IN THE COURT OF CLAIMS OF OHIO

JANE DOE, *et al.*	:	**Case No. 2020-00651JD**
	:	
Plaintiff	:	**Judge Dale A. Crawford**
	:	
v.	:	
	:	**MEMORANDUM OF DEFENDANT**
	:	**IN OPPOSITION TO PLAINTIFFS'**
MIAMI UNIVERSITY	:	**MOTION FOR A TEMPORARY**
	:	**RESTRAINING ORDER AND/OR**
Defendant.	:	**PRELIMINARY INJUNCTION**
	:	

Defendant Miami University ("Miami" or the "University") respectfully submits this Memorandum in Opposition to the Emergency Motion for a Temporary Restraining Order and/or Preliminary Injunction requested by Plaintiffs Jane Doe and Jane Roe.[1] At its core, this case is Plaintiffs' challenge to Miami's disciplinary process and an attempt at a "do over" dressed up as a breach of contract claim. Miami is committed to the success and advancement of each of its students, but it cannot abide behavior that jeopardizes the well-being and safety of the University community. Miami, like many universities across the country, has had to take aggressive actions to stop the spread of the COVID-19 virus among its students, including suspending students for holding mass gatherings. Miami is far from the only university taking such firm actions. Colleges across the country are suspending students for violating coronavirus measures, including Northeastern, Ohio State University, and Clemson University.[2]

[1] Miami does not consent to the use of pseudonyms in this matter and is separately filing an opposition to Plaintiffs' motion to proceed anonymously.
[2] https://thecollegepost.com/students-violating-covid-measures/; https://www.greenvilleonline.com/story/news/2020/09/23/clemson-suspends-students-

Long before the August party at Plaintiffs' residence, it was obvious that COVID-19 was deadly and highly contagious. The only way to stop its spread was to be diligent in social distancing, mask-wearing, and avoiding mass gatherings. An unrestrained spread of the disease would require Miami to shut down, causing employees to lose their jobs, or worse, could result in serious illness or death. Miami, as we all do, has an obligation to do its part to contain the spread of this disease.

Miami suspended Plaintiffs Jane Roe and Jane Doe after they were cited by an Oxford police officer who visited their house following complaints about noise at a "huge party." At the time of this party, both the City of Oxford and Miami prohibited such "mass gatherings." Plaintiffs do not deny knowing about these rules, and they have offered no sworn statement that there was not a mass gathering at their house. No affidavit and no verified complaint have been submitted, and Plaintiffs essentially put on no defense during their disciplinary proceedings.

Plaintiffs are simply unhappy with their suspension. But they do not get a do-over in this Court, and they are certainly not entitled to an injunction. To obtain this extraordinary relief, Plaintiffs must prove by clear and convincing evidence that they are likely to succeed on their underlying breach of contract claim, that they will suffer irreparable harm without the injunction, that the injunction will not harm third parties, and that the injunction is in the public interest. They can show none of these.

First and foremost, Plaintiffs' breach of contract claim fails as a matter of law. Miami complied with each of its contractual obligations related to the disciplinary process. Plaintiffs

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organizations-following-weekend-parties/3501942001/;
https://www.cnn.com/2020/08/25/us/ohio-state-university-suspensions-trnd/index.html.

quibble with the findings of Miami's hearing officer and object to the outcome. But whatever complaints Plaintiffs have about those matters, they are not at issue here. The only question is whether Miami followed the process outlined in the University's Code of Student Conduct, and it is clear that it has.

While Plaintiffs claim that they need immediate judicial intervention reversing their suspension so that they will not lose the benefit of their coursework from this semester, what they fail to mention is that Miami offered to let them serve their suspensions next semester to avoid precisely this result. Any alleged harm is self-inflicted.

Quite gallingly, Plaintiffs also claim that the injunction will not harm others. But the basis for the entire disciplinary proceeding was Plaintiffs' potential harm to others. Plaintiffs blatantly violated Oxford's mass gathering ordinance endangering the health and safety of other students.

Finally, the public interest is best served by allowing schools to carry out their disciplinary procedures, which in this case, means honoring the sanction imposed by Miami after a careful and thorough review of the Plaintiffs' cases.

Because Plaintiffs' claims are all deeply flawed, their Motion for a temporary restraining order must be denied. Plaintiffs' conduct was reckless, knowing, and irresponsible. They must face the consequences of their actions.

FACTS

In March 2020, Miami, faced with a deadly, one-in-a-century pandemic, suspended in-person classes and sent its students home. After much consideration and planning over the summer, it elected to allow students to return to campus for the Fall 2020 Term. To protect the

health and safety of the entire community, Miami implemented a variety of new and critical safety measures in an effort to prevent the spread of the disease upon the students' arrival. In particular, the University required all students to sign a "Healthy Together Pledge," which included a promise to, among other things: (1) wear face coverings whenever social distancing is not possible, (2) practice physical distancing, (3) not host or attend gatherings where physical distance is not possible, and (4) make efforts to stay informed of University COVID-19 policies and communications. *See* Compl. ¶ 97 & Ex. N. Plaintiffs do not dispute that they both signed the Pledge prior to the August 22 gathering.

