

FILED
Court of Appeals
Division I
State of Washington
4/12/2022 1:48 PM

100842-2

FILED
SUPREME COURT
STATE OF WASHINGTON
4/18/2022
BY ERIN L. LENNON
CLERK

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON

DIVISION ONE Case No. 83460-6-1

In the matter of

PRABHJOT KANG,

Appellant

v.

WESTERN GOVERNORS UNIVERSITY (WGU)

WESTERN GOVERNORS UNIVERSITY WASHINGTON

Appellee

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

PETITION FOR REVIEW

Prabhjot Kang, Pro Se
4227 South Meridian, Suite C-277
Puyallup WA 98373
(253) 216-4282

Ms. Prabhjot Kang is hereby filing a petition before the court requesting a review of the court's unpublished opinion of March 14th 2022. Her petition is based on the following grounds:

1. There is a question of constitutionality involved that needs to be reviewed by the court. The decision is partly based on an unfair, unethical, and unconstitutional tradition of deference afforded to one class of citizens in order to dilute the full scrutiny of their law breaking. It allows them to keep breaking the laws of the land with impunity. This so-called tradition of deference afforded to private universities that can be correctly named as American Oligarchs, violates the rights of another unfairly and unconstitutionally created class of citizens known as students of private universities. It means the students of private universities in the USA must be considered second class citizens and are not entitled to equal protection of law or full due process. The fact is the

American Oligarchs have carved out a corrupt constituency disguised as deference to get favorable treatment that has no basis in law and has no constitutional foundation. The court has failed to cite any amendment in the US Constitution or in the WA state constitution for that matter that affords more human rights, civil rights, or constitutional rights to students of public universities than those of private universities. The court could not even find a case law in Washington State to base its decision on.

2. Ms. Kang was born and raised in the USA, and she is turning only 28 in a week. She has been fighting against this Hindutava Tyranny for the last 3 years, which has been steadily penetrating the American life for quite some time. Ms. Kang belongs to an ethnic and religious minority group known as the Punjabi Sikhs originating from Hindu dominated India. Ms. Kang has inherited this identity from her parents both of whom belong to this minority group.

Therefore, she has learned everything that this group has endured and is still enduring at the hands of successive Hindu dominated Governments in India. Just recently, hundreds of members belonging to this group perished during the year long farmers protest movement. They were subjected to harsh and cruel treatment by India's ruling Hindutava tyrants because this movement was started and lead by this courageous minority group from the state of Punjab, the birthplace of Ms. Kang's father. Ms. Kang has been unfairly subjected to capricious treatment at the behest of Hindutava Warriors (Hindu agents) of WGU. Even though one of the three Hindu agents namely Mr. Pandya claims not to be subscribing to the Hindu religion, that does not change anything because one does not need to subscribe to the Hindu religion in order to act as a Hindu agent.

3. This review will be of great public interest and significance with far reaching implications. The Indian

minorities in India as well as in the Diaspora have been eagerly awaiting the decision, and now the review. The Courts keep affording this so called deference to WGU, the embezzler of \$713 million worth of public funds. This is no speculation because it was concluded by the US Inspector General. By those standards the next candidate for this so called deference will be America's second largest lender, Nationstar Mortgage/Mr. Cooper, the loser of a multi-million dollar class action lawsuit that is illegally trying to foreclose on Ms. Manjeet Kaur Kang. Why? Because Manjeet Kaur Kang is Mr. Amrik's Kang's wife and the assistant editor of PUNJABI MANCH for over two decades and she happens to be Ms. Prabhjot Kang's mother and thereby needs to be punished. Is that another speculation? No it is not because it is the same house that was scheduled to be foreclosed upon more than ten years ago when Ms. Kang's father Amrik Kang was dragged through the proverbial mud for three years in

Pierce County Superior court by filing false sexual assault charges against him by the same Hindutava mafia, spread over the country with its tentacles in the Seattle area. It is not hard to connect the dots to understand this entire saga. The Hindutava agents are eating America's lunch by penetrating American institutions the same way China has been eating America's lunch through unfair trade practices and theft of intellectual property for which there is not enough room here to elaborate on.

