IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LEE RAVEN,

Plaintiff,

v.

MATC and GAIL F. BAILEY,

Defendants.

OPINION AND ORDER

09-cv-503-slc

Plaintiff Lee Raven has brought this civil rights lawsuit against MATC (Madison Area Technical College) and Gail F. Bailey, an MATC teacher, for violating her civil rights. Raven was expelled from MATC's Watertown campus after Bailey complained of Raven's classroom behavior and MATC's Judicial Review Board found Raven in violation of the Student Code of Conduct. Raven, an African-American woman, claims that defendants actually expelled her because of her race. Both parties have moved for summary judgment. Because Raven has failed to demonstrate a genuine issue of material fact with regard to her claims of intentional discrimination, the court is granting summary judgment to both defendants. [1]

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[1] As for the other pending motions, I am granting Raven's motion for leave to file sur-reply (dkt. 54), and I have considered the sur-reply (dkt. 57) in deciding the summary judgment motions. Raven has renewed her motion for appointment of counsel (dkt. 46, filed on June 18, 2010, along with Raven's responsive summary judgment materials) which I am denying as moot because defendants have obtained summary judgment. The court also denies as moot defendant's recent motion to dismiss as a Rule 37(d) sanction (dkt. 63) and plaintiff's motion for leave to be deposed by written questions (dkt. 65).

UNDISPUTED FACTS[2]

In August 2007, Plaintiff Lee Raven, an African-American woman, enrolled in classes at MATC's Watertown campus, including Business Law I, taught by defendant Gail F. Bailey. Raven and Bailey got off to a rocky start: in the first class, on August 28, 2007, Bailey asked her students to write a one-page personal essay. Raven questioned Bailey as to whether the essay was a requirement and ultimately submitted the following (spacing and lineation similar to the original, which filled most of a page):

Something Personal

I was born. I am living
& I will die someday.
I hate bigots, gay bashers, phony
solidarity & people who think
I'm too stupid to know when
they're giving me the nigger
treatment just because they have a
smile on their face while
they're doing it. Whachawawawa? I'll
take my A+.

May 4 , 2010 Affidavit of Lee Raven ("Raven Aff."), Ex. 2 (dkt. 27-3).

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[2] These facts are derived from the parties' undisputed proposed findings of facts viewed in the light most favorable to Raven. Defendants urge the court to reject Raven's proposed findings of fact because they are not supported by admissible evidence and the documents attached to her affidavit are not properly authenticated. Raven attempted to correct the authentication errors, *see* dkts. 40, 53, 57-2. For the limited purpose of deciding the pending dispositive motion(s), I will consider Raven's imperfectly-authenticated exhibits. Such forbearance, however, does not relieve Raven of her obligation to put forth *evidence* in support of her motion for summary judgment and in opposition to defendants' motion, a requirement the court flagged for Raven in an April 23, 2010 order, *see* dkt. 23 at 2. Summary judgment is the "put up or shut up" phase of a civil lawsuit. *AA Sales & Assocs., Inc. v. Coni-Seal, Inc.*, 550 F.3d 606, 612-13 (7th Cir. 2008). To survive summary judgment, Raven must show through specific evidence that a triable issue of fact remains. *Id*.

Raven and Bailey had more interactions over the next few classes but they are factually disputed. More precisely, Raven doesn't necessarily dispute MATC's version of the facts but disputes defendants' characterization of her behavior as "disruptive" or otherwise problematic. Accordingly, at this point I am not adopting as fact any disputed characterization of an event. For instance, defendants contend that at the August 30, 2007 session of Bailey's class, Raven refused to participate in a discussion of a short video and that she sighed loudly; Raven contends that she completed the assignment by stating that she had no comment. Also: whenever Raven left during class to use the bathroom (defendants claim it was once per class session), she would re-pack all of her effects into her backpack, zip it, leave the classroom for several minutes, return to class, unzip her backpack, and unpack her items again. Defendants allege that this behavior was disruptive to the class. Raven explains that she did not feel comfortable leaving her personal belongings in the classroom when she was not present, and that it is an overreaction for defendants to characterize this practice as disruptive.