On August 18, recognizing the threat posed by the "large influx of people from across the country and international students" returning to campus, the City of Oxford passed an Ordinance requiring masks to be worn in all public places and prohibiting "mass gatherings" of more than ten people who do not reside in the same house at one time.[3] *See* Ex. 1. The University advised students of this Ordinance on August 21, specifically informing students that "the City of Oxford . . . has passed an ordinance . . . prohibiting mass gatherings of more than ten people."[4] Compl. ¶ 106 n.9 (a copy of the notice cited in this footnote is attached here for ease of reference as Ex. 2).[5] In the same communication, it noted the "troubling spread of COVID-19 on university campuses across the nation" and reminded students that "[e]veryone must do their part to protect their own health and the health of others." *See id.*

[3] The Court may take judicial notice of municipal ordinances within its territorial jurisdiction. *See* Civ.R. 44.1; *Bowers Constr. Co. v. Chuparkoff*, Ninth Dist. Summit, No. 24775, 2010-Ohio-419, ¶ 17.

[4] Plaintiffs suggest that notice of the Ordinance was "buried." Actually, it appeared in the second paragraph of a five paragraph notice. *See* Ex. 2.

[5] The parties have stipulated to the authenticity of all the exhibits to the Complaint, along with the exhibits attached to this motion.

Notwithstanding the global pandemic, the rising infection rates, and the City and University directives against mass gatherings, on August 22, a large group of students gathered at Plaintiffs' residence in Oxford. This gathering was a blatant violation of Oxford's Ordinance. At around 3:30 p.m., a city of Oxford police officer responded to a noise complaint at Plaintiffs' residence.[6] *Id.* ¶ 40. After being fetched by one of the male students on the porch, Ms. Roe joined the officer outside. *Id.* ¶¶ 18-20. The officer explained to her that it was a slap in the face for other members of the community to see a large group of people partying without masks and without social distancing. *See* Ex. 3. She agreed and said that she "would definitely go inside and tell everyone that they need to go." *See id.*

Shortly thereafter, Ms. Roe went inside and retrieved Ms. Doe, and they both returned to the porch. Compl. ¶ 25. The officer informed them that he would have to issue them a citation and warned them that Miami was pulling the citations, so the University might call them and ask them why they were having a party. *See* Ex. 3. Ms. Doe indicated that if she were contacted by Miami, she would lie instead of admitting to hosting a party, saying: "I can just say my friends and I were; we had our speaker out on the porch." *Id.*

The officer issued a Civil Offense Citation (the "Citation") for noise violation to Ms. Doe, stating that "while hosting a social gathering of approximately 40 people, [she] was playing music which was audible from a distance of greater than 25' from property." *Id.* Exs. A, B. At no point did Plaintiffs tell the officer that they were not having a party or that there were not 30-

[6] His stop at the house is captured on footage from his body camera. A copy of this footage is attached as Exhibit 3, and the parties have filed a joint motion to seal this Exhibit. The parties have stipulated to the authenticity of this Exhibit.

40 people at their house.[7] Not a single student appearing on the footage—including Plaintiffs—was wearing a mask.

Miami obtained a copy of the citation from the Oxford police department. *Id.* When Miami receives notice of "a report alleging that a student . . . has engaged in conduct prohibited by [the Code of Student Conduct]" (referred to here as the "Code"), the "Student Conduct Process" is initiated. *See* Compl. ¶ 80 n.3 (a copy of the webpage cited in this footnote is attached here as Ex. 4 for ease of reference).

The Code delineates the following steps, as relevant here, that comprise the Student Conduct Process:

> (1) The student receives a notice of complaint, which includes specific information about the alleged violation.
>
> (2) If "more information is needed in order to determine next steps in the student conduct process," an investigation regarding the alleged misconduct may occur.
>
> (3) Students attend a procedural review, during which the charges are reviewed, and an explanation of the conduct process and hearing options (either an Administrative Hearing or a hearing before the Community Standards Board) is provided.
>
> (4) Students then proceed to the hearing, which is designed to be prompt, fair, and impartial. During the hearing, both the claimant (here, Miami) and the respondents (here, Plaintiffs) have the opportunity, but are not required, to call and examine witnesses. The standard of review used to determine responsibility is a "preponderance" standard.
>
> (5) Following the hearing, a written decision is rendered.
>
> (6) The student is permitted to appeal the decision to an appeals board (comprised of two faculty members and one Miami student). The appeals board may order a new hearing only upon evidence that (a) the

[7] Nor did Plaintiffs indicate that they were unaware of the City Ordinance regarding mass gatherings. On the contrary, Ms. Roe's statements to the police officer indicate that she did know about it. *See* Ex. 3.

