or have you ever been, charged with or subject to disciplinary action for scholastic (such as plagiarism or cheating) or any other type of behavioral misconduct at any educational institution?

Since Petitioner was previously found guilty of disorderly conduct and violation of probation under USF's Student Code of Conduct, this was a false statement. This false statement is sufficiently relevant and material to support USF's decision to revoke Petitioner's admission. *See Morfit* 794 So. 2d at 656 (noting that universities that follow their adopted student code of conduct ensure that due process is afforded to students).

² Petitioner also contends that USF is blocking his admission by placing academic holds and requiring a declaration of a major that he has already declared. However, we decline to address these arguments as they are not relevant to the final order that is the subject of this Petition.

Conclusion

Because Petitioner was afforded procedural due process, the essential requirements of law were observed, and competent, substantial evidence supported USF's revocation of Petitioner's admission, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida this

8 day of August 2016.

Original Order entered on August 8, 2016, by Circuit Judges Jack Day, Pamela A.M. Campbell, and Thomas M. Ramsberger.

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