Raven recounts an argument after class on August 30, 2007, during which Raven and Bailey had a literal tug-of-war with a copy of the class syllabus. The conversation/argument continued in the office of a student advisor. Raven repeatedly called Bailey a liar or said that her statements were lies during this argument. This meeting triggered MATC's Conflict Management Services ("CMS") process. CMS helps to mediate and resolve conflicts that arise at MATC, including grade disputes and conflicts between individuals. When allegations arise regarding violations of the Student Code of Conduct, the incident is to be reported to CMS or the regional campus administrator's office.

On or about August 30, 2007, Bailey sent an email to Kathleen Radionoff, MATC's Dean for the Center of Business and Applied Arts, concerning Raven's behavior in class. Throughout

September, Bailey continued to discuss with Dean Radionoff Bailey's concerns with Raven, including that she found some of Raven's comments and behaviors to be threatening.

On September 4, 2007 Raven called the CMS office to complain about a particular instructor, presumably Bailey. Raven was assigned an advisor, Alfonse Studesville, to help her with the difficulties she was encountering. On September 18, 2007 Raven met with Studesville, Campus Manager Jeff Dodge and one other person.

Raven sent Bailey a letter dated September 19, 2007 stating:

> I do not want to be on any of the panels or the presentations. I will be in class. I could use more time to reinforce the chapters being read for this class. If there is something else I could do to make up for the credit, I'd be willing to consider it. If not, fine.

Bailey Decl., dkt. 35-4, Ex. K.

On October 4, 2007, Bailey sent an e-mail to Dean Radionoff and to Dodge reporting that another student had expressed concerns about Raven's behavior in class. Bailey also listed six reasons for removing Raven from her class:

> (a) she will not participate in group activities
>
> (b) she leaves the class, then returns to the class
>
> (c) she makes negative gestures to me throughout the class, including stares, sights, rolling of eyes and shaking her head no
>
> (d) she has threatened me twice now, once in writing and once verbally
>
> (e) not attending class but being present in the building
>
> (e) [*sic*] on her "good" days she has contributed to the class discussion and her attendance has been good, but the mood swings are frightening.
>
> Cornille Decl. Exh. H., dkt. 35-1.

On October 11, 2007, Dean Radionoff sent an email to Keith Cornille, then MATC's Dean of Learner Development, requesting immediate removal of Raven from the Watertown class for violations of Sections 3, 4, and 14 of the Student Code of Conduct.[3] Dean Cornille decided to suspend Raven temporarily pending the outcome of a Judicial Review Board ("JRB") hearing for alleged violations of the Student Code of Conduct. Interim suspension is MATC's standard practice when a student is alleged to have engaged in conduct that interferes with the educational process, which Raven was alleged to have done by violating Section 3 of the Student Code of Conduct. Dean Cornille wrote a letter to Raven announcing her temporary suspension, informing her that a JRB Hearing would be held promptly, identifying Studesville (Raven's advisor during the CMS process) as her judiciary advisor, and enclosing a copy of the Student Code of Conduct and information regarding the judiciary process.

On Monday, October 15, 2007, MATC's Chief of Security James Bottoni hand-delivered the suspension letter to Raven at the Watertown Campus and had Raven removed from campus. Raven's JRB hearing was set for October 30, 2007. Prior to the hearing, Dean Cornille sent letters to Raven reiterating the process and enclosing policy statements. Dean Cornille acted as the chair of the JRB for Raven's hearing. The four other members of the JRB board were MATC's director of technology services, an MATC faculty member, a non-administrative, non-faculty professional staff member, and an MATC student representative. Bailey acted as the "prosecutor" for her case against Raven and was responsible for presenting evidence supporting

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[3] Which provide: "3. Students are responsible to interact in ways that will not interfere with the educational process and/or any MATC sponsored activity. Class disruptions are considered an interference with the educational process. . .; 4. Students are responsible to treat others with respect and dignity; . . . 14. Students are responsible to comply with all reasonable verbal and written instructions and/or directives from authorized MATC personnel."

Raven's rule infractions. During the hearing Bailey presented the JRB with a summary of Raven's behavior and argued that Raven had violated sections 3, 4 and 14 of the Student Code of Conduct. Raven then had an opportunity to respond to the Bailey's allegations. At one point, Raven told Bailey to "shut up." Raven acknowledged that she had called Bailey a liar. After the hearing, the JRB deliberated in closed session. The board members did not discuss Raven's race during their deliberations.