The one reason these American Oligarchs have been getting this preferential treatment disguised as the so called deference is because the US Courts have ceded their authority to them even though it is supposed to be the other way around. This tradition is nothing but the hallmark of a muddied jurisprudence of a banana republic to eventually gut our republic that needs to be rescued before it is too late. There is still time to "Keep The Republic" if the US judiciary shows some courage to act

on behalf of the US Constitution by not affording any so called deference to these American Oligarchs namely its private Universities by using its authority to start “second guessing” them. These American Oligarchs embezzle public funds with impunity enriching themselves at the backs of the poor and struggling students of private universities whose lives have been essentially reduced to the level of slave labor of Xinjiang province of China by burying them under unbearable student debt for most of their productive lives.

Hindutava is the Antithesis of the US Constitution

India’s Hindutava tyrants expect all people of East Indian descent to tow the line and accept the Supremacy of the Hindutava philosophy of India’s Racist Hindu rulers. That was precisely the reason when US deputy national security advisor Daleep Singh recently visited India, the Hindutava warriors criticized him for lecturing them and

not being favorable to India, despite him being a person of Indian descent. That is the kind of mindset the Hindu rulers of India have exhibited time and time again and never hesitate from those kinds of demands and expectations from non Hindus of East Indian descent. This is no speculation. These are published facts proven by India's oppressed minorities like the Sikhs, Nagas, Mizos Christians, Dalits, and many others for decades. That was the reason one of the Hindu agents of WGU, Dr. Gauri Sawant's husband tried to bribe Ms. Kang's father Amrik Singh Kang. When that failed, the Indian Govt. made a direct attempt to bribe Ms. Kang's father by trying to invite him to India for a speaking gig and promising to bestow him with a major national award of India. Ms. Kang's father declined to accept the invitation. Then the Indian Government's agents tried to persuade him to go from India's consulate to the consulate in North America to organize religious poetry meets in honor of the first

Guru of the Sikhs during his 550th birth anniversary. Ms. Kang's father fearing for his personal safety, declined to enter any Indian embassy or consulate anywhere. Then the Indian Government agents further diluted the invitation to get at least something out of him by offering him to chair one Religious Poetry Meet ONLY via Zoom from his own studio in the USA that he accepted with caution. It was broadcast live from the central TV station in New Delhi controlled by the Central Government of India. It was also broadcast live simultaneously by Mr. Amrik Kang himself on his own channel known as PUNJABI MANCH Live USA , against the objection of the agents of the Indian Govt. Ms. Kang's father did not want his words to be hacked and misconstrued by the agents of Hindutava. After chairing the Poetry meet he was sent a form by the cultural ministry of India to fill in to receive an Award Certificate and a Monetary Award. Mr. Kang refused to fill in the form to accept any award certificate or

a monetary award. All this happened right before the scheduled jury trial in Ms. Kang's case. This pulverized Plan-A of India's Hindu Agents. When Plan-A of the Hindu Agents failed, the jury trial already scheduled and agreed upon by both sides was thwarted through legal jugglery of WGU lawyers and they opted for Plan-B, choosing the gimmicks of a Summary Judgment route.

Constitutional Paradox: Why doesn't this so called tradition of deference afforded to private universities apply to other businesses like bouquet makers, cake bakers, wedding planners, etc.? These businesses are told that they cannot refuse service or discriminate against certain groups even when they do not subscribe to the same philosophy, faith or lifestyle. The reason is that the courts have rightfully started to step in and protect the Constitutional rights of those minority groups e.g. gays, lesbians and many others when they started to organize and protest. What is so special about the American

Oligarchs the so called private universities that they deserve this deference? What Amendment of the US Constitution or the Washington State Constitution affords them such deference? Ms. Kang has not found such an amendment, and neither can the courts cite one because it does not exist. This whole practice is unconstitutional and corrupt and needs to be exposed as such.

