IN THE OHIO COURT OF CLAIMS

JANE DOE	)	
	)	CIVIL CASE NO:
and	)	
	)	
JANE ROE,	)	JUDGE:
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
MIAMI UNIVERSITY,	)	
	)	
Defendant.	)	

PLAINTIFFS' EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Now comes Plaintiffs, Jane Doe and Jane Roe, by and through undersigned counsel, Eric F. Long and Leslie A. Albeit, pursuant to Rule 65(A) and (B) of the Ohio Rules of Civil Procedure, and hereby moves for a Temporary Restraining Order and/or a Preliminary Injunction enjoining Defendant, Miami University, from its continued sanctions against Plaintiffs, specifically including their suspensions from Miami University. The grounds for this motion are set forth in the Memorandum of Law in Support of the instant Motion, which is incorporated herein by reference.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant their Motion for Temporary Restraining Order and/or Preliminary Injunction and issue an Order:

1. Enjoining Defendant, Miami University, from continuing its sanction against Plaintiffs stemming from the University's investigation involving Plaintiffs' alleged violation of the Code of Student Conduct and/or Healthy Together Pledge;

2. Ordering Defendant, Miami University, to reinstate Plaintiffs as students in good standing;

3. Expunge and/or otherwise seal Plaintiffs' disciplinary records from all of their education records;

4. Represent Plaintiffs' good standing to inquiring third parties; and

5. Enjoin Miami University from continuing to engage in disciplinary proceedings inconsistent with its Policies and Procedures.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. Introduction

On November 12, 2020, Plaintiffs Jane Doe and Jane Roe filed their Complaint and Motion for Leave to File Under Seal relative to Defendant Miami University's ("Miami") decision to suspend them from the University following a lengthy and flawed disciplinary process.[1]

Three (3) separate Administrative Hearings involving the same allegation against ten (10) roommates, including Plaintiffs, were conducted on September 30, 2020, October 1, 2020, and October 2, 2020. The administrative hearings were convened by Miami, without any investigation, to determine whether the students, including Plaintiffs, were in violation of the Code of Student Conduct policy relative to Endangering Health or Safety and Failure to Comply. The purported violations stem from an interaction between an Oxford Police Officer ("the Officer") and Plaintiffs, after Plaintiffs were summoned from their residence on August 22, 2020 for the sole purpose of speaking with the Officer.

The only evidence presented at Plaintiffs' hearings was body camera footage that shows the Officer arriving to the home to find seven males on the deck and an excessive noise citation issued by the Officer. Importantly, the Officer did not cite any household members for violating the Ordinance and spent a considerable amount of time advising students that the ordinance is really unclear. At the time the Officer arrived at the residence on August 22nd, Plaintiffs were not outside, and can not be observed on the video. After speaking to the males outside, the Officer notified them that a resident of the house must accept a noise citation. Shortly thereafter, one of the males went inside the house to summon a resident, Ms. Roe, to speak to the Officer. Roe, who did not want the citation in her name, retrieved Ms. Doe to speak to the Officer. Thus, the sole

[1] *See* Plaintiffs' Addendum of Statement of Facts, which is incorporated herein by reference.

reason for the Plaintiffs being outside was to discuss and accept service of the citation at the request of the Officer. There is no evidence that either Plaintiff had invited, hosted, or otherwise participated in the gathering that took place at the residence. The hearing officer determined that there were at least thirteen (13) individuals present at the residence. However, as Plaintiffs set forth in their administrative appeal to Miami, that number included Plaintiffs and at least one (1) female neighbor and one (1) male student who came to the scene only after the Officer arrived. At no time did the Officer's body camera capture more than ten (10) non-residents gathered at the residence.

The hearing officer determined that Plaintiffs were responsible for violating Miami's Endangering Health or Safety policy because Plaintiffs "***were, at a minimum, present for and/or had knowledge of the mass gathering***." The hearing officer further found that Plaintiffs failed to comply with a lawful ordinance banning mass gatherings and that they were therefore responsible for "Failure to Comply." Neither the language of Miami's Endangering Health or Safety policy, nor the Ordinance support such findings.

The hearing officer imposed a one-semester suspension on the students, and Plaintiffs appealed the decision to the University Appeals Board, which was convened on October 20, 2020. On or about November 3, 2020 the Appeals Board determined that there was no procedural defect in the adjudication of the case, that new evidence related to the case would not be considered, and that the sanction imposed was appropriate under the Code of Student Conduct.

At the time of this notification, Plaintiffs were in their third year at Miami and were on track to graduate in May of 2022. Plaintiffs have no prior disciplinary record at Miami. Ms. Doe has maintained a GPA of 3.42 and Ms. Roe has maintained a GPA of 3.46. Doe has plans to apply to law schools following graduation. Roe is in the ultra-competitive field of marketing, has an

internship with a fortune 500 company for the summer of 2021, and hopes to earn a full-time job with the same company following her anticipated graduation in May 2022. These plans are immediately in jeopardy given the suspension.