In a letter dated October 31, 2007, Dean Cornille informed Raven of the JRB's determinations: it found Raven in violation of Sections 3 and 4 of the Student Code of Conduct, but not Section 14. More specifically, Dean Cornille stated that the Section 3 violation was based on Raven's practice (at least once each class session) of repacking her materials to visit the restroom, then unpacking them upon her return, which the JRB found "demonstrated excessive disruption to the classroom environment, teaching and activities." The JRB found a violation of Section 4 based on materials and testimony indicating "a pattern of your exhibiting disrespectful behavior toward your instructor"; "other students in the class observed behaviors and actions which were interpreted as disrespectful to the instructor"; and "Similar behaviors were also exhibited at the hearing such as referring to Ms. Bailey solely as 'Bailey' and telling the complainant to 'shut up.'" Defs.' Exh. G, dkt. 34-7. The JRB decided to expel Raven from MATC's Watertown campus, but to allow her to take classes at MATC's Truax campus if she met certain conditions, including obtaining a psychological assessment. *Id.*

On August 13, 2009, Raven filed this lawsuit and requested leave to proceed *in forma pauperis*. The court, in an opinion signed by Judge Crabb, allowed Raven to proceed but ordered her to submit an amended complaint that complied with Rule 8. Sept. 14, 2009 Order, dkt. 3.

The court inferred that Raven was alleging a due process violation, *id.* at 3, but in her second amended complaint, Raven explicitly disavowed any due process claim, stating that "Raven is not claiming that she didn't receive due process." Second Am. Compl., dkt. 8, at 1. Instead, Raven's claims are that defendant MATC violated Title VI of the Civil Rights act of 1964, 42 U.S.C. § 2000(d), and that defendant Bailey violated Raven's rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983. *Id.* at 1; *see also* October 26, 2009 Order, dkt. 9.

OPINION

Both parties have moved for summary judgment, although Raven appears to have withdrawn her motion. *See* Dkt. 53 at 3 ("move the Court to deny both MSJs & allow this case to proceed to trial").[4] Also, in her surreply, Raven attempts to raise the due process claim that she explicitly waived at the beginning of her lawsuit. *See* Dkt. 53 at 2. This is too late. Raven affirmatively waived this claim in her second amended complaint. She cannot add it to the mix for the first time in response to defendants' summary judgment motion. *See E.E.O.C. v. Lee's Log Cabin, Inc.* 546 F.3d 438, 443 (7th Cir. 2008). In any event, Raven has failed to demonstrate any property right as the foundation of such a claim. *Williams v. Wendler*, 530 F.3d 584, 589 (7th Cir. 2008) (rejecting general assertion that "any student who is suspended from college has suffered a deprivation of constitutional property").

[4] Even if Raven has not withdrawn her motion, the analysis that follows establishes not only that she is not entitled to summary judgment in her favor, but that defendants are entitled to summary judgment against her.

Raven has brought her discrimination claim against MATC under Title VI of the Civil Rights Act of 1964, which forbids racial discrimination by recipients of federal grants, 42 U.S.C. § 2000d, while her discrimination claim against Bailey personally would arise under the Equal Protection Clause under the Fourteen Amendment. *See Burks v. Wisconsin Dept. Of Transp.*, 464 F.3d 744, 750 n.2 (7th Cir. 2006). Both claims can be analyzed under the same framework as a Title VII discrimination claim. *See Brewer v. Bd. of Trustees of the Univ. of Ill.*, 479 F.3d 908, 921 (7th Cir. 2007) ("The elements of a prima facie case are the same under both Title VI and VII."); *Williams v. Seniff*, 342 F.3d 774, 788 (7th Cir. 2003) ("Our cases make clear that the same standards for proving intentional discrimination apply to Title VII and § 1983 equal protection."); *Friedel v. City of Madison*, 832 F.2d 965, 971 (7th Cir. 1987) ("When the plaintiff alleges intentional discrimination, as here, it is clear that the same standards in general govern liability under section 1981, 1983 and Title VII.").

