

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

KIMBERLY A. HIVELY

Plaintiff,

v.

IVY TECH COMMUNITY COLLEGE,

Defendant.

CAUSE NO. 3:14-CV-1791-JD-MGG

PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT

Plaintiff Kimberly Hively, by and through counsel, respectfully submits her Motion For Leave to Amend the Complaint. Counsel for Ms. Hively has conferred with counsel for Defendant Ivy Tech Community College (“Ivy Tech”). Counsel for Ivy Tech opposes this motion.

I. INTRODUCTION

The Court should grant Ms. Hively’s Motion For Leave to Amend the Complaint so that Ms. Hively can allege a retaliation claim she learned about in discovery in late 2017. The basis for Ms. Hively’s claim came to light following the review of Ivy Tech’s November and December discovery responses. Allowing the amendment would enable the parties to efficiently litigate all of the claims arising from Ivy Tech’s unlawful conduct.

II. STATEMENT OF FACTS

On August 15, 2014, Ms. Hively filed her Complaint against Ivy Tech alleging under Title VII that Ivy Tech had “denied [her] full time employment and promotions based on sexual orientation.” (D.E. 1). Her original complaint was dismissed, but on appeal, the en banc Seventh Circuit reversed and remanded the case back to this Court last summer. On remand,

after retaining pro bono counsel in this Court, Ms. Hively filed an Amended Complaint on August 25, 2017, the last day for amendments to the pleadings without leave of Court. (D.E. 31). The amended complaint alleged that Ms. Hively applied for several full-time positions at Ivy Tech starting in 2008. (D.E. 37). Even though she had strong supervisor and student reviews, attached in Exhibit A, had earned a master's degree, had been fully credentialed to teach full-time by a Dean in 2011, and had been recommended for and won a teaching award, attached in Exhibit B, Ivy Tech refused to hire her full-time. (*Id.*) Finally, in the summer of 2014, Ivy Tech elected to not renew her part-time employment contract. (*Id.*) The complaint alleged that Ivy Tech's refusal to promote her and the non-renewal decision were motivated by Ms. Hively's sexual orientation. (*Id.*)

Months after filing the EEOC charge that led to this lawsuit, Ms. Hively applied for yet another full-time teaching position in the spring of 2014. None of Ms. Hively's previous applications had prompted a second review of her credentials. Yet for some reason, the spring of 2014 application following Ms. Hively's EEOC complaint prompted Ivy Tech to undertake an extensive review of her credentials. Ms. Hively was led to believe that the credentialing review was part of a department-wide review of all adjunct instructors pursuant to a mandated reduction in force. Accordingly, on September 22, 2017, Ms. Hively propounded her first set of discovery requests, including a request for "All documents describing, concerning, or regarding any reduction in force at Ivy Tech's South Bend Campus."

On the Wednesday before Thanksgiving, November 22, 2017, Ivy Tech responded to the discovery request. The responses were rife with objections that obscured the facts of this case, forcing the parties to cancel depositions that had been scheduled for late November and early December so that Ivy Tech could cure its defective responses. Ivy Tech supplemented its

answers to interrogatories and its document production just before Christmas, December 22, 2017. Ivy Tech did not produce any documents regarding a 2014 reduction in force.

While Ivy Tech's discovery responses still have gaps, it now appears that in June of 2014, six months after Ms. Hively filed her EEOC charge, Ivy Tech administrators singled out Ms. Hively for a rigorous credentialing review. Unlike her prior review in late 2011 when she was re-credentialed after receiving her master's degree, in this new effort Ivy Tech reached out to people at the school where she had earned her master's degree to re-evaluate her course work during her master's degree program. (Exhibit C). Every inference and ambiguity was applied against Ms. Hively. Moreover, the math credentialing policy was seemingly construed differently than it had been in her prior successful credentialing review in late 2011 because, despite a teaching award, strong administrator recommendations, and that 2011 credential review on the same record, attached in Exhibit D, Ivy Tech nonetheless concluded in summer 2014, that Ms. Hively was not qualified to teach at the school and ended her employment.

It is difficult to reconcile Ivy Tech's actions in the spring of 2014 with the glowing student evaluations that Ivy Tech produced on December 22, 2017. Students from her Fall 2013 and Spring 2014 evaluations describe Ms. Hively as "amazing, a wonderful teacher" and "one of the best and down to earth teachers." (Exhibit A). Tellingly, Ivy Tech has not produced a single negative review from her students for the 2013-2014 academic school year.

The stark record produced cries out for relief. Accordingly, Ms. Hively now seeks leave from the Court to amend her complaint to add a claim for retaliatory discharge.