> sanction was inappropriate or (b) there was a defect in procedure or new evidence was presented which was sufficiently substantial to have affected the outcome of the proceeding. The decision of the appeals board is final.

See Ex. 4.

In accordance with this procedure, Plaintiffs received a Procedural Review Notice on September 8, 2020, informing them that they had allegedly violated the following sections of the Code:

> **Endangering Health or Safety**: Taking or threatening action that endangers the safety, physical or mental health, or life of any person, or creates a reasonable fear of such action.
>
> **Failure to Comply**: Failure to comply with the directions of law enforcement, emergency personnel, or authorized University officials, including failure to identify oneself when requested or violation of a no contact order or directive issued by Miami University.

Compl. Exs. A, B.

On September 11, 2020, Miami e-mailed Plaintiffs and provided them with the officer's body camera footage and advised them that it would be used at the hearing. *See id.* Exs. I, J.

Plaintiffs' procedural review hearing occurred on September 14 and 16. *Id.* Exs. A, B.

Their hearings took place on October 1 and 2. *Id.* ¶ 52. Before the hearing, they were specifically advised that they were "responsible for requesting witness participation for any witness you plan on asking to attend." *Id.* Exs. C, D. During the hearing, Plaintiffs called no witnesses and answered to no questions. *Id.* ¶ 53. The hearing officer who conducted the hearing reviewed the public record of the police officer's body camera footage and the Citation. *Id.* ¶ 54.

Following the hearing, Miami notified Plaintiffs that it had determined that Plaintiffs were responsible for violating the "Endangering Health or Safety" and "Failure to Comply" sections of the Code. *See id.* Exs. E, F. Specifically, it advised that:

> A mass gathering of more than ten (10) people is demonstrated by **a preponderance of the evidence** to have occurred at your residence, 116 East Church Street. You were, at minimum, present for and/or had knowledge of the mass gathering. A **preponderance of the evidence** does exist to indicate that you violated the "Endangering Health or Safety" and "Failure to Comply" policies. (Additional rationale for this decision has been attached[.])

Id. (emphasis added). With respect to the "additional rationale," the hearing officer noted:

> **The bodycam footage supplied by the Oxford Police Department contains a significant amount of objective information; the credibility of such objective information is not in question** as, by definition, objective information is not subject to personal feelings or opinions. In this matter, the University's determination does not turn on the credibility of the accuser, the accused, or witnesses but upon the objective evidence available. **Your statements in the body cam footage** as well as your presence at your residence is being considered in addition to the other readily observed objective evidence in the determination of this specific matter.

Id. (emphasis added).

The hearing officer also attached still shots taken from the body camera footage in which he numbered thirteen separate individuals present at the house and stated:

> In the images attached there are thirteen (13) unique individuals, yourself included, readily observed as being present and intermingling with each other without wearing facial coverings at 116 East Church Street, Oxford Ohio between 3:33PM-3:49PM EST on August 22, 2020. . . . The images are screenshots of the bodycam footage, labeled by the hearing officer, and included herein as part of the rationale for this matter. . . .
>
> Because these thirteen (13) individuals were likely all gathered at the same place (116 E. Church) at the same time and they do not all reside at the same housing unit or dwelling, this gathering is clearly in violation of the Oxford City Council Mass Gathering ordinance, which became effective on August 18, 2020.

Id.

Plaintiffs submitted an appeal, on which their attorneys advised, on October 12, 2020. *See* Compl. Exs. G, H. The hearing panel rejected the appeal, concluding that "no procedural defect [or] . . . new evidence was presented that would substantially change the hearing's outcome," and that the "sanction was appropriate." *See id.* Exs. I, J.

Unhappy with this result, Plaintiffs have now filed this suit, alleging claims for breach of contract, declaratory judgment, and breach of the duty of good faith and fair dealing, and demand a temporary restraining order or a preliminary injunction.

ARGUMENT

Injunctive relief is an extraordinary remedy and must be approached with great caution. *Cementech, Inc. v. City of Fairlawn*, 109 Ohio St.3d 475, 477, 2006-Ohio-2991, 849 N.E.2d 24, 27, ¶ 10. A preliminary injunction, which seeks to preserve the status quo of the parties pending a final adjudication of the case upon the merits, should only be granted when the relief sought is necessary to protect a clear right from immediate and irreparable harm and when no other adequate remedy exists. *Yudin v. Knight Industries Corp.*, 109 Ohio App.3d 437, 439, 672 N.E.2d 265, 266 (6th Dist.1996); *AgriGeneral Co. v. Lightner*, 127 Ohio App.3d 109, 115, 771 N.E.2d 1037, 1041 (3rd Dist.1998).

