STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

CHRO ex rel. Valerie Lorimer, Complainant — CHRO No. 1230447

v.

Southern Connecticut State University, Respondent — May 7, 2015

CORRECTED
RULING ON RESPONDENT'S MOTION TO STRIKE

I.

PRELIMINARY

Complainant, Valerie Lormer, filed a complaint with the CHRO alleging that the respondent, Southern Connecticut State University, discriminated against her when they dismissed her from their masters in social work program. Complainant alleges that she has a brain injury, which causes her to have seizures and other disabilities. On March 13, 2015, Respondent filed a Motion to Strike claims based on General Statutes §§ 46a-64, 46a-74, 46a-71 and any claim for damages under §46a-77 and Americans with Disabilities Act 42 U.S.C. § 12101, et seq. On April 20, 2015, the CHRO filed an opposition to the Motion to Strike. For the reasons set forth below, the Motion to Strike is hereby, **DENIED.**

II.

STANDARD

"In ruling on a motion to strike, the court is limited to the facts alleged in the [challenged pleading] ..." (Internal quotation marks omitted.) *Faulkner v. United*

Technologies Corp., 240 Conn. 576, 580, 693 A.2d 293 (1997). The court must "construe the [challenged pleading] in the manner most favorable to sustaining its legal sufficiency." *Broadnax v. New Haven*, 270 Conn. 133, 173, 851 A.2d 1113 (2004). "It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted." (Internal quotation marks omitted.) *Asylum Hill Problem Solving Revitalization Ass'n v. King,* 277 Conn. 238, 246, 890 A.2d 522 (2006).

II.

LAW AND ANALYSIS

"To sustain a claim of discriminatory denial of a public accommodation a complainant must be able to establish that: (1) respondent is a public accommodation, resort or amusement; (2) respondent denied him full and equal accommodations; and (3) respondent's basis for said denial was complainant's protected status." (Internal citations omitted) *Commission on Human Rights and Opportunities ex rel. Clark O'Brien, Complainant v. Connecticut Medical Insurance Company, Respondent*, 2013 WL 2448746 (2013.)

"Connecticut's appellate courts, in construing state antidiscrimination statutes that have similar federal counterparts, have looked to federal case law for guidance, even though the federal and state statutes may differ somewhat It also has been recognized, however, that under certain circumstances, federal law defines the beginning and not

the end of our approach to the subject.... Consequently, on occasion, we have interpreted our statutes even more broadly than their counterparts, to provide even greater protections to our citizens, especially in the area of civil rights." (Citation omitted; internal quotation marks omitted.) *Commission on Human Rights & Opportunities v. Savin Rock Condominium Assn., Inc.,* 273 Conn. 373, 386 n. 11, 870 A.2d 457 (2005)." *Corcoran v. German Soc. Soc'y Frohsinn,* Inc., 99 Conn. App. 839, 843, 916 A.2d 70, 72 (2007). Our federal law is replete with examples where courts analyzed universities' graduate and postgraduate programs as places of public accommodations or subject to the Americans with Disabilities Act (ADA) as state entities.

Judge Prescott opinioned in CHRO ex rel *Vargas v. State Dep't of Correction,* No. HHBCV136019521S, 2014 WL 564478, at *6 (Conn. Super. Ct. Jan. 10, 2014) "The ADA is divided in three main parts: Title I, which prevents employment discrimination on account of a qualified disability; Title II, which prevents disability discrimination by public entities; and Title III, which prevents disability discrimination by private entities in places of public accommodation. See *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675, 121 S.Ct. 1879, 149 L.Ed.2d 904 (2001). Although courts have regularly held that Title III (public accommodations provisions in private entities) of the ADA does not apply to the States; see, e.g., *Bloom v. Bexar County*, 130 F.3d 722, 726 (5th Cir.1997); *Sandison v. Michigan High School Athletic Ass'n,* 64 F.3d 1026, 1036 (6th Cir.1995); *DeBord v. Board of Education,* 126 F.3d 1102, 1106 (8th Cir.1997); state governments are still regulated by the ADA, not because they are [private] places of public accommodation, but because they fall within Title II's definition of a "public entity," which includes "any department, agency ... or other instrumentality of a State or States or local

government[.]" 42 U.S.C. § 12131(1) (B)." Title II to is analogues to General Statute § 46a-74. "In this sense, § 46a–74 clarifies that our state public accommodation laws apply not just to private entities like restaurants, stores and movie theatres, but also to state facilities or organizations that meet the definition of "a place of public accommodation." *CHRO ex rel Vargas v. State Dep't of Correction*, No. HHBCV136019521S, 2014 WL 564478 at *7 (Conn. Super. Ct. Jan. 10, 2014). The only complainant alleged she was discriminated against at a state postgraduate program at the University of Southern Connecticut. Taking the most favorable view complainant's allegations, she states a claim for relief.