The claim for retaliatory discharge will not complicate discovery. No depositions have yet occurred. The new claim will not impact the documents Ms. Hively produced last fall. Nor will

it significantly impact the facts to be discovered by Ms. Hively because the same incidents are likewise relevant to her termination claim.

III. ARGUMENT

The Court ordered that after August 25, 2017, a party must seek leave from the Court to amend pursuant to Fed. R. Civ. P. 15(a)(2). (D.E. 29, 31). Rule 15 provides that “leave to amend is freely given freely when justice so requires.” Some courts require parties to show good cause under Rule 16 for seeking leave to amend after the deadline to amend without leave has passed if granting leave would require modification to the scheduling order. *See, e.g., Kortum v. Raffles Holdings, Ltd.*, No. 01 C 9236, 2002 U.S. Dist. LEXIS 21252, *8, 2002 WL 31455994 (N.D. Ill. Oct. 31, 2002) (“When a request for amendment would require alteration to a Rule 16(b) scheduling order (as it would in this case), the moving party must overcome the presumption against modification through ‘a showing of good cause.’”). If a party seeking leave to amend can show “that despite its diligence, the time table could not reasonably have been met,” the party has shown good cause. *Med. Informatics Eng’g, Inc. v. Orthopedics Northeast, P.C.*, No. 1:06-CV-173, U.S. Dist. LEXIS 2526, *4-5, 2008 WL 141504 (N.D. Ind. Jan. 11, 2008).

Though the more stringent “good cause” standard of Rule 16 does not apply, Ms. Hively can nevertheless establish good cause for amending the complaint.

A. Ivy Tech Did Not Produce the Evidence Giving Rise to a Retaliation Claim Until After the Deadline to Amend Passed

Here, the deadline for amendment without leave expired shortly after counsel appeared for Ms. Hively and before discovery could be served. The disclosure of new evidence after the deadline for amendments can constitute “good cause” for seeking leave to amend after the

deadline in the scheduling order has passed. *See Lauer v. Patriot Paint Co.*, No. 1:06-CV-02442007, U.S. Dist. LEXIS 51860, *6, 2007 WL 2068595 (N.D. Ind. July 17, 2007) (granting leave to amend where movant “convincingly demonstrates good cause because the precise contours of its counterclaim and third-party claims were not revealed until months after the pleading deadline lapsed, and then only became apparent through discovery responses submitted well within the discovery cutoff”). Before Ivy Tech served its discovery responses in November and December, Ms. Hively did not know that Ivy Tech’s review of her credentials in the summer of 2014 was an adverse employment action for which she was singled out. Rather, Ms. Hively had been led to believe at the time that the review was a campus-wide procedure to inform a mandated reduction in force, and that her employment ended as a result of the reduction in force that followed. Only when Ms. Hively’s counsel reviewed the Ivy Tech documents showing that its administrators singled out Ms. Hively to zealously (and unfairly) scrutinize her credentials despite years of loyal service, glowing student evaluations, and positive administrator evaluations, did she have the basis for alleging a retaliation claim.

B. No Exception to the Liberal Amendment Policy of Rule 15(a)(2) Applies

A court should grant leave to amend here as there has been no undue delay, there is no prejudice to Ivy Tech, or futility in pursuit of the claim. *Teton Homes Eur. v. Forks RV*, No. 1:10-CV-33010, U.S. Dist. LEXIS 108031, *5, 2010 WL 3980254 (N.D. Ind. Oct. 8, 2010) citing *Ind. Funeral Dir. Ins. Trust v. Trustmark Ins. Corp.*, 347 F.3d 652, 655 (7th Cir. 2003).

1. The Retaliation Charge Would Not Cause Undue Delay Nor Would It Prejudice Ivy Tech

Granting Ms. Hively leave to amend would not cause undue delay because the amendment would not prejudice Ivy Tech’s ability to propound discovery necessary to build its defense against the retaliation claim. First, Ms. Hively filed the motion seeking leave to amend a mere

two months after Ivy Tech produced its first discovery responses and well ahead of the discovery cut-off of May 9, 2018 (D.E. 50). Second, Ivy Tech had notice of the retaliation claim well in advance of Ms. Hively's deposition currently scheduled for January 29, 2018. Third, Ivy Tech has the facts regarding its reasons for its non-renewal of Ms. Hively's contract in its possession. Indeed, the person responsible for the zealous re-credentialing exercise is still employed at Ivy Tech, as are the accountable supervisors and decision-makers. Finally, Ms. Hively has already produced all relevant documents in her possession.

Moreover, the amendments would not require further modification to the scheduling order. Ms. Hively's expert reports are not due until late February and no one from Ivy Tech has yet been deposed.