As set forth herein, Plaintiffs seeks emergency injunctive relief to preserve their enrollment as students in good standing so that the matter *sub judice* can be decided on the merits and they can avoid the irreparable harm associated with a suspension from Miami, which includes a delay in graduation, potential loss of law school and/or graduate program acceptance, delay and difficulty in entering the workforce, reputational injury, and the consequences of a suspension being permanently noted on their official transcripts. Plaintiffs have a strong likelihood of prevailing on the merits of this case because Miami's decision to suspend Plaintiffs breached their contract and covenant of good faith and fair dealing, was arbitrary, capricious, and unsupported by a preponderance of the evidence.

While the threat of irreparable harm to Plaintiffs is extraordinary, there is no prejudice to Miami should injunctive relief be granted. While Miami claims that Plaintiffs' actions endangered the safety of the campus community at the time of the incident, there are no claims that Plaintiffs pose any lingering or ongoing danger.[2] Additionally, if Plaintiffs were a continual threat to health or safety, Miami had the option under the Code of Student Conduct to suspend or restrict access to campus by Plaintiffs on an interim basis. Plaintiffs were not placed under immediate interim suspension or otherwise restricted from any access to campus or campus resources for over two months following the incident. Additionally, as Plaintiffs can and do attend their classes remotely, they do not pose a threat to Miami's ability to provide a safe educational setting. Finally, Miami is not reconvening on-campus classes following Thanksgiving, so the Plaintiffs will be leaving

[2] *See* Decision of the University Board of Appeals attached to the Addendum of Statement of Facts, which is incorporated herein by reference.

Oxford, no later than November 20th (eight days from the filing of this Motion) and will not return until January of 2021, at which point their one-semester suspension would already be over. Therefore, Plaintiffs are entitled to immediate injunctive relief to preserve the status quo while this litigation moves forward.

II. Law and Argument

A. *Miami should be enjoined from suspending Plaintiffs and/or enforcing its disciplinary sanctions because its decision was in violation of the contractual agreement between Plaintiffs and Miami, was a breach of Miami's covenant of good faith and fair dealing.*

"The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Sunshine Diversified Invs., III, LLC v. Chuck*, No. 92464, 2009-Ohio-4226, 2009 Ohio App. LEXIS 3640, 2009 WL 2574166 (8th Dist.) (quoting *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981)). Given this limited purpose, and in light of the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal - and evidence that is less complete - than in a trial on the merits. *Id., citing Univ. of Texas v. Camenisch,* 451 U.S. 390, 395 (1981). Accordingly, the moving party "is not required to prove his case in full at a preliminary injunction hearing." *Id*.

Ohio courts have determined that courts should consider four factors to decide whether to grant a preliminary injunction. *Ohio High Sch. Ath. Ass'n v. Ruehlman*, 157 Ohio St. 3d 296, 136 N.E.3d 436, 2019 WL 3104306; *TGR Enters., Inc. v. Kozhev*, 167 Ohio App. 3d 29, 2006-Ohio-2915, 853 N.E.2d 739, at ¶ 11 (2d Dist.). These four factors include:

> (1) plaintiff's likelihood of success on the merits; (2) whether injunctive relief is necessary to prevent irreparable harm to the plaintiff; (3) what injuries will be caused to third parties if the restraining order or injunction is granted; and (4) whether the injunctive relief will serve the public interest.

Id. In determining whether to grant injunctive relief, no one of the four factors is dispositive; rather, a balancing should be applied. *Intralot, Inc., v. Blair*, No. 17AP-444, 2018-Ohio-3873, 2018 Ohio App. LEXIS 4200, 2018 WL 4616430 (10th Dist), *citing Escape Enters., Ltd., v. Gosh Enters., Inc.,* 10th Dist. No. 04AP-834, 2005-Ohio-2637, at 48.

While COVID-19 related disciplinary actions may be a matter of first impression for this Honorable Court, a number of other courts have issued preliminary injunctions to students who were suspended from their schools due to alleged violations of their schools' COVID-19 safety guidelines. *See Doe v. Rensselaer Polytechnic Institute*, No. 1:20-cv-01359-BKS-CFH, 2020 U.S. Dist. LEXIS 207946 (N.D.N.Y. Nov. 6, 2020); *Ashley Storino v. New York University*, No. 157947/2020 (Sup. Ct. New York County Oct. 15, 2020); *Elnaz Pourasgari v. New York University*, No. 157815/2020 (Sup. Ct. New York County Sept. 25, 2020).

i. Plaintiffs are likely to succeed on the merits because Miami breached its contract and covenant of good faith and fair dealing by finding Plaintiff's responsible and issuing the one-semester suspension.