Raven can avoid summary judgment against her in one of two ways: (1) "the conventional method of presenting a 'convincing mosaic' of direct of circumstantial evidence that could permit a reasonable jury to conclude that the employer acted with discriminatory intent, often called the 'direct' method of proof;" or (2) "the burden-shifting method first established in *McDonnell-Douglass Corp. v. Green*, 411 U.S. 792, 802 (1973), often called the 'indirect' method of proof." *Brewer*, 479 F.3d at 915. As discussed below, Raven has not presented sufficient evidence under either method of proof to avoid summary judgment.

(1) Direct Proof of Raven's Claims

Despite the name of this method, a plaintiff may present and rely upon both direct and circumstantial evidence to establish that she has a triable discrimination claim. "Direct evidence is evidence which, if believed by the trier of fact, will prove the particular fact in question without reliance upon inference or presumption." *Rudin v. Lincoln Land Comm. College*, 420 F.3d 712, 720 (7th Cir. 2005). Raven offers no direct evidence of racial animus harbored by Bailey or anyone else at MATC. Rather, Raven attempts to offer circumstantial evidence that Bailey discriminated against her. Raven's voluminous submissions are rife with unequivocal–and hyperbolic–accusations of racism[5] but the only discernible allegations Raven has provided in support of her claim of discrimination on the part of Bailey are:

> "On the next class after 8/30/07, Bailey asked the class in a disgusted tone of voice about a poster on the wall of 'that woman,' Rosa Parks." Dkt. 44 at ¶ 23.
>
> Bailey searched "whacha wa wa wa," or some variation of it, online and found a slang definition of W.A.W.A. in an online "urban dictionary." Dkt. 44 at ¶ 43.
>
> Bailey made some reference to Raven "milking" the system. Dkt. 52.
>
> Bailey complained about Raven scowling, shaking her head no, starting, sighing, and rolling her eyes, which Raven contends are obvious racial stereotypes. Dkt. 26 ¶ 3.
>
> Bailey was motivated by racial animus in complaining that she felt threatened by Raven. Dkt. 57 at 44.

Even considering these allegations together, it is difficult to conclude that they suggest, let alone prove, racial animus by Bailey. *See Sun v. Bd. of Trustees of the Univ. of Ill.*, 473 F.3d 799, 812 (7th Cir. 2007). ("Circumstantial evidence of discrimination is evidence which allows the

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[5] For instance, in her second amended complaint, Raven characterizes Bailey's actions as a "filthy race crime." Dkt. 8 at 9.

trier of fact to infer intentional discrimination by the decisionmaker.") This conclusion, however would be a tenuous basis on its own to grant summary judgment against Raven.

More importantly, these allegations are unsupported by any evidence outside of Raven's own affidavit, which in turn relies on Raven's opinions and subjective interpretation of events. Like the plaintiffs in *Friedel v. City of Madison*, Raven has "relied upon mere allegations, conclusory statements, and assertions of belief rather than fact, and such material cannot serve to raise a genuine dispute on a question of material fact." 832 F.2d 965, 972 (7th Cir. 1987). Raven focuses primarily on her assertion that Bailey was "crying rape,"[6] and that "Bailey was never at any time actually in fear of Raven. Bailey just wanted Raven out of her class & was willing to do anything to do that." Dkt. 57 at 44. Raven's assertions that Bailey either lied about feeling threatened by Raven or felt threatened because of Raven's race are the type of conclusory allegations the Seventh Circuit warned against in *Friedel.* Nor is a trial required simply because Raven claims that Bailey–or anyone else at MATC–is lying about her/his true motives. "[T]he prospect of challenging a witness' credibility is not alone enough to avoid summary judgment." *See Dugan v. Smerwick Sewerage Co.*, 142 F.3d 398, 406 (7th Cir. 1998).

Finally, there is a causal break between Bailey's behavior and the alleged harm to Raven. MATC's decision to expel Raven was made by separate decision-makers as part of an independent process that heard from both sides before deciding. Even if Bailey's complaints about Raven were motivated by racial animus, MATC, not Bailey, made the decision to expel

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[6] In her interview with the United States Department of Education, Office of Civil Rights, Raven "explained the 'cry rape' phrase she used in the OCR complaint was a reference to America's racial history in which a white person who feels uncomfortable in the presence of blacks can always make a false accusation against a black to put him in his place, including the most extreme case a white woman claiming a black man raped her." Dkt. 27-8 at 3.