"Place of public accommodation, resort or amusement' " is defined in General Statutes § 46a-63(1) as "any establishment which caters or offers its services or facilities or goods to the general public, including, but not limited to, any commercial property or building lot, on which it is intended that a commercial building will be constructed or offered for sale or rent." Title III of the ADA states that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or operates a place of public accommodation." 42 U.S.C. § 12182. The ADA defines a "public accommodation" as a private entity affecting commerce, including, inter alia, "a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education." 42 U.S.C. § 12181(7)(j). Finally, the ADA defines "discrimination" to include, inter alia, "a failure to make reasonable modifications in polices, practices, or procedures, when such modifications are

necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of the goods...." 42 U.S.C. § 12182(b)(2)(a)(ii).

Similarly, § 504 provides that "no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ..." 29 U.S.C. § 794. Under the Rehabilitation Act, the term "program or activity" is defined to include all of the operations of "a college, university or other post secondary institution, or a public system of higher education ... any part of which is extended Federal financial assistance." 29 U.S.C. § 794(b)(2)(A).

Title III of the ADA and § 504 provide similar protections for individuals with disabilities. Accordingly, the elements a claimant must establish to prevail on an action under either statute are the same. *Powell v. Nat'l Bd. of Med. Exam'rs*, 364 F.3d 79, 85 (2d Cir.2004[1])" *McInerney v. Rensselaer Polytechnic Inst.*, 688 F. Supp. 2d 117, 124 (N.D.N.Y. 2010)

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[1] Powell involved a case where" UConn concedes that, as an educational institution, it meets the definition of public accommodation and is therefore subject to Title III. See id. § 12181(7)(J). The defendant National Board of Medical Examiners also concedes that its services constitute a public accommodation covered by Title III." Title II applies to any state or local government or instrumentality of a state or local government. Id. § 12131(1).

" UConn has long conceded it is an instrumentality of the state of Connecticut (that case involved admission to a Medical School) Title III of the ADA proscribes discrimination against the disabled in public accommodations. "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns ... or operates a place of public accommodation." Id. § 12182(a). "

Respondent argues that SCSU master of Social Work program is too selective to be considered as "open to the general public." In *Powell,* the University of Connecticut's (UConn) medical school was subject to the ADA laws, as a state entity or place of public accommodation. See also, *Maczaczyj v. State of N.Y.*, 956 F. Supp. 403, 407 (W.D.N.Y. 1997) (Empire State College involved a plaintiff who had been discriminated against in a master's program at the College.) It is reasonable to allege that Southern Connecticut State University (SCSU) and all of its programs are subject to the ADA.

General Statutes § 46a-71 provides:" (a) all services of every state agency shall be performed without discrimination based upon race, color, religious creed, sex, gender identity or expression, marital status, age, national origin, ancestry, intellectual disability, mental disability, learning disability or physical disability, including, but not limited to, blindness. (b) No state facility may be used in the furtherance of any discrimination, nor may any state agency become a party to any agreement, arrangement or plan which has the effect of sanctioning discrimination. (c) Each state agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of sections 46a-70 to 46a-78, inclusive, and shall initiate comprehensive programs to remedy any defect found to exist. (d) Every state contract or subcontract for construction on public buildings or for other public work or for goods and services shall conform to the intent of section 4a-60. " "No state facility may be used in furtherance of any discrimination, nor may any state agency a party to any agreement, arrangement or plan which has the

effect of sanctioning discrimination." *State v. State,* No. CV9557527S, 1996 WL 737513, at *10 (Conn. Super. Ct. Dec. 16, 1996.) Complainant is entitled to present evidence that SCSU is also a state facility that may not be used in furtherance of any discrimination.

A. Factual Allegations

Moreover, a motion to strike requires that all facts alleged in the pleading must be construed in favor of the complainant, not the respondent. In *Quinnipiac Council, Boy Scouts of America, Inc. v. Commission on Human Rights & Opportunities,* 204 Conn. 287, 300 (1987), our Supreme Court observed that coverage under our public accommodations statute "depends, in each case, upon the extent to which a particular establishment has maintained a private relationship with its own constituency or a general relationship with the public at large." General Statute § 46a–63(1) defines "place of public accommodation, resort or amusement" as "any establishment which caters or offers its services or facilities or goods to the general public, including, but not limited to, any commercial property or building lot, on which it is intended that a commercial building will be constructed or offered for sale or rent." The Supreme Court of Connecticut has declined "categorical judgment" as to what types of establishments are, or are not, public accommodations. "[C]overage under the statute depends, in each case, upon the extent to which a particular establishment has maintained a private relationship with its own constituency or a general relationship with the public at large. So viewed, the question of coverage is a question not of law but of fact." *Quinnipiac Council, Boy Scouts of Am., Inc. v. Comm'n on Hum. Rights & Opportunities,* 204 Conn.