Plaintiffs are likely to succeed on the merits of the case because Miami suspended them for conduct that, even based on the hearing officer's own findings, does not rise to a violation of the local ordinance banning mass gatherings, Miami's Code of Conduct or Healthy Together Pledge. Miami has distorted its own definitions and abandoned its own policies in establishing an overly harsh and punitive response to the COVID-19 pandemic. Miami's policies do not permit for discipline where a person fails to take action or is merely aware of a situation relative to its Endangering Health or Safety Policy. Rather, to be in violation, a person must "take or threaten action."

As previously mentioned, the hearing officer determined that Plaintiffs were responsible for violating the Endangering Health or Safety policy because Plaintiffs "were, at a minimum,

present for and/or had knowledge of the mass gathering." Simply having knowledge of a gathering or being present in the general vicinity of said gathering does not amount to an affirmative action of the Plaintiffs that does or threatens to endanger the health or safety of others. Furthermore the conclusion that Plaintiffs were "present" is not a finding that Plaintiffs were present outside on the deck and participating in the gathering. Rather, the Plaintiffs were "present" because they had been in the house, including as Ms. Roe put it, "upstairs in [my] room, away from, and not participating at all, in the gathering. Thus, according to Miami's own policies, Plaintiffs being aware that seven (7) males (or any number of people) were gathered outside of their house does not warrant a finding of responsibility or discipline. Miami's manipulation of key provisions of policy in order to support a disciplinary action and sanction is a per se breach of the contract.

Miami also erred in finding that the thirteen (13) people counted by the hearing officer, which included a neighbor who walked over to see what the Officer was doing there, and a male who was not part of the gathering, constituted a violation of the Ordinance, which prohibits a gathering of more than 10 non-household members. Even if evidence was presented that Plaintiffs had hosted, invited, or participated in the gathering, **which it was not**, the gathering was not in violation of the Ordinance because there were only nine (9) non-household members present at the time the Officer was present, once the female neighbor and male bystander are removed from the equation.

As part of a crackdown on the perception of COVID-19 dangers among the Miami community [3], Miami abandoned its well-established policies relative to the notice, investigation, hearing, and appeals process, perhaps to appear to be taking the pandemic more seriously in the

[3] Miami had recently faced extremely negative national attention involving an off campus "COVID" party. *See* for examples: *https://www.washingtonpost.com/nation/2020/09/11/miami-university-ohio-party-covid-19/*, *https://www.cnn.com/videos/us/2020/09/12/miami-university-ohio-student-party-coronavirus-ctn-vpx.cnn*, *https://www.cbsnews.com/news/miami-university-covid-19-positive-students-party-police/*,

eyes of the nation. The result is an arbitrary and capricious finding that is not supported by Miami's own policies, or evidence submitted at the hearing and subsequent appeal, imposes an unduly harsh and inconsistent penalty (many students have received a sanction of probation for similar conduct [4]), and has an irreparable negative impact on Plaintiffs.

Miami breached its contract by introducing documentary evidence in the form of the Oxford Police Department ticket and body camera video without having the Officer testify relative to the documents or his own observations. Despite its contractual obligation to have witnesses appear in person and to allow students to ask questions of witnesses, the Officer was not called and the evidence was admitted despite its credibility concerns.

Plaintiff also breached its contractual obligations as set forth by the Healthy Together Pledge, which provided that "repeated violations" of the Pledge "may" result in a referral to the Student Conduct Office. Miami has since taken the position that the Pledge does not say that "a single incident" would "never" be referred to Student Conduct. Such an interpretation is asinine and contrary to every legal rule relative to contract interpretation.

Moreover, the finding and sanction is poised to render Plaintiffs' past three months of remote learning and studying squandered, will leave a harmful gap in their educational record, and will impact future educational and employment opportunities, while doing nothing to keep the community safe. All the sanction accomplishes is to remove the students from online classes and with a partially finished semester that is non-transferable and non-refundable. , but unfinished semester that is non-transferable. Miami's Policy provides that sanctions are meant to be educational and to protect the community, as opposed to be punitive. Here, the sanction is overly

[4] One student who is known to Plaintiffs was caught hosting a large outdoor party, but was given probation because he "asked students to leave the party" once police showed up to shut down the party.

harsh and is entirely punitive. As such, Plaintiffs have strong likelihood of success on their Breach of Contract and Breach of Covenant of Good Faith and Fair Dealing Claims.

