

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

DISCRETIONARY REVIEW OF :	*	
	*	
HAYDEN BARNES,	*	
	*	
Petitioner,	*	OSAH DOCKET NO.:
	*	
<i>TO BOARD OF REGENTS FROM FINAL INSTITUTIONAL-LEVEL DECISION OF:</i>	*	OSAH-REGENTS-0809039-92- GATTO
	*	
	*	
VALDOSTA STATE UNIVERSITY,	*	
	*	
Respondent.	*	

“Attachment 2”

AMENDED STATEMENT OF APPEAL

COMES NOW the Board of Regents of the University System of Georgia, by and through counsel, Thurbert E. Baker, Attorney General for the State of Georgia, and submits this Amended Statement of Appeal as follows:

1.

Hayden Barnes (hereinafter “Petitioner”) was a student at Valdosta State University (“VSU”) until he was administrative withdrawal on May 7, 2007.

2.

Petitioner was administratively withdrawn from VSU because he posed a threat to VSU’s President Ronald Zaccari and to the campus.

3.

Or or about March 23, 2007, Petitioner had authored flyers that were placed across VSU’s campus opposing planned parking decks. During this same time, Petitioner maintained a Facebook website and a blog website concerning the issue of parking decks.

4.

On or about March 26, 2007, Petitioner wrote a letter to President Zaccari apologizing for his actions in relation to his opposition of the parking decks to the extent they were “perceived as a personal ‘attack’” against the President and announcing the end of his public opposition to the building of the parking decks by removing the flyers and deleting the Facebook website and the blog website.

5.

Petitioner reversed his decision to discontinue public opposition of the parking decks several days prior to the Board of Regents’ monthly meeting scheduled for April 17-18, 2007. Petitioner contacted the Governor’s office, the Chancellor’s office, and numerous members of the Board of Regents concerning the parking deck issue, telling them that he had met with President Zaccari on this issue, when he had not.

6.

As a result of Petitioner’s activity in relation to the Board of Regents’ meeting, Vice Chancellor Linda Daniels contacted President Zaccari on or about April 16, 2007, inquiring about Petitioner’s actions.

7.

On or about April 16, 2007, President Zaccari and the Dean of Students, Russ Mast, met with Petitioner, suggesting to Petitioner productive ways to address the parking deck issue and explaining to Petitioner the business plan regarding the parking decks.

8.

On or about April 16, 2007, the VSU campus was shaken by the news of more than 30 deaths in the Virginia Tech massacre.

9.

On or about April 18, 2007, President Zaccari received a paper copy of Petitioner's Facebook website complaining about parking issues. The Website featured a picture of President Zaccari accompanied by the caption, "S.A.V.E.-Zaccari Memorial Parking Deck."¹

10.

On or about April 20, 2007, Petitioner sent an email to President Zaccari referencing Easter Island and mocking its business plan.

11.

On or about this time, Petitioner posted a link on his website page to an article discussing the massacre at Virginia Tech. The linked information included a graphic which stated, "Shoot it. Upload it. Get famous. Project Spotlight is searching for the next big thing. Are you it?" Below the link on the posting, Petitioner added the comment, "[Petitioner] is cleaning out and rearranging his room and thus, his mind, or so he hopes."

12.

President Zaccari considered Petitioner's actions, including the statement on the Facebook website, to be a specific threat to his safety and a general threat to the safety of the campus.

13.

On or about this time, based on Petitioner's actions, President Zaccari consulted with campus police. For the remainder of the semester, President Zaccari was

¹ S.A.V.E. is a student group at VSU. The acronym stands for Students Against Violating the Environment.

accompanied to high-profile events by plain-clothed police officers, and uniformed police officers were placed on high alert.

14.

On or about this time until the end of the semester, President Zaccari convened several meetings with top-level campus administrators to discuss the threat posed by Petitioner.

15.

During these meetings, President Zaccari considered his concern for the safety of the campus, his concern for his personal safety, and his concern that the campus would erupt into chaos if the threat against him became public balanced against Petitioner's ability to complete his Spring-semester classes.

16.

Based on the totality of circumstances, President Zaccari determined Petitioner's presence on campus could create a clear and present danger of material interference with the normal operation of VSU.

17.

Based on the totality of the circumstances, President Zaccari determined Petitioner had clearly obstructed or disrupted, or attempted to obstruct or disrupt, administrative activities on campus.

18.

Petitioner was allowed to complete his 2007 Spring-semester classes.

19.

After the end of the 2007 Spring semester, on or about May 7, 2007, Petitioner was informed by letter that he had been administratively withdrawn from VSU pursuant to Board of Regents' policy 1902 because he was considered to present a clear and present danger to VSU's campus as a result of his recent activities directed toward President Zaccari, including the statement on the Facebook website.

20.

The May 7, 2007 letter from President Zaccari informed Petitioner of the circumstances under which he could return to school.

21.

The May 7, 2007 letter from President Zaccari explained Petitioner's right to appeal the decision to administratively withdraw Petitioner. In the letter, President Zaccari stated, "Generally, decisions of the University may be appealed to my office. However, because this matter directly concerns me, should you elect to appeal my decision, you should submit your written appeal within twenty (20) days of receipt of this letter to the Board of Regents."

22.

On or about May 19, 2007, Petitioner filed an appeal with the Board of Regents of the University System of Georgia for discretionary review of the final institutional-level decision.

23.

In several letters requesting and clarifying his appeal, Petitioner asked that he be reinstated as a student at VSU, that any mention of the incidents at issue in this appeal be

removed from all of his VSU records, that he be provided copies of VSU and/or Regents policies that define an administrative withdrawal, and that the Regents provide an official response “as to their standing on administrative dismissals by University Presidents that are absent any procedural due process.”

24.

In a letter dated September 29, 2007, Petitioner limited the issues on appeal by stating that he was “no longer requesting readmission to” VSU. Although not a part of the decision by VSU on appeal to the Board of Regents, Petitioner also sought to be reimbursed for the increase in costs associated with attending Kennesaw State University, the university he has chosen to attend as of the 2008 Spring Semester, as well as one-time reimbursement for relocation expenses.²

25.

The Board of Regents granted Petitioner a discretionary review. The *de novo* hearing, to be conducted by this Court as part of the discretionary review with this Court serving as hearing officer, is not subject to the Administrative Procedures Act, O.C.G.A. § 50-13-2 (1) (stating that “schools” are specifically excluded from the definition of “agency”). Because the review is discretionary and because Petitioner has no property right at issue, the burden rests upon the Petitioner to show that the decision of VSU to administratively withdraw him from school was arbitrary or capricious.

² From September 29, 2007 through October 3, 2007, Petitioner submitted several correspondences to the Board of Regents regarding this hearing. An amended Record on Appeal, which includes these documents, is being provided concurrently with the filing of this pleading. The amended Record on Appeal replaces the previously filed Record on Appeal, designated as Exhibit “1.”

PLEASE ADDRESS ALL
COMMUNICATIONS TO:

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing
AMENDED STATEMENT OF APPEAL prior to filing the same, by depositing a copy
thereof, postage prepaid, in the United States Mail, properly addressed upon:

Hayden Barnes
1408 Iola Dr., Apt. B
Valdosta, GA 31602

This ____ day of October, 2007.

DEBRAE C. KENNEDY 414335
Assistant Attorney General