4. The unpublished opinion of the court reverses an established principal of law that does not allow a summary judgment to be entered as long as there is even one outstanding issue (CP 612). However, in this case all six issues are still outstanding. Those six outstanding issues have been described by Ms. Kang in sections (A), (B), (C), (D), (E), and (F) of her July 1st, 2021 brief. (See brief of July 1st, 2021 that she is placing in the Appendix only by reference because the court already has it)

Conclusion: The unpublished opinion of March 14th, 2022 of the court of appeals violates the principles of fundamental fairness, and completely overlooks the matter of outstanding issues. By doing so, the court stops the further inquiry and jeopardizes the civil, human, and constitutional rights of Ms. Kang, and therefore it needs to be reversed. Ms. Prabhjot Kang hereby requests the court to send the matter back to the superior court for a jury trial and let the chips fall where they may.

I hereby certify that this document contains 1698 words in accordance with RAP 18.17.

Respectfully submitted this 12th day of April, 2022

Prabhjot K. Kang

Prabhjot K. Kang

CERTIFICATE OF SERVICE

The undersigned certifies that on the below date, I caused service in the manner listed below, a true and correct copy of my attached Petition For Review to:

Beth M. Strosky/David Russell
KELLER ROHRBACK L.L.P.
1201 Third Ave Suite 3200
Seattle WA 98101-3052

via Greyhound Legal, Tacoma, WA whose Declaration of service is also filed with the court.

Dated this 12th day of April 2022 Puyallup WA

Prabhjot K. Kang

Prabhjot Kang, Pro Se

4227 South Meridian, Suite C-277 Puyallup WA 98373

253-571-8506 Prabhjot1938@PunjabiMench.com

253-216-4282 PrabhjotKKang@comcast.net

PRABHJOT KANG - FILING PRO SE

April 12, 2022 - 1:48 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 83460-6
Appellate Court Case Title: Prabhjot Kang, Appellant v Western Governors University, Respondent
Superior Court Case Number: 19-2-08319-6

The following documents have been uploaded:

- 834606_Affidavit_Declaration_20220412134404D1432258_4143.pdf
This File Contains:
Affidavit/Declaration - Service
The Original File Name was Kang v. WGU-affidavit-of-service.pdf
- 834606_Petition_for_Review_20220412134404D1432258_1863.pdf
This File Contains:
Petition for Review
The Original File Name was Kang v. WGU Petition for review and certificate of service.PDF

A copy of the uploaded files will be sent to:

- PrabhjotKKang@comcast.net;Prabhjot1938@PunjabiManch.com
- bstrosky@kellerrohrback.com
- drussell@kellerrohrback.com

Comments:

Sender Name: Prabhjot Kang - Email: PrabhjotKKang@comcast.net
Address:
4227 South Meridian Ste C-277
Puyallup, WA, 98373
Phone: (253) 604-1261

Note: The Filing Id is 20220412134404D1432258

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION I

Plaintiff / Petitioner: PRABHJOT KANG	Case No: 83460-6-1
Defendant / Respondent: WESTERN GOVERNORS UNIVERSITY (WGU) WESTERN GOVERNORS UNIVERSITY WASHINGTON	DECLARATION OF SERVICE

The undersigned, being first duly sworn on oath deposes and says: That he/she is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen years, not a party to or interested in the above entitled action and competent to be a witness therein.

That on Tue, Apr 12 2022 at 01:18 PM, at the address of 1201 3RD AVE Ste 3200, within SEATTLE, WA, the undersigned duly served the following document(s): PETITION FOR REVIEW in the above entitled action upon BETH MARIE STROSKY, by then and there, at the usual place of business of said person(s), personally delivering 1 true and correct copy(ies) of the above documents into the hands of and leaving same with JOHN MURRAY.

Description:

Name: JOHN MURRAY

Age: 53+

Ethnicity: Caucasian

Gender: Male

Weight: 180

Height: 6'

Hair: Brown

Eyes: Brown

Other: Glasses

Relationship: Authorized Agent

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

Date: 4/12/2022



EMILY BEEBE

29655

GreyhoundLegal.com

9508 Front St S

Lakewood, WA 98499

(253) 230-9675

PRABHJOT KANG - FILING PRO SE

April 12, 2022 - 1:48 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 83460-6
Appellate Court Case Title: Prabhjot Kang, Appellant v Western Governors University, Respondent
Superior Court Case Number: 19-2-08319-6

The following documents have been uploaded:

- 834606_Affidavit_Declaration_20220412134404D1432258_4143.pdf
This File Contains:
Affidavit/Declaration - Service
The Original File Name was Kang v. WGU-affidavit-of-service.pdf
- 834606_Petition_for_Review_20220412134404D1432258_1863.pdf
This File Contains:
Petition for Review
The Original File Name was Kang v. WGU Petition for review and certificate of service.PDF

A copy of the uploaded files will be sent to:

- PrabhjotKKang@comcast.net;Prabhjot1938@PunjabiManch.com
- bstrosky@kellerrohrback.com
- drussell@kellerrohrback.com

Comments:

Sender Name: Prabhjot Kang - Email: PrabhjotKKang@comcast.net
Address:
4227 South Meridian Ste C-277
Puyallup, WA, 98373
Phone: (253) 604-1261

Note: The Filing Id is 20220412134404D1432258

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PRABHJOT KANG,)	No. 83460-6-I
)	
Appellant,)	DIVISION ONE
)	
v.)	
)	
WESTERN GOVERNORS)	
UNIVERSITY, a foreign nonprofit)	
corporation; and WESTERN)	UNPUBLISHED OPINION
GOVERNORS UNIVERSITY-)	
WASHINGTON, a Washington)	
nonprofit corporation,)	
)	
Respondents.)	

BOWMAN, J. — Western Governors University (WGU) discovered five plagiarized papers Prabhjot Kang submitted as a student there. WGU sanctioned Kang for academic dishonesty. Kang sued WGU for breach of contract; violation of the Consumer Protection Act (CPA), chapter 19.86 RCW; and discrimination under the Washington Law Against Discrimination (WLAD), chapter 49.60 RCW, asserting that Hindu East Indian employees of WGU manufactured evidence against her because of her Sikh religion and Punjabi ethnicity. The trial court granted summary judgment dismissal for WGU. Because Kang presents no competent evidence supporting the essential elements of her claims, we affirm.

FACTS

WGU is an online, private academic institution. WGU-Washington is a wholly-owned subsidiary of WGU (collectively WGU). Between November 2013 and April 2016, Kang attended WGU and graduated with a bachelor's degree in business management. Then, in May 2017, Kang enrolled in a master of business administration (MBA) program.

Like all WGU students, Kang agreed to abide by a "Code of Student Conduct" (Code), which prohibits acts of academic dishonesty, including plagiarism. WGU defines "plagiarism" as

the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

In its Code, WGU reserves the right to review all work submitted to the university. To verify its students produce original work, WGU requires them to submit written assignments through a plagiarism detection software called "Turnitin." WGU encourages students to submit their drafts to Turnitin to check for plagiarism before they submit their final draft.

In October 2018, the WGU Assessment Security and Authenticity Department (Authenticity Department) conducted an "originality review" of Kang's work. WGU explained that it investigated Kang because another investigation implicated much of her work.¹ It determined that five papers Kang submitted between May 2017 and June 2018 plagiarized other students' work.

¹ The other investigation involved Kang's sister, who was also an MBA student at WGU.

Authenticity Department personnel determined that Turnitin did not flag Kang's assignments for plagiarism because they fell within its "allowed threshold." Still, it appeared to the Authenticity Department that Kang was committing "thought-progression" plagiarism. She started with another student's paper and reworded it, or revised it down, "to the point that the language was different enough that Turnitin would likely not catch it but the original author's thought process and ideas were still obvious." The Authenticity Department created side-by-side comparisons of each of Kang's papers with the papers it alleged she plagiarized. The Authenticity Department also obtained metadata from two of Kang's papers showing other students as the original authors of the files.

The Authenticity Department referred its findings to the WGU Office of Student Conduct. WGU assigned the case to student conduct officer Kumar Pandya. Pandya notified Kang by e-mail that the Authenticity Department referred her work to his office for plagiarism. He attached the supporting evidence. That same day, Kang met with Pandya by telephone to discuss the alleged plagiarism. Pandya recorded the call per Code policy.