2. The Retaliation Claim is Not Futile

Ms. Hively's retaliation claim is not futile. Although "retaliation" was not raised in her original EEOC charge or the subsequent complaint, the Seventh Circuit has held that subsequent retaliation is encompassed by the earlier EEOC complaint that precipitated the punitive action. *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1030 (7th Cir. 2013) ("We have held for practical reasons, to avoid futile procedural technicalities and endless loops of charge/retaliation/charge/retaliation, etc., that a plaintiff who alleges retaliation for having filed a charge with the EEOC need not file a second EEOC charge to sue for that retaliation."). For example, in *Ajayi v. Aramark Bus. Servs.*, the Seventh Circuit reversed the district court's grant of summary judgment dismissing an employee's retaliatory-discharge claim based on events that occurred after the EEOC charge, noting "the suspicious timing of the events surrounding" the discharge in relation to the EEOC charge. 336 F.3d 520, 534 (7th Cir. 2003).

Moreover, the amended pleading makes out a prima facie case for a retaliation claim, which requires the plaintiff to show “that (1) after lodging a complaint about discrimination, (2) only he, and not any otherwise similarly situated employee who did not complain, was (3) subjected to an adverse employment action even though (4) he was performing his job in a satisfactory manner.” *Stone v. City of Indianapolis Pub. Utils. Div.*, 281 F.3d 640, 642 (7th Cir. 2002). *See also Hilt-Dyson v. City of Chicago*, 282 F.3d 456, 465 (7th Cir. 2002). *Stone* clarifies that to establish a prima facie case of retaliation, an employee need not present proof of a “causal link” between the protected expression in which the plaintiff engaged (as by filing a complaint about an unlawful act by his employer) and the adverse employment action of which he is complaining.” *Stone*, 281 F.3d at 642.

Finally, because Ms. Hively only learned of her claim in late 2017, it is not barred by statute of limitations.

IV. CONCLUSION

For at least the foregoing reasons, Ms. Hively respectfully requests that the Court grant her Motion for Leave to Amend the Complaint.

Date: January 22, 2018

Respectfully submitted,

FISH & RICHARDSON P.C.

/s/ Raisa Ahmad

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

I, Raisa Ahmad, counsel for Kimberly Hively conferred with counsel for Ivy Tech Community College on January 16, 2018. Counsel for Ivy Tech Community College have confirmed that they do not oppose this motion.

/s/ Raisa Ahmad

Raisa Ahmad

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document is being served to all counsel of record by first class mail, postage prepaid:

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Fort Wayne, IN 46802-2206

ATTORNEYS FOR DEFENDANT
IVY TECH COMMUNITY COLLEGE

Date: January 22, 2018

Respectfully submitted,

FISH & RICHARDSON P.C.

/s/ Raisa Ahmad

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ATTORNEYS FOR PLAINTIFF

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

KIMBERLY A. HIVELY

Plaintiff,

v.

IVY TECH COMMUNITY COLLEGE,

Defendant.

CAUSE NO. 3:14-CV-1791

PLAINTIFF'S SECOND AMENDED COMPLAINT

This is an action under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e-5) and for equal rights under law (42 U.S.C. § 1981), to correct unlawful employment practices on the basis of sex, and to provide appropriate relief to Plaintiff Kimberly Hively. As alleged with greater particularity in paragraphs 6-19 below, Plaintiff alleges that Defendant, Ivy Tech Community College (“Ivy Tech”) denied her full-time employment and promotion, and terminated her based on her sexual orientation.

PARTIES

1. The Plaintiff is Kimberly A. Hively. Her address is 1112 S. 25th St., South Bend, IN 46615, and her telephone number is (574) 232-7986.

2. The Defendant is Ivy Tech Community College. Ivy Tech is located at 220 Dean Johnson Blvd., South Bend, IN 46601. The Defendant has appeared in this case, and thus no further service of process is required.

BASIS OF CLAIMS AND JURISDICTION

3. This action is brought for employment discrimination pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e to 2000e-17, and equal rights under Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

4. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a).

5. This case is on remand from the United States Court of Appeals for the Seventh Circuit. There is no dispute at this point about jurisdiction or venue.

STATEMENT OF CLAIMS

6. Kim Hively is a woman. She is a private person. Her sexual orientation is homosexual.

7. Plaintiff began teaching as a part-time adjunct professor at Ivy Tech Community College (“Ivy Tech”) in South Bend, Indiana in 2000.

8. Plaintiff received a master’s degree in liberal studies from Indiana State University in 2011, with hopes to advance her career with Ivy Tech. Upon earning her master’s degree, Ivy Tech concluded that Ms. Hively met Ivy Tech’s credential criteria to teach all math courses. The School Dean and Vice Chancellor of Academic Affairs signed the credentialing evaluation.

