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COURT OF APPEALS OF THE STATE OF WASHINGTON
Division III

Court of Appeals No. 365565

In re:

DANIEL NELSON,

Plaintiff/Appellant,

and

SPOKANE COMMUNITY COLLEGE,

Defendant/Respondent.

APPELLANT'S REPLY BRIEF

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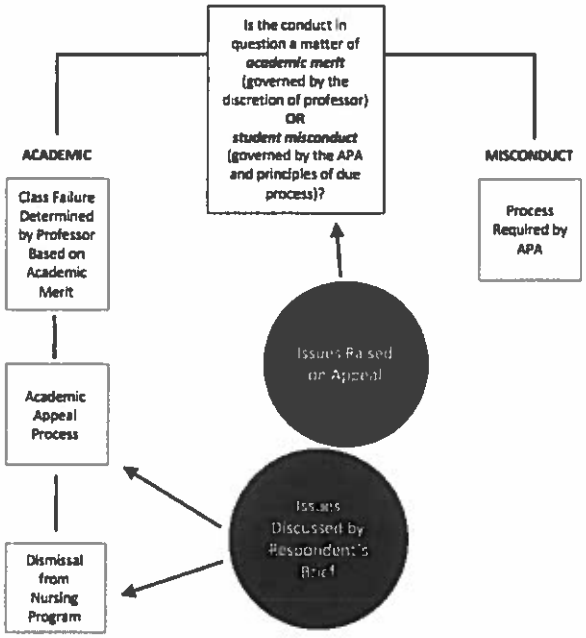
I. OBJECTION TO RESPONDENT'S BRIEF

Appellant objects to Respondent's brief because it failed to answer the opening brief pursuant to RAP 10.3(b). Respondent purported to "restate" Appellant's issues, but instead, it discussed issues not raised on appeal. Prior to filing this brief, Appellant moved to have Respondent's brief stricken with leave to refile an amended brief, but his request was denied.

This case references several administrative processes, as well as various stages within those processes. The following illustration identifies the stage at which Appellant assigns error; it also identifies the subsequent stages where Respondent focuses the entirety of its analysis. Respondent entirely ignored Appellant's assignments of error and instead analyzed events that occurred significantly *after* the assigned errors.



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II. ARGUMENT

Appellant's Argument on Appeal

A. SCC's order is invalid under the APA, and Mr. Nelson is entitled to relief on appeal.

1. The APA governs SCC's entry of disciplinary sanctions against Mr. Nelson.

SCC refused to acknowledge that *the entry of the failing grade as a sanction for plagiarism* is the subject of appeal. Instead, SCC discussed whether academic dismissals are governed by the APA.

This analysis is irrelevant to Mr. Nelson's arguments on appeal; he did not argue that the APA governs academic dismissals.

Because SCC failed to acknowledge Mr. Nelson's assignments of error, issues, or arguments, his APA claim remains unanswered and unopposed.

2. SCC violated the APA when it entered disciplinary sanctions against Mr. Nelson.

See comments in Section 1, above.

3. Mr. Nelson was prejudiced by SCC's violation of the APA.

See comments in Section 1, above.

B. SCC violated Mr. Nelson's constitutional rights when it entered disciplinary sanctions without providing due process.

1. Mr. Nelson is entitled to Due Process.

As before, SCC refused to acknowledge that the subject of Mr. Nelson's

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appeal is the entry of a failing grade based on a determination of plagiarism (adjudicated unilaterally by one teacher). Instead, SCC discussed whether due process applies to an academic dismissal.

This analysis is irrelevant to Mr. Nelson's arguments on appeal; he does not make constitutional arguments associated with the academic dismissal.

SCC failed to acknowledge Mr. Nelson's assignments of error, issues, or arguments; his constitutional claim remains unanswered and unopposed.

2. ***The process due to Mr. Nelson included the right to receive reasonable notice, to attend a hearing held by a neutral officer, to present oral argument, to cross-examine witnesses, and to have counsel.***

See comments in Section 1, above.

3. ***Mr. Nelson did not receive Due Process.***

See comments in Section 1, above.

C. Mr. Nelson is entitled to an award of fees on appeal.

SCC argues that its "action to provide an academic appeal process rather than a disciplinary adjudicatory hearing was substantially justified under the case law," but it cites no caselaw, and (consistent with all previous comments), it addresses only to academic dismissals rather than the entry of disciplinary sanctions (which is the subject of appeal).

SCC's argument is irrelevant to Mr. Nelson's argument on appeal. Because SCC failed to acknowledge his assignments of error, his issues, and his arguments, his claim for fees remains unanswered and unopposed.

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Respondent's Argument on Appeal

SCC'S "RESTATED" ISSUE #1: *"Where Mr. Nelson had the opportunity to appeal his failing grade through a four-part process applicable to academic matters, did SCC provide Mr. Nelson with a procedure that satisfies due process?"*

Mr. Nelson did not assign error to SCC's academic appeal process; therefore, the sufficiency of that process is not in question. The analysis of this issue as reformulated by SCC is irrelevant to Mr. Nelson's appeal.

SCC'S "RESTATED" ISSUE #2: *"Because Mr. Nelson was dismissed from the Nursing Program for failing to meet academic standards, do the Administrative Procedure Act's ("APA") procedural requirements apply in the context of academic dismissals."*

Mr. Nelson did not assign error to SCC's failure to apply the APA's procedural requirements to Mr. Nelson's *academic dismissal*, nor does he argue that the APA's requirements apply to Mr. Nelson's *academic dismissal*. The analysis of this issue as reformulated by SCC is irrelevant to this appeal.

SCC'S "RESTATED" ISSUE #3: *"Did SCC violate the APA when it took 'other agency action' by dismissing Mr. Nelson from the Nursing Program for failing to meet academic standards, without an adjudicatory proceeding."*

Mr. Nelson did not assign error to SCC's failure to provide an adjudicatory proceeding prior to his *academic dismissal*, nor does he make any attempt to discuss the APA in the context of the *academic dismissal*. The analysis of this issue as reformulated by SCC is irrelevant to Mr. Nelson's appeal.

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SCC'S "RESTATED" ISSUE #4: *"Where longstanding case law holds that due process does not require an evidentiary hearing to contest a faculty member's academic decision, is Mr. Nelson entitled to an award of attorney's fees on appeal?"*

Mr. Nelson does not assign error to SCC's failure to require an evidentiary hearing to contest an *academic* decision; rather, Mr. Nelson argues that the *disciplinary sanction* entered by the faculty member was *not* an *academic* decision. Disciplinary sanctions are governed by the APA, WAC 132Q-10, and constitutional due process considerations. The analysis of this "issue" as reformulated by SCC is irrelevant on appeal.

III. CONCLUSION

While Respondent clearly invested considerable effort in drafting a forty-page brief that addresses its favorite arguments related to this case, it is unclear why none of the information provided acknowledged the issues and arguments actually raised by Appellant on appeal. Unfortunately, as a result, this Court is left with a substantive opening brief and utterly unhelpful response/reply briefs, which is counter-productive to the interests of everyone involved. Other than arguing that Appellant must prevail on appeal given that all of his claims and arguments have gone unanswered and unopposed, he has no ability to offer any further analysis.

RESPECTFULLY SUBMITTED this 31st day of January, 2020.

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CERTIFICATE OF ATTORNEY

I certify that on January 31, 2020, I arranged for hand-delivery of a copy of the foregoing REPLY BRIEF to the following:

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Comments:

The only change to the brief is the addition of the tables.

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