Plaintiffs must establish their right to this extraordinary relief based on the following factors: "(1) the likelihood or probability of a plaintiff's success on the merits; (2) whether the issuance of the injunction will prevent irreparable harm to the plaintiff; (3) what injury to others will be caused by the granting of the injunction; and (4) whether the public interest will be served by granting the injunction." *Corbett v. Ohio Bldg. Auth.*, 86 Ohio App.3d 44, 49, 619 N.E.2d 1145, 1148 (10th Dist. 1993). "[T]he party seeking the preliminary injunction must

establish a right to the preliminary injunction by showing clear and convincing evidence of each element of the claim." *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co., Gen. Commodities Div.*, 109 Ohio App. 3d 786, 790, 673 N.E.2d 182, 184 (1996). Here, Plaintiffs cannot satisfy their burden on any of the four factors. Therefore, injunctive relief is not warranted.[8]

I. Plaintiffs cannot establish success on the merits.

A. Plaintiffs' breach of contract claim fails.

To prove a breach of contract, Plaintiffs must establish a contract, a breach, and damages. *See Lucarell v. Nationwide Mut. Ins. Co.*, 2018-Ohio-15, 152 Ohio St. 3d 453, 463, 97 N.E.3d 458, 469. "In addressing the issue of whether [a] contract [between student and school] has been breached, the trier of fact appropriately looks to the terms of the contract as found in the college guidelines supplied to students." *Bleicher v. Univ. of Cincinnati Coll. of Med.*, 78 Ohio App. 3d 302, 308, 604 N.E.2d 783, 787 (1992).

Plaintiffs claim that the Code of Student Conduct establishes a contractual relationship between Miami and Plaintiffs, and then allege ten supposed breaches of that agreement. Compl. ¶ 117. Not one of these complaints constitutes a breach of contract claim:

Alleged breach No. 1: "Miami failed to investigate the allegations despite having insufficient information to determine whether a violation had occurred." *Id.* This argument fails because the Code does not *require* any investigation; rather, it just states that an

[8] Plaintiffs cite to three cases in which they claim students who were disciplined for having violated school COVID-19 policies obtained injunctive relief. Mot. 7. Those cases are inapposite to the analysis here because they all turned on the fact that the students lacked sufficient notice, which Plaintiffs do not allege here (and it is clear from the body camera footage that Plaintiffs were aware of the City Ordinance prohibiting mass gatherings).

investigation "*may* be initiated" if more information is needed. *See* Ex. 4 (emphasis added). Quite plainly, there is no binding obligation to undertake an investigation, and therefore there can be no breach for choosing not to do so. Nor have Plaintiffs identified any basis for their allegation that there was "insufficient information" to determine whether a violation had occurred. On the contrary, the hearing officer specifically stated that "[t]he bodycam footage supplied by the Oxford Police Department contains a significant amount of objective information." Compl. Exs. E, F.

Alleged breach No. 2: "Miami failed to conduct a prompt, fair, or impartial hearing." Compl. ¶ 117. Plaintiffs cannot argue that the hearing was not prompt. The Policy states that "[t]he University's conduct process generally takes 30-90 days." *See* Ex. 4. Here, the entire process was completed in 56 days. Plaintiffs received their first notice on September 8, 17 days after the Citation. *See* Compl. Exs. A, B. Their hearing was conducted on October 1 and 2—24 and 25 days later. *Id.* ¶ 53. The decision was issued on October 5. *Id.* Exs. E, F. And their appeal concluded on November 3, 2020, 29 days after the initial decision. *See id.* Exs. I, J.

Nor can Plaintiffs claim it was not fair. What the Code actually says is that "[h]earings are *designed* to provide a prompt, fair, and impartial *resolution*." Ex. 4 (emphasis added). Plaintiffs do not allege that the hearings were not "*designed*" to provide prompt, fair, and impartial resolution.

But even if the language were different, Plaintiffs' breach claim would still fail. *Doe v. The Trustees of the University of Pennsylvania* is instructive on this point. 270 F. Supp. 3d 799 (E.D. Pa. 2017). The University of Pennsylvania had similarly promised its students that disciplinary hearings would be "fair." *Id.* at 811. The court concluded that a "fair" hearing was

one that "complied with the more specific provisions of the Disciplinary Procedures concerning hearings" and that the school was not required to satisfy some "additional unspecified 'fairness'" requirement. *See id.* at 814. Therefore, the plaintiff could not prove a breach of the fair hearing promise without "identifying some other specific provision in the Disciplinary Procedures that was allegedly breached." *See id.* at 814-15.