9. In her time at Ivy Tech, Plaintiff has consistently received high performance reviews as an adjunct professor, as well as positive student-evaluations. In 2011-2012, Plaintiff received an award for Excellence in instruction. In 2014, she received praise from Dean James Powell in a written recommendation.

10. In 2009, Plaintiff and her partner were reported to have been kissing in the parking lot at Ivy Tech. Subsequently, Ivy Tech called Plaintiff to inform her of the report, and to remind her of her “professionalism,” notwithstanding that public displays of affection at Ivy Tech were

common (e.g., “kiss good-bye,” hand-holding, etc.) among men in relationships with women who conformed to Ivy Tech’s gender norms. Plaintiff, however, was reprimanded by the office of Academic Affairs because Plaintiff was female and because she was not conforming with Ivy Tech’s gender norms. In 2011-2012, Plaintiff won the Adjunct Faculty Award for Excellence in Instruction, and was nominated for an additional teaching award. She had good reviews and positive student evaluation throughout her tenure.

11. Plaintiff had applied for at least six positions with Ivy Tech. She was not recommended for hire for a single teaching or administrative position she applied for over a five-year period beginning in 2009.

12. Moreover, despite several applications, Plaintiff was never offered full-time employment.

13. On December 10, 2013, Plaintiff filed a sex discrimination charge regarding these adverse employment actions, which was presented to the Equal Employment Opportunity Commission (the “EEOC”). In that charge, she asserted that she was “being discriminated against based on [her] sexual orientation.”

14. After having taught at Ivy Tech for more than thirteen years, administrators at Ivy Tech began to scrutinize Ms. Hively’s credentials in June of 2014 after she filed her EEOC complaint and had applied for another job. Ms. Hively was not subjected to a credentialing review for any application prior to her 2013 EEOC charge. On information and belief, the credentialing review was a pretext for Ivy Tech to justify its decision to not renew Ms. Hively’s part-time employment contract in July 2014.

15. Ivy Tech’s aforementioned decision to single Ms. Hively out for a credentialing review was an act of retaliation. Namely, the credentialing review was an adverse employment

action that occurred after Ms. Hively lodged her charge with EEOC alleging discrimination. Ivy Tech initiated the credentialing review despite the fact that Ms. Hively's credentials had not changed except for successfully completing more teaching assignments since her 2011 credentialing, receiving more positive reviews, and receiving a teaching award. Ivy Tech's retaliatory conduct is prohibited by Title VII. 42 UCSC § 2000e-3.

16. Ivy Tech's aforementioned decision to not renew Plaintiff's contract in the summer of 2014 was motivated by her prior filing a complaint with the EEOC.

17. Ivy Tech's aforementioned decision to not promote or renew Plaintiff's contract was motivated by Plaintiff's sex, including her failure to conform to the female gender stereotypes given her sexual orientation toward other women. By discriminating against Plaintiff for failing to conform to the female stereotype, and by discriminating against her based on conduct it allowed men to engage in, Ivy Tech engaged in unlawful gender stereotyping that falls within Title VII's prohibition against sex discrimination. *Hively v. Ivy Tech Cmty. Coll. of Indiana*, 853 F.3d 339, 346 (7th Cir. 2017), as well as sexual discrimination in favor of men.

18. Ivy Tech's aforementioned decision to not promote or renew Plaintiff's contract was motivated by Plaintiff's sex and sexual orientation. Ivy Tech did not take adverse action against men who were attracted to, dating, or living with women. Ivy Tech has disadvantaged Plaintiff because she did not conform to gender stereotypes and norms about women, was treated less favorably than men who were attracted to women, and she has experienced "paradigmatic sex discrimination" under Title VII. *Id.*

19. Ivy Tech took adverse action against Plaintiff based on her association and relationship with another woman. Plaintiff would not be suffering the adverse actions against her, had her sex been different. Ivy Tech's decision not to promote or renew Plaintiff's contract

because of her association with another woman is prohibited sex discrimination under Title VII. *Id.* at 348-349.

20. The effect of the practices described in paragraphs 6-19 above have been to deprive Plaintiff of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex.

21. The unlawful employment practices complained of in paragraphs 6-19 above were intentional.

22. The unlawful employment practices complained of in paragraphs 6-19 above were done with malice or with reckless indifference to Kim Hively's federally protected rights.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court:

23. Order Ivy Tech to make Kim Hively whole, by providing appropriate back-pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

24. Order Ivy Tech to make Kim Hively whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 6-19 above, such as debt-related expenses, job search expenses, medical expenses, and other expenses incurred by her, which were reasonably incurred as a result of Defendant's conduct, in the amounts to be determined at trial.