During that meeting, Kang first defended her work by suggesting that the papers matched other students' work because she shared a laptop with her sister. When Pandya informed Kang that the papers matched students' work other than her sister's, Kang suggested that "when thousands of students are writing about the same stuff and there are thousands of papers floating out there, then it's bound to match[] something" because "[t]here are only so many ways

you can write something.” Kang then asserted she relied on the Turnitin software to ensure her work did not “accidentally” match someone else’s, and that Turnitin never flagged her drafts. After hearing her defenses, Pandya told Kang that he did not believe she was being truthful and that the WGU Student Conduct Board (SCB) would schedule a hearing to determine whether there was evidence of a student conduct violation. The SCB consisted of four voting members and Pandya, a nonvoting member.

Before the SCB hearing, Kang submitted a letter to the board stating the same defenses. At the hearing, the SCB heard from two Authenticity Department investigators. The investigators described each instance of plagiarism they found in Kang’s papers and presented their evidence. The SCB then heard from Kang, who again denied plagiarizing other students’ work, but offered more explanations. She encouraged the SCB to “look at things outside the box and see there are other ways that things could happen.” Kang offered that Turnitin “could have a glitch” or could have been “hacked” because “lots of companies have gotten hacked.” Kang also offered that she had no access to her original documents, so “there could be human [s]henanigans, there could be hacking, there could be file corruption.”

After the hearing, the SCB determined that there was clear and convincing evidence that Kang violated the Code’s prohibition against plagiarism and imposed sanctions. The SCB issued a “Level 2 Conduct Warning” on Kang’s permanent disciplinary record. It “zeroed out” the grades for four of the papers and required Kang to rewrite them. It changed Kang’s grades in two classes to

“not passed” until she submitted original papers. And it required Kang complete an online ethical development seminar at her cost and submit a two-page reflection essay on academic integrity and professional ethics.

Kang appealed the SCB’s decision to the WGU Appellate Board. In preparing her appeal, Kang e-mailed Pandya, seeking declarations from him and SCB panel member Dr. Gauri Sawant attesting that “they have no affiliations, connections, or communications with any East Indian political parties/entities in the United States, India, or elsewhere,” or recuse themselves. Kang made the same request of appeal board member Dr. Rashmi Prasad. Kang explained that she was asking not because of “their race, religion, gender, ethnicity, national origin, skin color, etc.” but “only because of their political affiliation to a foreign state.” The WGU employees did not provide the requested declarations or recuse themselves.

Kang then submitted a nine-page letter and attached 10 exhibits in support of her appeal. She generally denied plagiarizing and argued that the SCB reached the wrong conclusion. She then, again, broadened the scope of her defense. Urging the Appellate Board to “think outside the box” to “unravel the real facts of this saga,” she argued that the metadata evidence was “[d]octored,” that WGU deliberately targeted her for investigation, that Pandya was scheming against her, and that the SCB’s decision was “[a] convenient tool for [her] personal destruction in the East Indian community.” Kang labeled the disciplinary proceedings as “ongoing propaganda against [her] about [her] intelligence” because of her Sikh religion and Punjabi ethnicity. She called them

“a highly sophisticated attempt to achieve [her] personal destruction and to damage the reputation of [her] parents,” which she claimed was in line with the “pattern of propaganda in the gender biased East Indian community.” She then discussed rumors “circulating in the East Indian community for almost a quarter century” about her being “a dumb girl” because of circumstances involving her birth after her mother experienced a complicated pregnancy.

After reviewing the verbatim record of the SCB hearing and supporting documents as well as Kang’s submitted material, the Appellate Board concluded that the SCB hearing was fair and “in conformity with prescribed procedures.” It determined that the decision rested on “substantial” evidence and that the sanctions were proportionate.

Kang sued WGU in May 2019 and filed an amended complaint in September 2019. She asserted claims of breach of contract and violation of the CPA, alleging that WGU failed to follow its policies in the Code. Kang also asserted a claim under the WLAD. She alleged that Hindu members of the SCB and Appellate Board, working as “agents of the foreign political and religious entities of East Indian descent,” targeted her and fabricated a plagiarism case against her because of her Sikh religion and Punjabi ethnicity. She claimed that the SCB and Appellate Board used the WGU disciplinary proceedings “as a breeding ground to hatch a conspiracy against” her to destroy her career, destroy the reputation of her parents, and to “take revenge” because of her and her father’s “role in bringing down the state Government in East Punjab (India)

through our literary and artistic activities on social media as well as on the ground.”