Raven from its Watertown Campus. "For a nominal non-decision-maker's influence to put an employer in violation of Title VII, the employee must possess so much influence as to basically be herself the true 'functional[] . . . decision-maker.'" *Brewer*, 479 F.3d at 917 (quoting *Little v. Ill. Dept. of Revenue*, 369 F.3d 1007, 1015 (7th Cir. 2004)). In other words, "[t]he nominal decision-maker must be nothing more than the functional decision-maker's 'cat's paw'." *Brewer*, 479 F.3d at 917-18 (citing *Shager v. Upjohn Co.*, 913 F.2d 398, 403 (7th Cir. 1990)).

Here, while Bailey "prosecuted" her complaints against Raven, Raven had an equal opportunity to present her version of events, after which the JRB alone made the decision to expel Raven. "[W]here a decision maker is not wholly dependent on a single source of information, but instead conducts its own investigation into the facts relevant to the decision, the employer is not liable for an employee's submission of misinformation to the decision maker." *Brewer*, 479 F3d at 916 (citing *Byrd v. Ill. Dept. of Public Health*, 423 F.3d 696, 708 (7th Cir. 2005); *Willis v. Marion County Auditor's Office*, 118 F.3d 542, 547 (7th Cir. 1997)). Any arguable racial animus from Bailey was filtered and negated by Dean Radionoff's review of the situation, followed by Dean Cornille's review, and finally by the Board's decision after hearing from both sides.

Raven had an opportunity to present her side of the story at the JRB hearing. Although she did not call witnesses in her defense, she had the right to do so. MATC heard and considered Raven's version of her conflict with Bailey. The Board also considered Raven's demeanor and statements made during the hearing in deciding to expel her; indeed, Dean Cornille specifically noted Raven telling Bailey to "shut up" during the hearing as a reason for finding Bailey in violation of Section 4 of the Student Code of Conduct, which concerns treating

others with respect. The fact that the JRB did not find Raven in violation of one of the sections of the Student Code of Conduct charged by Bailey is further evidence that the Board acted independently after conducting its own investigation into the facts.

As the Seventh Circuit instructed in *Brewer*,

> It does not matter that in a particular situation much of the information has come from a single, potentially biased source, so long as the decision maker does not artificially or by virtue of her role in the company limit her investigation to information from that source. For instance, we have frequently dealt with employees that claim they were framed for misconduct by a racist coworker or superior, which cause the employee in question to be fired. Even though the employer in such situations must often decide what to do based on nothing more than the conflicting stories of two different employees, the employer will not be liable to the racism of the alleged frame-up artist so long as it independently considers both stories.

479 F.3d at 916; *see also Eiland v. Trinity Hosp.*, 150 F.3d 747, 753 (7th Cir. 1998) (finding supervisor had acted independently in firing plaintiff nurse where she "evaluated the circumstances, including [the plaintiff's] version"); *Willis v. Marion County Auditor's Office*, 118 F.3d 542, 547-48 (1997) (finding "proactive involvement" in a serious investigation sufficed to absolve employer of liability for the immediate supervisor's frame-up). In other words, there was no causal relationship between Bailey's alleged racial animus and Raven's expulsion because the chain was broken by MATC's independent investigation and hearing. *See Willis*, 118 F.3d at 547 ("[I]t is clear that, when the causal relationship between the subordinate's illicit motive and the employer's ultimate decision is broken, and the ultimate decision is clearly made on an independent and a legally permissive basis, the bias of the subordinate is not relevant.").

But what about Raven's overarching Title VI claim that *MATC* discriminated against her?[7] Doesn't this prevent the court from relying on the neutrality of the JRB hearing and decision? It could, if there were any evidence to support this claim. Raven, however, offers nothing beyond conjecture spun from her subjective characterizations of what happened. Raven's position appears to be that her challenged behavior was acceptable; therefore, if anyone at MATC found it unacceptable, it was because Raven is African-American, not because she is rude and disrespectful. There is no proof to support this theory. The undisputed evidence reveals words and deeds by Raven in class and toward Bailey that most reasonable people would find rude and disrespectful coming from *any* person. Therefore, it is a non sequitur automatically to attribute MATC's disapproval of Raven to her race rather than to her words and deeds themselves. Further, the undisputed evidence is that the JRB members did not discuss Raven's race when considering her case. If there were proof that the JRB then treated Raven more harshly for her behavior than comparable white students, this would permit an inference of racial motivation. This possibility is discussed in the next section on indirect proof, but I note here that Raven has presented no evidence that would support her claim of racism by anyone at MATC.[8]

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[7] *See, e.g.,* Raven's surreply, dkt .57, at 47: "Does the Court see the conspiracy, the set-up & the successful railroading of Raven now? Doesn't all the CMS going on behind Raven's back suggest a set-up for some surprise covert action against Raven, that for some reason was suddenly abandoned?"