25. Order Ivy Tech to make Kim Hively whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices complained of in

paragraphs 6-19 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, the amounts to be determined at trial.

26. Order Ivy Tech to pay Kim Hively punitive damages for its malicious and reckless conduct described in paragraphs 6-19 above, in amounts to be determined at trial.

27. Award Kim Hively attorneys' fees, expenses and costs for this action.

Date: January 22, 2018

Respectfully submitted,

FISH & RICHARDSON P.C.

/s/ Raisa Ahmad

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

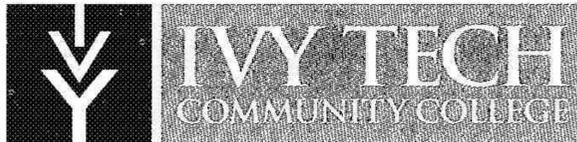
The undersigned hereby certifies that a true and correct copy of the above and foregoing document is being served via email to all counsel of record this 22nd day of January 2018, to the following addresses:

Jason T. Clagg
Email: jason.clagg@btlaw.com
Adam L. Bartrom
Email: adam.bartrom@btlaw.com
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ATTORNEYS FOR DEFENDANT
IVY TECH COMMUNITY COLLEGE

/s/ Raisa Ahmad
Raisa Ahmad

EXHIBIT A



August 11, 2014

To the Director of Admissions
Transition to Teaching Program
Bethel College

I am writing to give a general recommendation for Professor Kim Hively who is applying for the Transition to Teaching Program at Bethel College.

Kim has taught mathematics and algebra for the South Bend Campus of Ivy Tech Community College of Indiana since the Spring Semester of 2001. In her long service as one of our most reliable adjunct faculty, I have observed and interacted with Kim on a daily basis and have found her to be a knowledgeable, proficient and thorough lecturer. Students always ask to be in her classes. In addition, she is mature, has a profound devotion to higher education in general, possesses a good sense of humor, and interacts well with students and faculty alike. She would be a great asset to your program. I recommend her with no reservations whatsoever.

Sincerely,

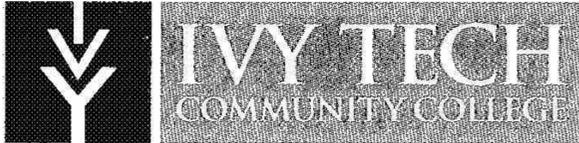
A handwritten signature in cursive script that reads 'James Powell'.

Dr. James Powell
Dean, School of Liberal Arts and Science



Ivy Tech Community College of Indiana
220 Dean Johnson Blvd.
South Bend, IN 46601
574-289-7001 ext 5377
jpowell@ivytech.edu

220 DEAN JOHNSON BOULEVARD
SOUTH BEND, INDIANA 46601-3415
574-289-7001



January 18, 2014

To Whom it May Concern:

I am writing to recommend Professor Kim Hively.

Kim has taught at Ivy Tech as a math adjunct for 13 years, and much of that has been under my tenure as Department Chair, so I know Kim well. She has taught the gamut of remedial math and also Intermediate Algebra, College Algebra, and Concepts in Mathematics. Kim has taught as many as seven courses in a semester. She is (obviously) a very hard worker. In addition, she is knowledgeable, a good lecturer, and is very popular with the students she teaches. She has a knack for explaining math concepts in a way that students understand and appreciate. Students recommend her to their peers, so her classes always fill up well. Kim is one of those adjuncts that I rely heavily upon as Department Chair, because I know she will do a very good job in any class to which she is assigned. She is also very professional and reliable.

Personally, I've always found Kim to be congenial, collegial, and very likeable as a person. She has a passion for teaching and an appreciation for and devotion to her job and to her students. She would be a great asset to any institution, and I recommend her wholeheartedly.

Please feel free to contact me if I might be of any further help.

Sincerely,

A handwritten signature in cursive script that reads 'Daniel Ledson'.

Professor Daniel Ledson
 Department Chair for Math and Science
 School of Liberal Arts and Science



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Ivy Tech Community College
Region 02 - North Central
Fall 2013 Evaluation Commentaries

School of: Liberal Arts & Sciences

Instructor: Hively, Kimberly A.

Campus: South Bend

CRN - DNS: 33463-MATH 118-04B

Program: MATH

Title: Concepts in Mathematics

Web or Print: P

Please add any comments you may have regarding your experience with Ivy Tech.

Kim is one of the best teacher I have had at Ivy Tech. She is amazing, a wonderful teacher.

Ivy Tech Community College
Region 02 - North Central
Spring 2014 Evaluation Commentaries

School of: Liberal Arts & Sciences

Instructor: Hively, Kimberly A.

Campus: South Bend

CRN - DNS: 45914-MATH 118-C6B

Program: MATH

Title: Concepts in Mathematics

Web or Print: P

Please add any comments you may have regarding your experience with Ivy Tech.

Kim Hively is one of the best and down to earth teachers.
Highly recommended!

EXHIBIT B



December 19, 2011

Re: Kim Hively

To the Gerald Lamkin Award for Excellence in Instruction Selection Committee:

I have known Kim Hively since January 2001. For much of that the time, she has taught mathematics and student success courses in the Academic Skills Advancement program under my direct supervision.

Kim is an excellent teacher in part because she shares her enthusiasm with her students. Kim is especially effective in finding practical applications for the material she is teaching, and she has the ability to clearly explain those applications to her students. Students learn quickly that when they ask for "real life" examples, they get them. Students consistently comment that Kim is able to take complex concepts and make them understandable. Kim's willingness to answer questions, inside or outside of class, makes her someone that students gravitate toward. Beyond understanding math, students also comment on how much they learn to enjoy mathematics, a subject that many of them previously pursued with dread.

Kim approaches teaching with a positive outlook. She is an individual who believes in what her students can achieve, often before they believe it themselves. Kim is committed to Ivy Tech and its students beyond the classroom. She frequently helps students outside of class, and she has also contributed to the Ivy Quill, a creative writing journal.

Kim Hively exemplifies the kind of adjunct faculty that Ivy Tech needs for its students. She is dedicated to helping students understand and enjoy mathematics and to helping them see how learning mathematics will help them to achieve their goals. I support her candidacy to be Ivy Tech's 2011-12 winner of the Gerald I. Lamkin Award for Excellence in Instruction.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Kathryn L. Waltz-Freel'.

Kathryn L. Waltz-Freel
Academic Skills Advancement Dean
Ivy Tech Community College, North Central

220 DEAN JOHNSON BOULEVARD
SOUTH BEND INDIANA 46601-3415
574-289-7001

EXHIBIT C

Subject: FW: kim hively transcripts

-----Original Message-----

From: Kathryn L. Waltz-Freel
Sent: Monday, June 16, 2014 4:50 PM
To: Morag Fulton <mfulton1@ivytech.edu>
Subject: FW: kim hively transcripts

FYI

-----Original Message-----

From: Dr. Dale C. Downs
Sent: Monday, June 16, 2014 4:50 PM
To: Kathryn L. Waltz-Freel
Subject: RE: kim hively transcripts

Hi,

It looks like she's credentialed to teach up to and including MATH 122, but not higher.

Dale

Dale C. Downs, Ph.D.
Dean, School of Liberal Arts and Sciences Associate Professor, Physics Ivy Tech Community College
410 East Columbus Drive
East Chicago, IN 46312
Phone: (219)392-3600 ext 283
ddowns@ivytech.edu

-----Original Message-----

From: Kathryn L. Waltz-Freel
Sent: Monday, June 16, 2014 3:40 PM
To: Dr. Dale C. Downs
Subject: FW: kim hively transcripts

Dale,
Can you look at the attached and tell me if you would credential this individual for math. I appreciate it, thank you, KWF

-----Original Message-----

From: Beth Ann Green
Sent: Thursday, June 12, 2014 11:27 AM
To: Kathryn L. Waltz-Freel; James R. Powell; mfulton@ivytech.edu
Subject: kim hively transcripts

Scanned Document

Subject: FW: Kim Hively

From: Kathryn L. Waltz-Freel
Sent: Tuesday, June 17, 2014 11:34 AM
To: Morag Fulton <mfulton1@ivytech.edu>
Subject: FW: Kim Hively

Morag,
FYI,
KWF

From: James R. Powell
Sent: Tuesday, June 17, 2014 11:34 AM
To: Kathryn L. Waltz-Freel
Subject: RE: Kim Hively

yes

From: Kathryn L. Waltz-Freel
Sent: Tuesday, June 17, 2014 11:30 AM
To: James R. Powell
Subject: FW: Kim Hively

Jim,
Morag's answers from the head of mathematics and the MLS program. It doesn't sound as if the 300-level classes would count at all based on Dr. Darnel's response. After you talk with Kim, let me know if she wishes to teach ASA classes.