In January 2021, WGU moved for summary judgment dismissal of Kang’s lawsuit. It argued Kang failed to produce “any actual evidence” to establish the essential elements of each of her claims. Kang responded by filing a declaration in which she denied facts alleged in the underlying disciplinary action and questioned the legitimacy of various documents presented to the SCB. She asserted that WGU submitted “falsified” and fraudulent evidence, attributing the “corrupted” evidence to “the three Hindu agents of WGU,” Pandya, Dr. Sawant, and Dr. Prasad.

The court heard oral argument on the motion on Friday, February 5, 2021. At the end of the hearing, the court granted summary judgment for WGU on Kang’s breach of contract and CPA claims. On the following Monday, the court granted summary judgment for WGU on Kang’s WLAD claim, and entered an order dismissing Kang’s lawsuit with prejudice.

Kang appeals.

ANALYSIS

Kang argues that the trial court erred by granting summary judgment for WGU because she raised genuine issues of fact sufficient to support each of her claims.² We disagree.

² WGU urges us to decline review of Kang’s assignments of error because her brief does not comply with RAP 10.3(a)(6). But RAP 1.2(a) calls for a liberal interpretation of the rules “to promote justice and facilitate the decision of cases on the merits.” *Viereck v. Fibreboard Corp.*, 81 Wn. App. 579, 582, 915 P.2d 581 (1996). Because Kang adequately identifies her assignments of error and generally supports them with argument, we consider the merits of her appeal.

We review rulings on summary judgment de novo, performing the same inquiry as the trial court. Kruse v. Hemp, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993). Summary judgment is appropriate only where “there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” CR 56(c). The moving party bears the burden of proving that there is no genuine issue as to any material fact. Lamon v. McDonnell Douglas Corp., 91 Wn.2d 345, 349, 588 P.2d 1346 (1979). We consider all facts submitted and all reasonable inferences that can be drawn from those facts in the light most favorable to the nonmoving party. Ellis v. City of Seattle, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000).

A defendant may move for summary judgment by showing the plaintiff lacks competent evidence to support an essential element of their case. Guile v. Ballard Cmty. Hosp., 70 Wn. App. 18, 25, 851 P.2d 689 (1993). If the defendant makes this showing, the burden shifts to the plaintiff to establish the existence of the essential element. Pagnotta v. Beall Trailers of Or., Inc., 99 Wn. App. 28, 36, 991 P.2d 728 (2000). The plaintiff must present specific facts showing a genuine issue for trial. Pagnotta, 99 Wn. App at 36. The plaintiff cannot meet this burden by responding with conclusory allegations, speculative statements, or argumentative assertions. Pagnotta, 99 Wn. App at 36. If the plaintiff fails to meet their burden, summary judgment for the defendant is proper. Knight v. Dep’t of Labor & Indus., 181 Wn. App. 788, 795-96, 321 P.3d 1275 (2014).

Breach of Contract

Kang contends she presented competent evidence that WGU breached its contract and the implied covenant of good faith and fair dealing by failing to follow its written disciplinary procedures and failing to provide her a fair disciplinary hearing.

To prevail on a breach of contract claim, a plaintiff must establish a contractual duty, breach of that duty, and that the breach proximately caused the plaintiff damage. Nw. Indep. Forest Mfrs. v. Dep't of Labor & Indus., 78 Wn. App. 707, 712, 899 P.2d 6 (1995). And to show breach of an implied duty of good faith and fair dealing, a plaintiff must establish that the defendant did not perform in good faith the specific obligations imposed by their agreement. Bill & Melinda Gates Found. v. Pierce, 15 Wn. App. 2d 419, 433, 475 P.3d 1011 (2020), review denied, 197 Wn.2d 1006, 483 P.3d 785 (2021); Rekhter v. Dep't of Soc. & Health Servs., 180 Wn.2d 102, 113, 323 P.3d 1036 (2014).