Plaintiffs likewise cannot prevail based on their own subjective assessment of unfairness when it is clear that the hearing "complied with the more specific provisions of [the Code]." *See id.*; *see also Z.J. v. Vanderbilt Univ.*, 355 F. Supp. 3d 646, 699 (M.D. Tenn. 2018), *appeal dismissed*, No. 19-5061, 2019 WL 3202209 (6th Cir. Apr. 26, 2019) (claim of beach of contractual provision promising "fair procedures" was coextensive of breach of duty of good faith and fair dealing claim and neither could survive where the plaintiff failed to identify any particular terms of the Sexual Misconduct Policy that the school had violated). Indeed, it is undisputed that Miami complied with each step of the Student Conduct Process:

Step in Student Conduct Process	**Undisputed evidence that step was satisfied**
(1) The student receives a notice of complaint, which includes specific information about the alleged violation.	Plaintiffs received a notice informing them of their alleged violation of the Endangering Health or Safety and Failure to Comply provisions of the Code. *See* Compl. Exs. A, B.
(2) If "more information is needed in order to determine next steps in the student conduct process," an investigation regarding the alleged misconduct may occur.	The Code does not require Miami to undertake an investigation. *See* Ex. 4.
(3) Prior to the hearing, students attend a procedural review, during which the charges are reviewed.	Plaintiffs' received a procedural review. *See* Compl. Exs. A, B.
(4) Students then proceed to the hearing, which is designed to be prompt, fair, and impartial. During the hearing, both the claimant (here, Miami) and the respondents (here, Plaintiffs) have the opportunity, but are	Plaintiffs do not contest that the hearing was *designed* to be prompt, fair, and impartial (nor can they identify any way in which the process was actually not prompt, fair, or impartial). Plaintiffs had the right to call their

not required, to call and examine witnesses. The standard of review used to determine responsibility is a "preponderance" standard.	own witnesses. *See* Ex. 4. The University relied on public records evidence in the form of police officer body camera footage. *Id.* The hearing officer said he reached his conclusions by a preponderance of the evidence. *See* Compl. Exs. E, F.
(5) Following the hearing, a written decision is rendered.	A written decision was rendered. *See id.*
(6) The student is permitted to appeal the decision to an appeals board The appeals board may order a new hearing only upon evidence that (a) the sanction was inappropriate or (b) there was a defect in procedure or new evidence was presented which was sufficiently substantial to have affected the outcome of the proceeding.	Plaintiffs filed an appeal. The appeals board reviewed whether the sanction was inappropriate and whether there was a defect in procedure or new evidence that would have impacted the outcome of the proceeding. *See id.* Exs. G-J.

Finally, Plaintiffs have presented no evidence or even a basis to conclude that the hearing officer was not impartial. "[I]n the University setting a disciplinary committee is entitled to a presumption of honesty and integrity absent a showing of actual bias." *Doe v. Univ. of Cincinnati*, No. 1:15-CV-600, 2015 WL 5729328, at *2 (S.D. Ohio Sept. 30, 2015). To overcome that presumption, Plaintiffs must provide evidence of "personal animosity, illegal prejudice, or a personal or financial stake in the outcome" on the part of University officials, and cannot simply rely on their belief that the hearing officer had ulterior motives. *Doe v. Belmont Univ.*, 334 F. Supp. 3d 877, 896 (M.D. Tenn. 2018) (quoting *Ikpeazu v. Univ. of Nebraska*, 775 F.2d 250, 254 (8th Cir. 1985)). Plaintiffs have failed to put forward any—much less clear and convincing—evidence of actual bias and "the speculative allegations of prejudgment and purported bias, without factual support, fail to meet the required hurdle to sustain a breach of contract claim." *Belmont*, 334 F. Supp. 3d at 897 (and collecting cases); *Doe v. Univ. of Cincinnati*, 173 F. Supp. 3d 586, 602 (S.D. Ohio 2016); *Penn.*, 270 F. Supp. 3d at 814.

Alleged breach No. 3: "Miami failed to presume that Plaintiffs were not responsible until the conclusion of the disciplinary process." Compl. ¶ 117. This assertion is simply false as a factual matter. The Code expressly states that "[t]he respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the conduct process." *See* Ex. 4. Nor do Plaintiffs provide any allegations to reasonably substantiate that this promise was not honored, and their subjective opinions about the hearing officer's presumptions are insufficient to establish a breach. *See, e.g.*, *Doe v. Coll. of Wooster*, 243 F. Supp. 3d 875, 893 (N.D. Ohio 2017) (student's unsubstantiated belief that college officials treated him as though he were guilty during hearing was insufficient to state a claim for breach of student handbook provision requiring all accused students be presumed innocent).

Alleged breach No. 4: "Miami failed to provide Plaintiffs with an opportunity to ask questions of witnesses and instead improperly relied on documentary evidence such as writings and recordings by the Officer, who did not attend the hearing in person or via remote access." Compl. ¶ 117. Preliminarily, it is important to correct Plaintiffs' misleading and imprecise allegation, which gives the impression that Miami *prevented* Plaintiffs from examining witnesses. That is not the case. Plaintiffs had the opportunity to call and question any witnesses they wanted. *See* Ex. 4. They chose not to call any witnesses.

Separately, while Plaintiffs complain about the hearing officer relying on "documentary evidence," the Code does not prevent him from doing so. This is an administrative proceeding. The rules of evidence do not apply. Nevertheless, Plaintiffs were told in advance of the hearing that the police body camera footage would be presented. Compl. Exs. I, J. Knowing this,

Plaintiffs elected to sit back and offer nothing to rebut or challenge the video evidence or answer any of the hearing officer's questions about who was present.

The Code also does not require Miami to call any particular witness. Rather, the Code only provides that Miami—like Plaintiffs—is *allowed*, but not required, to bring witnesses. *See* Ex. 4. Thus, neither Miami's use of documentary evidence nor its decision not to ask the police officer to testify when a complete video recording of the incident was available constitute a breach of contract.

In their Motion, Plaintiffs complain that the hearing officer "admitted" the body camera footage without testimony from the officer despite (unidentified) "credibility concerns." Mot. 9. But the hearing officer expressly stated that "the credibility of such objective information is not in question." *See* Compl. Exs. E, F. Moreover, there was nothing improper about the hearing officer "admitting" the public record body camera footage without the officer's testimony, as school disciplinary boards are not bound by formal rules of evidence or rules of criminal procedure. *See Flaim v. Med. Coll. of Ohio*, 418 F.3d 629, 635 (6th Cir. 2005); *Wooster*, 243 F. Supp. 3d at 892 (noting that disciplinary panel could rely on hearsay evidence).

Alleged breach No. 5: "Miami failed to properly apply the preponderance of the evidence standard of proof." Compl. ¶ 117. The Code says that "[t]he standard of review used to determine responsibility is a 'preponderance' standard." *See* Ex. 4. The hearing officer specifically stated that his finding was made by "*a preponderance of the evidence*." *See* Compl. Exs. E, F (emphasis added). Thus, there is no breach.

Plaintiffs' contention on this point is similar to an argument rejected by a federal district court in *Doe v. The Trustees of the University of Pennsylvania.* 270 F. Supp. 3d 799 (E.D. Pa.

2017). As here, the plaintiff argued that the University of Pennsylvania breached its obligation to apply the preponderance of the evidence standard. *Id.* at 819. The court noted that the complaint did not allege (or allege facts to support a reasonable inference) that the hearing officers found the student responsible even though they were not actually convinced that it was more likely than not that he had committed the relevant acts; instead, the student just alleged that the investigator had misconstrued the evidence. *Id.* The Court explained that, even if the investigator had erred in this way, it would not give rise to a reasonable inference that the investigator was not convinced of his conclusion by a preponderance of the evidence. *Id.* The same is true here, even if Plaintiffs disagree with the way the hearing officer applied the facts to this standard, that does not mean that the hearing officer applied the wrong standard.

Alleged breach No. 6: "Miami made factual conclusions that were not supported by the evidence, thus leading to an erroneous outcome." Compl. ¶ 117. This allegation (like most of their Motion) just challenges the conclusions of the hearing officer.[9] But whether the hearing officer (and the appeals panel which reviewed his decision) "got it right" is not before this Court. Thus, because "the Complaint does not allege facts that support a reasonable inference that the [hearing officer] failed to comply with the specific procedures delineated in the parties' contract, but merely challenges the quality of those procedures, it simply does not state a cognizable breach of contract claim." *Penn.,* 270 F. Supp. 3d at 821.

[9] For instance, Plaintiffs claim that they were found merely to be "present for and/or had knowledge" of the gathering, which they claim does not violate the Endangering Health and Safety policy in the Code, which prohibits "[t]aking or threatening action that endangers the safety, physical or mental health, or life of any person, or creates a reasonable fear of such action." Mot. 8. Obviously this argument is flawed because Plaintiffs took the action of being present, but, even setting that fact aside, Plaintiffs have failed to identify any contractual term breached by the hearing officer's supposed misapplication of the Code.

Alleged breach No. 7: "Miami breached the Pledge by referring the matter to the Student Conduct process despite no prior violations of the pledge." Compl. ¶ 117. Plaintiffs cannot seriously allege that the Pledge essentially gives them a "freebie" where they can violate the Pledge with no consequence. A plain review of the Pledge shows it contains no such language. At any rate, the matter would have come before the Student Conduct Process regardless, based on the Citation.

Alleged breach No. 8: "Miami improperly relied on an erroneous conclusion that Plaintiffs' conduct violated the Ordinance." *Id.* Plaintiffs' argument here is based on the hearing officers' use of a still photo taken from the officers' body camera footage. In that photo, the hearing officer numbered 13 individuals at the house, but Plaintiffs claim that they and two other students should be excluded from that total, leaving only 9 students. Once again, even if Plaintiffs' allegation were true (which it is not), Plaintiffs once again fail to identify any term of the Code that Miami breached. Plaintiffs may believe a different conclusion should have been reached, but "[t]he law does not allow this Court to retry [Miami's] disciplinary proceeding." *Belmont*, 334 F. Supp. 3d at 899.

This assertion is also factually wrong because it misconstrues the hearing officer's conclusion. The hearing officer noted in his rationale that his decision was based on "[Plaintiffs'] statements in the body cam footage" and other "objective evidence" from the body camera footage. Compl. Exs. E, F. The footage shows that Plaintiffs do not challenge the police officer's observation that 40 people had been gathered at their house, and Plaintiff Doe confirmed this point in the body camera footage when she stated she would "go inside and tell everyone that they need to go." *See* Ex. 3. Thus, even if the hearing officer had calculated the

guests at the party as Plaintiffs suggest, he still could have concluded that Plaintiffs violated the Code based on their statements and other objective evidence.[10] His conclusion that Plaintiffs violated the Ordinance was not "erroneous."

Alleged breach No. 9: "Miami's sanction was punitive and inconsistent with its stated purpose of sanctions." Compl. ¶ 117. Plaintiffs offer no evidence that the sanction was punitive. This statement reflects nothing but Plaintiffs' opinions and speculation. Moreover, Miami's Office of Community Standards states that the purpose of sanctions is to help students "reflect on their behavior, help remedy harm potentially done in the community, and reduce the likelihood of future violations." *Id.* ¶ 94. Plaintiffs do not deny that their suspension could serve these purposes.

Finally, even Plaintiffs' caselaw has held that a semester suspension is an appropriate punishment for a student found to have violated COVID-19 protocols. *See, e.g.*, *Storino v. N.Y. Univ.*, No. 157947/2020, 2020 WL 6161626, at *12-13 (N.Y. Sup. Ct. Oct. 21, 2020) (noting that a semester-long suspension was an appropriate sanction for students who had attended parties in violation of COVID-19 protocols and observing that even if the court were to have found the penalty to be unduly harsh, "the Court cannot micromanage sanctions or substitute its own judgment for that of [the University]").

Alleged breach No. 10: "Miami improperly denied Plaintiffs' Appeals." Compl. ¶ 117. Plaintiffs do not allege that they were denied the right to appeal, that they were not allowed to submit additional evidence, or that the appeals panel did not consider their evidence. Rather,

[10] Indeed, the hearing officer specifically stated that the screen shots were only "***part of***" his rationale. Compl. Exs. E, F (emphasis added).

they just dispute the conclusion—the supposedly improper denial—of the appeal. As described above, a breach of contract claim will not lie where there is no allegation that the University failed to follow the promised procedures. *See, e.g.*, *Penn.*, 270 F. Supp. 3d at 821.

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Plaintiffs have styled their claim as a breach of contract, but what they really want is for this Court to redo their disciplinary hearing (and reach a different result).[11] They cannot obtain this relief in this action. Whatever complaints they have about the conclusions the hearing officer reached, those are not before this Court. The only question here is whether Miami breached any contractual obligation it owes to Plaintiffs. Reviewing Plaintiffs' submissions, it is clear that Plaintiffs have provided no evidence that Miami failed to abide by any provision of the Code. As described more fully above, the Code requires that Plaintiffs receive a hearing at which they have the opportunity to present evidence, a determination made by a preponderance of the evidence, and a chance to appeal. Plaintiffs received all of these. There has been no breach.

B. Plaintiffs are not entitled to declaratory judgment.

Ohio's Declaratory Judgment Act provides that "courts of record may declare rights, status, and other legal relations" between parties. R.C. 2721. However, "[d]eclaratory judgment is not always available as an alternative remedy unless the trial court, within its discretion, finds that the action is consistent with the purposes of R.C. 2721.03." *Rose v. Primal Ability, Ltd.*, 10th Dist. Franklin, No. 14AP–114, 2014-Ohio-3610, ¶ 13.

[11] Indeed, tellingly, prior to filing this action, Plaintiffs tried to obtain an administrative review of their decision in the Court of Common Pleas.

Plaintiffs claim that, "[a]s set forth in this Complaint, Miami is opposing Plaintiffs' legal tangible interests in party (sic) because of Miami's violations of its policies" and it seeks a declaration that "Miami violated Plaintiff's (sic) rights under Miami's policies." Compl. ¶¶ 123, 125. However, as established in the previous section, there is no evidence that Miami violated its policies, so there is no basis for a declaration to that effect.

C. Plaintiffs' breach of the duty of good faith and fair dealing fails.

This claim fails as well. Ohio law is clear that "[a] claim for breach of contract subsumes the accompanying claim for breach of the duty of good faith and fair dealing." *Williams v. Nat'l Ass'n for Advancement of Colored People*, 2019-Ohio-1897, 135 N.E.3d 1260, ¶ 26 (10th Dist.) (quoting *Gianetti v. Teakwood, Ltd.*, 10th Dist. Franklin No. 15AP-413, 2016-Ohio-213, ¶ 35 (internal quotation marks omitted)). Therefore, where the plaintiff fails to establish a claim for breach of contract, "she necessarily also failed to establish a breach of the duty of good faith and fair dealing." *Id.* As described above, Plaintiffs cannot maintain a breach of contract claim, and therefore their breach of duty of good faith claim is likewise unsustainable. *See id.*

II. There is no irreparable harm.

A number of courts have held that suspension does not cause a student irreparable harm. *See, e.g. Pierre v. Univ. of Dayton*, 143 F. Supp. 3d 703, 714 (S.D. Ohio 2015) ("[C]ourts have also held that a suspension from school is not irreparable."); *Spadone v. McHugh*, 842 F. Supp. 2d 295, 302 (D.D.C. 2012) (noting that "a delay in completing courses from West Point does not necessarily constitute irreparable harm"); *Medlock v. Trs. of Ind. Univ.*, No. 1:11–CV–00977–TWP, 2011 WL 4068453, at *9 (S.D. Ind. Sept. 13, 2011) (finding no irreparable harm because the plaintiff would be eligible for reinstatement when his suspension ended, he would have the

opportunity to re-take any classes he failed as a result of his suspension, and the record of his suspension was protected by the Family Educational Rights and Privacy Act); *Baer v. National Bd. of Medical Examiners*, 392 F. Supp. 2d 42, 49 (D. Mass. 2005) (stating, in the context of a medical student's ADA claim, that "her inability to continue as a medical student without interruption at Drexel, while desirable, is not a harm that is irreparable to Baer's potential medical career"). These cases recognize that there is no irreparable harm because students are able to re-enroll following the suspension and continue with their studies.

Plaintiffs claim the suspension will cause irreparable harm because they will lose their coursework from this semester. Plaintiffs failed to inform this Court that Miami offered to allow them to serve their suspension next semester to avoid this very issue. They have chosen not to. But they cannot use that choice to manufacture a claim of irreparable harm.

Plaintiffs also make generalized assertions about the impact of their suspension on their future career plans and reputation. But these claims are too speculative to support a claim for injunctive relief. *See, e.g.*, *Beberman v. U.S. Dep't of State*, No. CV 19-3115 (TJK), 2019 WL 5653626, at *4 (D.D.C. Oct. 30, 2019) (allegations concerning decreased future career prospects were too speculative to support injunctive relief); *S.J.W. ex rel. Wilson v. Lee's Summit R-7 Sch. Dist.*, 696 F.3d 771, 779 (8th Cir. 2012) (holding that "any future harm to the [plaintiffs'] careers was speculative," and "[s]peculative harm does not support a preliminary injunction"). Nor do these allegations support a claim for *immediate* injunctive relief as plaintiffs are only juniors and therefore will not be seeking employment until 2022.[12]

[12] Moreover, Plaintiffs have demanded damages in excess of $75,000, so it is clear they believe this purported injury can be remedied with money damages and therefore it is not appropriate for injunctive relief. Compl. ¶¶ 120, 130.

III. There is a risk of harm to third parties if Plaintiffs are reinstated.

There is a risk of harm to third parties if Plaintiffs are reinstated because it will indicate to Plaintiffs and their classmates that they can flout University rules and regulations implemented to curtail the spread of COVID-19 with impunity. That would be a particularly dangerous statement to send now, with cases rising at dramatic rates.

IV. The public interest favors Miami's right to enforce its disciplinary procedures.

The final factor is whether the injunction will serve the public interest. Courts recognize that granting injunctive relief that disturbs the University's ability to enforce its disciplinary procedures is not in the public interest. *See, e.g.*, *Roe v. Dir., Miami Univ., Office of Cmty. Standards*, No. 1:19-CV-136, 2019 WL 1439585, at *9 (S.D. Ohio Apr. 1, 2019) (noting that preventing university from enforcing its disciplinary procedures would not be in the public interest); *Doe v. Univ. of Cincinnati*, No. 1:15-CV-600, 2015 WL 5729328, at *3 (S.D. Ohio Sept. 30, 2015) ("[G]ranting a temporary restraining order would likely disturb the University's ability to enforce its disciplinary procedures, which would not be in the public interest."); *Doe v. Transylvania Univ.*, No. CV 5:20-145-DCR, 2020 WL 1860696, at *13 (E.D. Ky. Apr. 13, 2020) (recognizing that the public also has an interest in universities' enforcement of their disciplinary procedures); *see also Pierre*, 143 F. Supp. 3d at 714 (recognizing that it was in the public interest to grant universities the latitude to carry out their educational mission as they see fit).

CONCLUSION

Plaintiffs have attempted to deflect from their behavior by levying a series of criticisms at the hearing officer, but despite this attempted misdirection, it is clear that there has been no breach of contract. As Plaintiffs also cannot satisfy the other factors required to obtain injunctive

relief, Miami respectfully requests that this court deny Plaintiffs' Emergency Motion for a Temporary Restraining Order and/or Preliminary Injunction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following this 16th day of November, 2020, by email:

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