KWF

From: Morag Fulton
Sent: Tuesday, June 17, 2014 11:24 AM
To: Kathryn L. Waltz-Freel
Subject: Kim Hively

Kathryn,

I heard back from both Dr. Chaney and Dr. Darnel about graduate level courses. I have copied the two responses below, but from what I gather the MLS degree does not have a math focus and a masters in math would contain at most 6 credits from the 400 level classes. I believe that this means that Kim Hively cannot be credentialed to teach Program Level courses.

Dear Morag:

In the MLS Program we don't count undergraduate courses as part of the degree. If the courses are appearing in the graduate portion of her student record, it indicates that she completed these courses after her undergraduate degree had been awarded. The applicant's assumption may be that her qualifications are the combination of her degree status (she has a master's degree) and her mathematics course work (completion of a certain number of upper division math courses). It may be possible to determine whether her mathematics background is equivalent to the BS in Mathematics. But the MLS degree is not itself concerned with a focus in math.

Yours,
Joe

Joseph R. Chaney
Director of the Master of Liberal Studies Program
Associate Professor of English
Indiana University South Bend
PO Box 7111
South Bend IN 46634-7111
Tel. (574) 520-4870
Fax (574) 520-4538

Dear Morag:

I cannot answer for the MLS program but a master's degree in mathematics usually allows at most six credit hours of undergraduate mathematics course work to be counted toward the graduate degree. These six credit hours would have to be senior level (400 and above) courses. Offhand, without seeing the transcript, these would include IU courses like M403, M404, M405, M413, M414, M415, M447-8, M463-6, M451, and M471-2, and would require grades of B- or better (though lower grades have been allowed under review).

I hope this helps.

Yours,

Michael R. Darnel, PhD
Chair, Dept. of Math. Sci.
IU South Bend

Subject: FW: Kim Hively

From: Kathryn L. Waltz-Freel
Sent: Tuesday, June 17, 2014 11:31 AM
To: Morag Fulton <mfulton1@ivytech.edu>
Subject: RE: Kim Hively

Morag,
I have forwarded the information below to Jim Powell. He is supposed to follow up with Kim. You will need to complete a new credential sheet. Let's talk next week.

KWF

From: Morag Fulton
Sent: Tuesday, June 17, 2014 11:24 AM
To: Kathryn L. Waltz-Freel
Subject: Kim Hively

Kathryn,

I herd back from both Dr. Chaney and Dr. Darnel about graduate level courses. I have copied the two responses below, but from what I gather the MLS degree does not have a math focus and a masters in math would contain at most 6 credits from the 400 level classes. I believe that this means that Kim Hively cannot be credentialed to teach Program Level courses.

Dear Morag:

In the MLS Program we don't count undergraduate courses as part of the degree. If the courses are appearing in the graduate portion of her student record, it indicates that she completed these courses after her undergraduate degree had been awarded. The applicant's assumption may be that her qualifications are the combination of her degree status (she has a master's degree) and her mathematics course work (completion of a certain number of upper division math courses). It may be possible to determine whether her mathematics background is equivalent to the BS in Mathematics. But the MLS degree is not itself concerned with a focus in math.

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Director of the Master of Liberal Studies Program
Associate Professor of English
Indiana University South Bend
PO Box 7111
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Dear Morag:

I cannot answer for the MLS program but a master's degree in mathematics

USDC IN/ND case 3:14-cv-01791-JD-MGG document 52-4 filed 01/22/18 page 6 of 8
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I hope this helps.

Yours,

Michael R. Darnel, PhD
Chair, Dept. of Math. Sci.
IU South Bend

From: Darnel, Michael R [<mailto:mdarnel@iusb.edu>]
Sent: Tuesday, June 17, 2014 11:59 AM
To: Chaney, Joseph R <jchaney@iusb.edu>; Morag Fulton <mfulton1@ivytech.edu>
Subject: RE: Transcript Question

I agree with Joe: contact the department.

From: Chaney, Joseph R
Sent: Tuesday, June 17, 2014 11:45 AM
To: Morag Fulton; Darnel, Michael R
Subject: RE: Transcript Question

I think you would need to contact the department in order to know that. But it may even differ from one student to the next. In MLS, at least, credits are counted in various ways, depending on the degree plan of the student. There was a time when we permitted the counting of undergraduate courses (as long as the teacher added graduate course elements for our students), but I don't think that would ever have occurred in MLS with mathematics courses.

Joe

Joseph R. Chaney
Director of the Master of Liberal Studies Program

Associate Professor of English
Indiana University South Bend
PO Box 7111
South Bend IN 46634-7111
Tel. (574) 520-4870
Fax (574) 520-4538

From: Morag Fulton [mfulton1@ivytech.edu]
Sent: 17 June 2014 11:36
To: Darnel, Michael R; Chaney, Joseph R
Subject: RE: Transcript Question

Thank-you both for your quick response. I suspected that the courses were not graduate level, but because they were on the graduate transcript some of the review committee were arguing that they were therefore counted by IUSB as Graduate Credit and not as Undergraduate Classes taken when the student was a graduate student.