Generally, we view the relationship between universities and their students as contractual. Marquez v. Univ. of Wash., 32 Wn. App. 302, 305, 648 P.2d 94 (1982); Maas v. Corp. of Gonzaga Univ., 27 Wn. App. 397, 400, 618 P.2d 106 (1980). Since a formal contract between a university and a student rarely exists, we look to the implied provisions found in university publications to determine the general nature and specific terms of the student-university agreement. Marquez, 32 Wn. App. at 305.

Courts routinely distinguish the contractual responsibilities of public universities and private universities when making discretionary academic or

disciplinary decisions. See Boehm v. Univ. of Pa. Sch. of Veterinary Med., 392 Pa. Super. 502, 509, 573 A.2d 575 (Pa. Super. Ct. 1990). That is because students of public universities are entitled to constitutional due process protections, so public university disciplinary decisions are subject to greater judicial scrutiny. See Alpha Kappa Lambda Fraternity v. Wash. State Univ., 152 Wn. App. 401, 413, 216 P.3d 451 (2009) (Washington State University disciplinary decisions are subject to review under the Administrative Procedure Act, chapter 3.05 RCW). But courts are more reluctant to interfere in the disciplinary proceedings of a private college. Boehm, 392 Pa. Super. at 509.

No published Washington case directly addresses the standard by which we evaluate whether a private university's disciplinary decision breached its contractual duty to a student. But we have turned to decisions from other jurisdictions in that regard. See Marquez, 32 Wn. App. at 305-09 (relying on non-Washington cases in analyzing University of Washington's academic decision); Maas, 27 Wn. App. at 400-03 (following cases from other jurisdictions in deciding standard for review for private university's academic decisions). And several other jurisdictions have recognized that students of private universities are entitled to at least the basic tenets of fundamental fairness in disciplinary proceedings. See Boehm, 392 Pa. Super. at 510; Shah v. Union Coll., 97 A.D.3d 949, 950-51, 948 N.Y.S.2d 456 (N.Y. App. Div. 2012).

To ensure fundamental fairness in disciplinary proceedings, private universities must (1) substantially comply with their published policies and (2) not subject students to arbitrary or capricious decisions. Boehm, 392 Pa. Super. at

510-11; Shah, 97 A.D.3d at 950-51.³ A university acts arbitrarily and capriciously when it takes “ ‘willful and unreasoning action . . . without regard to or consideration of the facts and circumstances surrounding the action.’ ” Alpha Kappa Lambda, 152 Wn. App. at 421⁴ (quoting Bowers v. Pollution Control Hr’gs Bd., 103 Wn. App. 587, 596, 13 P.3d 1076 (2000)). “ ‘[A] decision is not arbitrary or capricious if it is made honestly and upon due consideration.’ ” Alpha Kappa Lambda, 152 Wn. App. at 421 (quoting Bowers, 103 Wn. App. at 596).

WGU’s Code establishes its procedures for adjudicating charges of academic dishonesty. WGU must give written notice to the student and seek to reach a mutually agreeable resolution. If WGU and the student cannot reach an agreement, WGU will set a SCB hearing at which the WGU investigator presents his or her findings, the student has a chance to present information, and the SCB members deliberate about whether the accused student has violated the Code. If the SCB decides that the investigator proved the violations by clear and convincing evidence, the board may direct the student conduct administrator to impose any of the sanctions provided in the Code, which range from a “Level 1 Warning,” to “Disciplinary Expulsion,” to “Revocation of Admission and/or Degree.”

The record shows that WGU afforded Kang the adjudication processes and protections established in the Code. In her response to summary judgment, Kang asserted that WGU deviated from its published policies by imposing a

³ Kang and WGU agreed that this standard applied to her breach of contract claim below. Neither argues differently on appeal.

⁴ Internal quotation marks omitted.

“Level 2 Warning” as a sanction instead of “the level she was entitled to for an alleged first-time disciplinary violation.” But WGU’s Code gives discretion to the SCB to impose any level of sanction it deems appropriate for a student found to have violated the rules.