[8] Even if there were evidence that discriminatory intent triggered Bailey's initiation of disciplinary proceedings against Raven, the fact that MATC was the decision-maker rather than Bailey would relieve Bailey of any liability for Raven's expulsion. *See Beattie v. Madison County School Dist.*, 254 F.3d 595, 605 (5th Cir. 2001) ("As we have noted, Acton and Jones did not fire Beattie directly, but merely recommended her termination to the board, which made the final decision. If Acton and Jones did not cause the adverse employment action, they cannot be liable under § 1983, no matter how unconstitutional their motives.")

(2) Indirect Method of Proof

Under the indirect or burden-shifting method of proof, the plaintiff must first make out a prima facie case. Here, Raven must demonstrate that (1) she was a member of a protected class, (2) she was meeting MATC's legitimate educational expectations, (3) she suffered an adverse action, and (4) similarly-situated non-class members, i.e., non-African-American students, were treated more favorably than she. *Brewer*, 479 F.3d at 915. To withstand summary judgment as to this initial step, a plaintiff "need only show that there is a genuine issue of material fact regarding these elements." *Norman-Nunnery v. Madison Area Tech. College*, 625 F.3d 422, ___, 2010 WL 4395396, at *8 (7th Cir. Nov. 8, 2010) (citing *O'Neal v. City of New Albany,* 293 F.3d 998, 1003 (7th Cir. 2002)).

If the plaintiff makes a prima facie case, then the burden then shifts to the defendant to demonstrate a non-discriminatory reason for the adverse action. *McDonnell- Douglas*, 411 U.S. at 802; *Norman-Nunnery*, 2010 WL 4395396, at *8. Here, MATC and Bailey would need to demonstrate a non-discriminatory reason for expelling Raven. If the defendant is able to demonstrate a non-discriminatory reason, then the court then performs a pretext analysis.

Although normally the court reviews the prima facie case before requiring the defendant to demonstrate a non-discriminatory reason and engaging in the pretext analysis, here, the elements overlap. *See Norman-Nunnery*, 2010 WL 4395396, at *8. In other words, the question whether Raven was meeting MATC's legitimate educational expectations overlaps with the question whether MATC had a non-discriminatory reason for expelling her.

Beginning with Raven's burden to demonstrate a prima facie case, there is no dispute that Raven belongs to a racial minority or that she suffered an adverse action. Raven, however, has

failed to demonstrate that there is a genuine issue of material fact as to the second and fourth elements: that she was meeting MATC's legitimate educational expectations and that similarly-situated non-class member students were treated more favorably than she was.

First, the undisputed facts demonstrate that Raven was not meeting the legitimate educational expectations of MATC pursuant to its Student Code of Conduct at §§ 3 and 4. She regularly disrupted Bailey's class and she did not treat Bailey with respect and dignity. Raven vehemently contends otherwise, blaming Bailey for any conflicts and accusing her of "crying rape," but the vehemence of Raven's contentions proves MATC's point: Raven is unapologetically confrontational, outspoken and stubborn. Raven's self-appraisal that her behavior was neither disruptive nor disrespectful does not create a genuine issue of fact on this point. *See Dunn v. Nordstrom, Inc.*, 260 F.3d 778, 787 (7th Cir. 2001).