In general, if an applicant takes courses at IUSB as a graduate student is there a way to determine by looking at the transcript which courses would have been counted as graduate credit or do should the review committee contact each department separately?

Thank-you once again for your help.

Morag Fulton
Interim Mathematics Program Chair
North Central Region
Ivy Tech Community College

From: Darnel, Michael R [mdarnel@iusb.edu]

Sent: Tuesday, June 17, 2014 2:00 AM

To: Morag Fulton; Chaney, Joseph R

Subject: RE: Transcript Question

Dear Morag:

I cannot answer for the MLS program but a master's degree in mathematics usually allows at most six credit hours of undergraduate mathematics course work to be counted toward the graduate degree. These six credit hours would have to be senior level (400 and above) courses. Offhand, without seeing the transcript, these would include IU courses like M403, M404, M405, M413, M414, M415, M447-8, M463-6, M451, and M471-2, and would require grades of B- or better (though lower grades have been allowed under review).

I hope this helps.

Yours,

Michael R. Darnel, PhD
Chair, Dept. of Math. Sci.
IU South Bend

From: Morag Fulton [mfulton1@ivytech.edu]

Sent: Monday, June 16, 2014 4:18 PM

To: Chaney, Joseph R; Darnel, Michael R

Subject: Transcript Question

Dr. Chaney and Dr. Darnel,

I do not know if either of you is the correct person to contact for this question. If you cannot answer the question could you please direct me to the correct person.

I have an applicant who wishes to teach in the math department here at Ivy Tech South Bend. The applicant submitted an unofficial transcript that includes 100 -400 level math courses under the Graduate Record. From what I can determine her graduate record begins in the Spring Semester of 2001-2002 and finishes in summer 2011. (I am assuming this is when she was awarded her MLS).

What I am trying to determine is which of her Math Classes, if any, would have been counted as graduate credit/classes. Also is there a minimum grade that needs to be achieved in order to count?

Thanks for all help that you can provide

Morag Fulton
Interim Math Program Chair
Ivy Tech Community College
Region 2: South Bend, Elkhart, Warsaw

574-289-7001 x 6824
mfulton1@ivytech.edu

SQ: Consistency/Learner/Harmony/Responsibility/Input

EXHIBIT D

Received

08/20/14

SEP 14 2011

Evaluation of qualifications of faculty candidate
Ivy Tech Community College, North Central Region, Academic Affairs

Academic Affairs

Candidate: Kim Hively C#: _____

Campus. Campus initiating this request. Circle one: Elkhart, Warsaw or South Bend.

This candidate meets our credentialing criteria and is recommended for approval to teach either (a) all courses in a specific program or (b) only the specific courses listed below. Check one:

Program level approval. Recommend approval of this candidate to teach all courses, at all levels, in one specific instructional program or academic discipline.

Specific discipline or program: all math

Courses only approval. Recommend approval to teach only the following specific courses:

Candidate's background. The specific education, degrees, certifications, experience, portfolio or background of this candidate that satisfy our minimum credential requirements are:

MLP - IUB has 46 grad credits math
26 are 200-level & above

Attached. Copies of this candidate's credentials demonstrating compliance are attached.

This candidate meets our credentialing standards as specified in our current APPM 3.8

Initiated, evaluated and recommended by: _____ Date: _____

Reviewed and recommended by Program Chair: _____ Date: _____

Reviewed and recommended by School Dean: J. Fall Date: 9/8/11

Approved by Vice Chancellor Academic Affairs: Full Date: 2/20/11

Limitations on approval, if any: _____

Signed form copied to initiator, Chair, Dean, Vice Chancellor and Human Resources. ✓ 2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

KIMBERLY A. HIVELY

Plaintiff,

v.

IVY TECH COMMUNITY COLLEGE,

Defendant.

CAUSE NO. 3:14-CV-1791-JD-MGG

[PROPOSED] ORDER

On January 22, 2018, counsel for Plaintiff, Ms. Kimberly Hively, filed Plaintiff's Motion for Leave to Amend the Complaint. Through her Motion, Plaintiff sought leave to amend the Complaint so that Ms. Hively could allege a retaliation claim that she learned of in late 2017. Plaintiff noted that opposing counsel opposed the motion.

With good cause shown, the Court now **GRANTS** Plaintiff's Motion, and Plaintiff's Amended Complaint may be filed by the clerk.

SO ORDERED.

Dated this _____ day of January 2018.

United States Magistrate Judge