The record also shows that WGU’s decision to sanction Kang was not arbitrary or capricious. WGU first looked into Kang’s work after investigating her sister and finding the two submitted similar work product. On deeper investigation, WGU discovered other times when Kang plagiarized the work of others, and commenced disciplinary proceedings. WGU’s Authenticity Department presented evidence of the alleged plagiarism to the SCB. The SCB considered the evidence, including Kang’s response; found the Authenticity Department proved the plagiarism allegations; and imposed a sanction authorized by WGU’s Code. The Appellate Board then reviewed the decision. It heard argument and again considered the merit of Kang’s claims before upholding the SCB’s decision.

Kang claims that the SCB’s decision was arbitrary and capricious because the case against her rested on forgeries and fraud, motivated by “agents of East Indian descent . . . plotting to harm [her], due to their biases.” But Kang’s depictions of fraud, forgery, bias, and discrimination against her are conclusory allegations based on speculation and cannot defeat summary judgment.

Pagnotta, 99 Wn. App at 36. The trial court did not err in dismissing Kang’s breach of contract claim at summary judgment.⁵

⁵ Because Kang’s CPA claim is predicated on her breach of contract claim, the CPA claim also fails.

WLAD

Kang argues that she established a prima facie case of discrimination under the WLAD because she showed that WGU “agents of East Indian descent” plotted “to harm [her], due to their biases.”

The WLAD guarantees the right to “be free from discrimination because of race, creed, color, [or] national origin.” RCW 49.60.030(1). That guarantee extends to all places of public accommodation. RCW 49.60.030(1)(b).

We analyze WLAD claims under the burden-shifting framework established in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). See Domingo v. Boeing Emps.’ Credit Union, 124 Wn. App. 71, 77, 98 P.3d 1222 (2004), abrogated on other grounds by Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas County, 189 Wn.2d 516, 404 P.3d 464 (2017); see also Hartleben v. Univ. of Wash., 194 Wn. App. 877, 883-84, 378 P.3d 263 (2016). Under that framework, a plaintiff must first show a prima facie case of discrimination. Domingo, 124 Wn. App. at 77. If the plaintiff cannot meet that burden, the inquiry stops, and the defendant is entitled to summary judgment. Domingo, 124 Wn. App. at 77-78.

To make a prima facie showing of discrimination, Kang had to show (1) she is a member of a protected class, (2) WGU is a place of public accommodation, and (3) WGU treated her differently than other similarly situated students (4) because of her membership in that protected class. McDonnell Douglas, 411 U.S. at 802; Hartleben, 378 Wn. App. at 883-84.

WGU concedes that Kang's Punjabi ethnicity and Sikh religion make her a member of a protected class and that WGU is a place of public accommodation. But Kang fails to show that WGU treated her differently than other similarly situated students because of her membership in a protected class. Kang offers no evidence WGU disciplined her any differently than other students at WGU accused of plagiarism. Nor does she show the WGU employees involved in her disciplinary proceedings were aware of her Sikh religion, Punjabi ethnicity, or political affiliation. And Kang's allegations that several of WGU employees are "Hindu agents" motivated to manufacture evidence against her are speculative and do not amount to a prima facie showing of discrimination under the WLAD.⁶

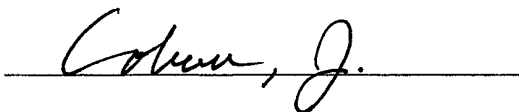
Because Kang failed to establish the essential elements of her claims, the trial court did not err in granting summary judgment for WGU.

We affirm dismissal of Kang's lawsuit with prejudice.

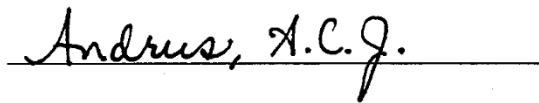


A handwritten signature in cursive script, appearing to read "Brennan, J.", written over a horizontal line.

WE CONCUR:



A handwritten signature in cursive script, appearing to read "Cohen, J.", written over a horizontal line.



A handwritten signature in cursive script, appearing to read "Andrews, A.C.J.", written over a horizontal line.

⁶ Indeed, the record shows that at least one of Kang's claimed WGU "Hindu agents" is not Hindu. In his declaration, Pandya was "surprised" that Kang claimed "under the penalty of perjury in her discovery responses . . . that she 'knows' I am Hindu. I am not."