Second, Raven has also failed to identify similarly-situated students who were treated more favorably than she was. Raven first offers the other eleven students in the business law class as similarly-situated students, but does not describe how their behavior was similar to hers. Raven also identifies various other students, one by name, and takes issue with their activities, dress and statements. Dkt. 42 at 13, 44 at ¶¶ 31-33. But, once again, this is insufficient: Raven has not identified any student who stood accused of anything similar to the reasons MATC expelled her. *Brewer*, 479 F.3d at 916; *see also Naik v. Boehringer Ingelheim Pharms., Inc.*, No. 09-2960, 2010 WL 4702453, at *3 (7th Cir. 2010) ("Similarly situated employees must be directly comparable to the plaintiff in all material respects, which includes showing that the coworkers engaged in comparable rule or policy violations."). (Raven does not explicitly identify the race of these students, but I will assume that they are white).

In any event, the defendants have presented legitimate, non-discriminatory reasons for expelling Raven from the Watertown campus. *Brewer*, 479 F.3d at 915 (focusing on defendant's reason rather than prima facie case); *Sun*, 473 F.3d at 815 ("Assuming that Sun could, in fact, establish a prima facie case, the defendants have articulated a non-discriminatory reason for denying him tenure that is not pretextual.") Raven does not dispute the facts of her interactions with teachers and behavior in class, she simply disputes the characterization of her actions as disruptive or warranting expulsion from MATC. Raven's filings are replete with examples of Raven's belief that she had some sort of fundamental right to act as she wished in class. *See, e.g.*, Dkt. 44 at ¶ 15 ("Al & CMS claimed that Bailey had some right to operate her class any way she wanted to & that I was supposed to sit through the 16 weeks & after that I could complain if I wanted to."); dkt. 57 at 12 ("Raven has a right to have hold & express her opinion just like the other students & all Americans, does she not?"); dkt. 57 at 45 ("[I]t's [Raven's] right to participate or not - which it is Raven's right to participate or not!").)[9]

Finally, Raven has failed to put forth any evidence that the defendants' proffered reasons were pretextual, that is, that defendants lied or their reasons have no basis in fact. *Alexander v. Wis. Dept. of Health & Family Servs.*, 263 F.3d 673, 683 (7th Cir. 2000). The question is not whether MATC's reasons for its decision were correct, it is whether these reasons are unsupported or a lie. Raven has offered nothing but her own incorrect and circular opinion that because her behavior actually was acceptable, MATC harassed and expelled her because she was African American. There is ample support in the record for the JRB's finding that Raven's

[9] Raven also disrespects her adversaries in her court filings. *See, e.g.,* dkt. 42 at 14 (referring to another teacher as a "filthy pig" for "gassing off in my face"); dkt. 57 at 27 (referring to "that gritty little worm Cornille").

behavior was unacceptable and there is no proof that Bailey, the JRB, or anyone else at MATC treated Raven as they did due to racial animus. Therefore, the defendants are entitled to summary judgment.

(3) Qualified Immunity

In addition to arguing that Raven has failed to put forth sufficient facts to demonstrate a violation of Title VI or of her rights to equal protection under the law to survive summary judgment, defendants also contend that summary judgment should be granted as to Raven's claims against Bailey because Bailey is entitled to qualified immunity. Specifically, defendants argue that "[n]o reasonable instructor in Bailey's position could have known that reporting a student's disruptive and disrespectful conduct potentially violated a constitutionally protected right." (Dkt. 33 at 23.) Defendants' argument misses the mark because they are not asking the right question. It is clearly established that it is unconstitutional to discriminate against a student on the basis of race, so if there had been evidence supporting Raven's claims, then the qualified immunity doctrine would offer no refuge to defendants. Because there is no evidence to support Raven's claims, the point is academic.

ORDER

IT IS ORDERED THAT:

1. Plaintiff's motion for summary judgment (dkt. 24) is DENIED;

2. Plaintiff's motion to set new precedent (dkt 45) is DENIED;

3. Plaintiff's motion to appoint counsel (dkt. 46) is DENIED;

4. Plaintiff's motion to deny summary judgment and proceed to trial (dkt. 53) is DENIED;

5. Plaintiff's motion for leave to file sur-reply (dkt. 54) is GRANTED;

6. Defendant's motion to dismiss as a Rule 37 (dkt. 63) discovery sanction is DENIED;

7. Plaintiff's motion for leave to be deposed by written questions (dkt. 65) is DENIED;

8. Defendants' motion for summary judgment (dkt. 30) is GRANTED and the Clerk of Court is directed to enter judgment closing this case.

Entered this 17th day of December, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge