

**JUDICIARY of the DUKE STUDENT GOVERNMENT**

*Pearlman et al. v. Head Line Monitor*



**Office of the Justices**

Docket No. 18-001

Case No. 22

Filed on

February 16th, 2018

Heard on

February 19th, 2018

Decided on

February 20th, 2018

## **Overview**

On February 16th, 2018 Charlie Pearlman et al. filed a Petition with the Judiciary contesting their tent's missed tent check within K-Ville on Wednesday 14th February. Sanjeev Dasgupta and Logan Kirkpatrick claim to have been in the tent at the time and to have slept through the check.

While the Petitioner conceded that their tent group did not physically make the check, they argued that their tent group was unfairly discriminated against due to the absence of a Disability Clause in the K-Ville Policy that allowed members of their tent with claimed disabilities receive reasonable accommodations. The Petitioner requested that the Judiciary vacate the missed tent check.

## **Parties**

### Parties of the Petitioner

Charlie Pearlman et. al., Petitioner

Logan Laguna-Kirkpatrick, Advocate

### Parties of the Respondent

Head Line Monitor David Duquette

Head Line Monitor Sara Constand

## **Held**

The absence of a disability clause in the K-Ville Policy is unconstitutional. Future policies should include a Disability clause that explicitly outlines the process through which students can seek out reasonable accommodations.

An injunction was issued that established that students seeking a reasonable accommodation in KVille should contact the Student Disability Access Office (SDAO).

# **OPINION of the COURT**

Delivered by

Chief Justice Devavrat V. Dabke

Joined by

Associate Chief Justice J. Ross Winston

Associate Justice Dean Ischiropoulos

Associate Justice Hunter McGhee

Associate Justice Analese Bridges

Associate Justice Alex Murphy

**Facts**

On Wednesday February 14th at approximately 2:45AM, a tent check was called by line monitor Noah Davis. Petitioner Charlie Pearlman's Tent #74 failed to physically check in with a line monitor thus missing this check which marked the tent group's second missed check. Sanjeev Dasgupta and Logan Kirkpatrick claim to have been in the tent at the time and to have slept through the check.

As a result of missing a second check, Tent #74 was bumped from line and moved to number 55 on the waitlist. Tent #74 appealed their missed tent check to the Head Line Monitor asking for their miss to be cleared on the basis they had evidence they were in the tent. The Head Line Monitor refused to vacate the missed tent check.

One member of tent #74, who was not in the tent on February 14th, had a hearing disability registered with the Duke Disability Office. Another member, Sanjeev Dasgupta, who was in the tent on February 14th, also claims to have an unregistered hearing disability.

## **Questions Raised**

The principle question is: Were members of tent #74 unfairly discriminated against due to their inability to make a tent check? We can divide this into three specific questions:

1. Was unjust harm done to the individuals with a disability on the basis of their disabilities?
2. Does the lack of a disability clause in the K-Ville Policy equate to unlawful discrimination?
3. What constitutes a tent check?

# DECISION

## **Unjust Harm**

Harm was done to Tent 74 when it was removed from the K-Ville tenting line. Since the individuals with claimed disabilities were a part of this group, harm was also inflicted upon them.

That being said, the individual with a documented disability was not in the tent at the time of the tent check. Thus, there is no causation between the individual's claimed disability and the harm done. The Judiciary concludes that while harm was done to the individuals with claimed disabilities, it was done for good reason, on the basis of Tent 74's missed check, and not on the basis of discrimination.

## **Discriminatory Nature of K-Ville Policy**

The Constitution is clear: "No student shall be subjected to discrimination on the basis of ... disability" (Article IX, § 5). As a student organization, the Line Monitor team falls under the purview of the Constitution of the Duke Student Government. Furthermore, as K-Ville is administered under the Duke Student Government they should be held to the highest standard of protecting student rights under the Constitution.

The K-Ville Policy itself does not include specific language regarding responsible accommodations for students in K-Ville. While accommodations for students in K-Ville have been made in the past, the absence of a clear disability policy places the burden on students to understand their rights and to seek out necessary accommodations. The Judiciary found that the absence of a disability policy could discourage students from tenting on the belief that there was no possibility to seek out accommodations in relation to a disability that would otherwise impact their ability to tent.

The Judiciary concluded that The K-Ville policy does not fully satisfy the requirements of the DSG Constitution Bill of Rights, specifically section 5. The lack of an explicit “Non Discrimination Clause” in the K-Ville Tenting Policy constitutes unlawful discrimination, and as a result, the K-Ville Policy is unconstitutional.

It should be noted that the K-Ville Policy falls under the purview of not only the Constitution of the Duke Student Government, but also Duke University’s Non-Discrimination Statement, which states, “(we admit) qualified students to all rights, privileges, programs, and activities generally accorded or made available to students.” Protections are thus available for students with disabilities.

However, the Judiciary concluded that while students could infer their right to non discrimination from other policies governing K-Ville Policy, they still could not clearly infer that they had the right to seek appropriate accommodations due to the absence of a policy in the K-Ville Policy itself.

### **Tent Check Definition**

The Judiciary defined a tent check as: the student check in with a Line Monitor during a called tent check. Thus, even if evidence was provided of an individual’s presence in K-Ville, mere presence alone would not constitute a check. The Judiciary concluded the line monitors complied with K-Ville policy to the best of their ability.

### **Conclusion**

The Judiciary finds that the lack of an explicit “Non Discrimination Clause” in the K-ville Tenting Policy constitutes unlawful discrimination, and as a result, the K-Ville Policy itself is unconstitutional.