287, 300, 528 A.2d 352 (1987). In considering whether a plaintiff has been discriminatorily denied accommodations, the Court must enquire into specific circumstances and focus equally on the particular opportunity, the particular position, rather than on access to an organization or an industry as a whole." Id. "[F]act-specific inquiry is ill-suited to a motion to dismiss." (Internal quotations omitted) *Collins v. Univ. of Bridgeport*, 781 F. Supp. 2d 59, 66 (D. Conn. 2011.)

Moreover, the respondent's contention that *State v. State,* supra, the University of Connecticut, (UConn) a place of public accommodation for undergraduates, differs from a Master's program in another State University is unreasonable. UConn, as well as the other state universities' undergraduate programs, are also arguably highly selective. Federal Courts have consistently held that master programs, law schools and medical schools, including the UConn's Medical School, are subject to the laws regarding reasonable accommodation. Once again, the State previously conceded in *Powell v. Nat'l Bd. of Med. Examiners*, 364 F.3d 79, 84-85 (2d Cir.) opinion corrected, 511 F.3d 238 (2d Cir. 2004) that University of Connecticut is a state education institution and subject to the ADA. See also *State v. State*, No. CV9557527S, 1996 WL 737513, at *8 (Conn. Super. Ct. Dec. 16, 1996) (a case, which determined that the University of Connecticut may very well be a public accommodation, but the position of cheerleader is not.)

The respondent's reliance on *Vargas v State, supra,* is also misplaced. Vargas is a very narrow holding and involved a pure question of law, as the facts of the case were not in dispute, as they are in this instance. The Vargas court defined its holding in the following manner:

> "At the outset, it is important to note what is not at issue in this appeal. First, it is not necessary for this court to decide whether all portions of a correctional facility, including administrative offices, employee areas, parking lots and other areas where inmates do not have access fall within the meaning of a 'place of public accommodation.' The issue in this case involves only the question of whether those portions of a correctional facility where inmates are permitted to be, including visiting rooms, are a place of public accommodation within the meaning of the statute. To the extent that this opinion refers to correctional or prison facilities, the reference is intended to include only those areas in which inmates are allowed."

CHRO ex rel Vargas v. State Dep't of Correction, No. HHBCV136019521S, 2014 WL 564478, at *1 (Conn. Super. Ct. Jan. 10, 2014) (Vargas only applying to prison waiting rooms when safety was a legitimate concern) Judge Prescott, who affirmed the referee's decision, made it abundantly clear that this was an extremely narrow holding. A prison visitation waiting room is not a realistic comparison to a program run by a state university.

B. Damages

Our statutes specifically provide that "[a]ll state agencies shall cooperate with the Commission on Human Rights and Opportunities in their enforcement and educational programs." General Statutes § 46a-77(a). This mandated cooperation is an example of the fact that "legislative enactments in this area have long evinced a general intent to accord parallel or overlapping remedies against discrimination." *Alexander v. Gardner Denver Co* ., 415 U.S. 36, 47 (1974). *Comm'n on Human Rights & Opportunities v.*

Cheshire Bd. of Educ., No. CV000503032S, 2001 WL 1681826, at *5 (Conn. Super. Ct. Dec. 13, 2001) aff'd in part, rev'd in part sub nom. *Comm'n on Human Rights & Opportunities v. Bd. of Educ. of Town of Cheshire,* 270 Conn. 665, 855 A.2d 212 (2004)

The commission's ability to award damages under General Statute §46a-58 was thoroughly discussed in *Comm'n on Human Rights & Opportunities v. Bd. of Educ. of Town of Cheshire.*

> " In 1967, … the legislature amended General Statutes (Rev. to 1967) § 53–36 to give the commission the additional authority to award damages for violations of our statutes prohibiting discrimination with regard to public accommodations and professional licensing. See P.A. 756. This legislation was preceded by legislative history indicating that it has broad remedial consequences. Then, in 1974, discrimination on the basis of sex was added to the list of prohibitions enumerated in General Statutes (Rev. to 1973) § 53–34, now § 46a–58. Public Acts 1974, No. 74–80.38In 1975, Public Acts 1975, No. 75–462 was enacted. That enactment specifically amended General Statutes (Rev. to 1975) § 53–36, which was the precursor to § 46a–86 (c), to authorize the commission to exercise its powers upon a complaint of a violation of General Statutes (Rev. to 1975) § 53–34, which was the specific statutory predecessor of § 46a–58 (a).The legislative history of this 1975 legislation is instructive. In explaining it to the House of Representatives, Representative Thomas C. Clark described § 53–34, now § 46a–58, as "the Civil Rights Statute of the State of Connecticut," and explained that the act "would extend ... the

powers of the [commission] to enforce" violations of § 53–34. 18 H.R. Proc., Pt. 10, 1975 Sess., pp. 4808–4809. Representative Clark further explained that, "under the current [s]tatute, the [c]ommission has a right to receive complaints ... for [a] violation of [§] 53–34, but it does not have the right to prosecute those to completion under its own laws. This Bill will enable [the commission] to do so." Id., p. 4809.16 Thus, after this 1975 legislation, there can be no doubt that the legislature intended the commission to have its full panoply of powers to enforce the broad civil rights protections afforded by what is now § 46a–58. Furthermore, given the breadth of the language of that statute, the fact that it was legislatively regarded as our state's civil rights statute, and the fact that the history of the development of the battle against racial discrimination in this nation was so deeply rooted in constitutional litigation over public schools, we cannot impute an intention to the legislature that the broad language and the specific enforcement power in the commission would, nonetheless, not apply to a discrete course of conduct amounting to racial discrimination by educational officials in our own public schools. Accordingly, we conclude that since 1975, the commission has had the statutory authority to investigate and adjudicate such claims of racial discrimination against students by such officials in the public schools of this state. In 1977, blindness and physical disability were added to § 46a–58 (a) as specifically protected conditions; Public Acts 1977, No. 77–278; and in 1980, religion and national origin were added as specifically protected

classes. Public Acts 1980, No. 80–54. In 1980, the statute was transferred from title 53 of the General Statutes to *711 its current location in title 46a.39 See P.A. 80–422, § 7; General Statutes (Rev. to 1981) § 46a–58 (a).Two things stand out from this history. First, from the beginning, the language and purpose of § 46a–58 (a) have been consistently broad and inclusive. The statute has long been this state's fundamental civil rights statute, with a purpose to cast a broad net of protection for all persons from discrimination. Second, whenever the statute has been amended substantively, the effects of the amendments have been to give the commission the power to enforce the statute and to broaden its coverage so as to reach additional forms of discrimination. This history supports the interpretation that § 46a–58 (a) applies to racial discrimination against a public school student by his principal and board of education. Indeed, given the history of the civil rights movement in this nation, it would be anomalous to construe our state's fundamental civil rights statute to have had an implied exception for the type of racial discrimination involved in the present case, particularly when neither the language, the purpose nor the history of the statute suggests any such implied exception."

Comm'n on Human Rights & Opportunities v. Bd. of Educ. of Town of Cheshire, 270 Conn. 665, 709-12, 855 A.2d 212, 239-41 (2004). Similarly, to racial discrimination, in 1977, blindness and physical disability were added to § 46a–58 (a) as specifically protected conditions; history supports that §46a-58 applies to physical disability. An

alleged injury to the brain causing seizures is a physical disability, just as any other alleged disorder causing seizures.

"As previously discussed, § 46a–58 (a) enjoys a long and distinguished pedigree as the fundamental civil rights statute of our state. In addition, in 1975, the legislature specifically gave the commission the authority to use its full powers to enforce the statute's prohibitions against discrimination, and that enactment carried with it the authority to investigate and, if necessary, adjudicate complaints of a specific course of conduct amounting to racial discrimination against students by educational officials in the public schools." *Comm'n on Human Rights & Opportunities v. Bd. of Educ. of Town of Cheshire,* 270 Conn. 665, 713, 855 A.2d 212, 242 (2004).

IV.

CONCLUSION

The complainant is entitled to have her well-pleaded allegations taken as true. Complainant has alleged sufficient facts to sustain her claim. The issues, as with most claims of failure to accommodate, are fact specific; therefore, a motion to strike unsuitable. Complainant is entitled to an evidentiary hearing to prove her allegations. Based on the foregoing, and taking the complainant's well-pleaded facts as true the respondent's motion to strike based on general statutes §§ 46a-64, 46a-74, 46a-71 and any claim for damages under §46a-77 and Americans with Disabilities Act 42 U.S.C. § 12101, et seq are hereby **DENIED.**

It is so ordered this 7TH day of May 2015.

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Michele C. Mount,
Presiding Human Rights Referee

cc.
Valerie Lorimer – via first class regular mail
Kimberly Jacobsen, Esq. – via email only
Ralph E. Urban, Esq. – via email only