ii. *Plaintiffs will suffer irreparable injury without the injunction.*

Courts have stated that demonstration of the likelihood of irreparable harm is the single most important prerequisite for issuance of a preliminary injunction. *Adams v. Ohio Dep't of Health*, 356 N.E.2d 324, 1976 Ohio Misc. LEXIS 60 (Ohio Ct. Com. Pl. 1976). In *Doe v. Rensselaer*, plaintiff was suspended from access to campus, including access to online classes and academic related activities. *Id.* The suspension stemmed from a gathering hosted by the plaintiff in his off-campus housing. *Id.* While the number of students in attendance at this gathering was in dispute, the number alleged ranged from 30-75 students. *Id.* When analyzing whether the plaintiff suffered irreparable harm, the court noted that plaintiff's final semester had been disrupted by the emergency suspension and that he was now at risk of being unable to complete his final semester, or having to repeat it. *Id.* The court acknowledged that whether an interruption in coursework is irreparable harm is a close question in which district courts have disagreed. *Id.*

For instance, in *Bhandari v. Trustees of Columbia Univ.*, No. 00-cv-1753, 2000 WL 310344, at *5, 2000 U.S. Dist. LEXIS 3720, at *15-16 (S.D.N.Y. Mar. 27, 2000), the court found irreparable harm where the plaintiff was suspended midway through the semester and would lose "the benefit of the work he has already performed the semester." There, the plaintiff was suspended in March, with the semester ending in May. *Id.* However, in *Doe v. Vassar Coll.,* No. 19-cv-9601 (NSR), 2019 WL 6222918, at *6, 2019 U.S. Dist. LEXIS 203418, at *15 (S.D.N.Y. Nov. 21, 2019), the court found no irreparable harm where plaintiff was suspended for a single semester at the beginning of his senior year.

Due to the close proximity of the end of the semester, Plaintiffs in the matter *sub judice* contend that a denial of the requested injunction will certainly result in irreparable harm, as they will lose the benefit of the substantial amount of work that they have already completed throughout the semester and the loss of tuition money paid this semester. Plaintiffs have continued to dedicate time and money toward their studies this semester, and Miami waited until only three weeks remained in the semester to impose discipline.

Moreover, Plaintiffs have worked hard as students at Miami University for over two years. A suspension will delay Plaintiffs' graduation and substantially delay and/or negatively affect their chances at post-graduation educational and employment opportunities. Not only will Plaintiffs have to explain the suspension/gap in their educational record – at a time where a response to COVID is a highly contentious and hyper-political issue - but they will also graduate outside of the typical hiring and graduate school application cycle. While, in theory, Plaintiffs could recoup economic damages through continued litigation, there is no adequate remedy at law to secure a timely graduation, future schooling or employment, reputational damages, and a permanent notation of the suspension on Plaintiffs' transcripts. Furthermore, each Plaintiff has been attending Miami on a Redhawk Scholarship, which awards fifty percent (50%) of the tuition. Miami has not made any indication that those funds remain available following Plaintiffs' re-enrollment at the university. Thus, even the ability to remain at Miami for the remainder of their college education is called into question, as the scholarships were a deciding factor in selecting Miami and provided the necessary funds to do so. There is no doubt that Plaintiffs face irreparable harm if the University is permitted to continue their suspensions. Accordingly, Plaintiffs respectfully request that this Honorable Court find that they will suffer irreparable harm, and grant the requested injunction.

iii. *The injunction will not substantially harm others.*

Miami can point to no evidence that the University would suffer any harm as a result of reinstating them as students in good standing. The only conceivable argument that Miami can make is that they have an obligation to ensure the safety of their students and campus. Such an argument is illogical and nonsensical in this case because Plaintiffs have been permitted to continue with classes for over two months following this incident. Plaintiffs could remain off-campus, or even outside of Oxford, Ohio (as other students have been permitted to do as an agreed upon sanction) and attend classes remotely for the duration of the last 8 days of classes and two weeks of finals. This offer has been rejected by Miami, showing that the sanction is not actually motivated by the safety of the community. Rather, Miami's harsh and illogical sanction can only be viewed as a punitive action which requires an extra semester of schooling (with an extra semester's worth of tuition) to be completed by the students.

In *Doe v. Rensselaer Polytechnic Institute*, the school argued that allowing plaintiff to remain in online classes would make it appear as if the school is not sanctioning students and that violations are permissible and without consequences. While the court in the case was mindful of this argument, the court still found that the balance of hardships weighed in favor of the plaintiff as he would lose the work he had already completed in the semester. *Id.* Further, the court noted that the plaintiff would have minimal connection with the school should he be allowed to remain in online classes. *Id.* Plaintiffs' in the matter *sub judice* find themselves in a similar situation. Without an injunction, Plaintiffs will lose the significant amount of work they have already completed for the semester. Meanwhile, should Plaintiffs be allowed to remain off-campus and complete classes remotely, they will have a minimal physical connection with Miami.

Further, while the Defendant claims that Plaintiffs' actions endangered the safety of the campus community at the time of the incident, there are no claims that Plaintiffs still pose a danger to anyone or that suspension with three weeks remaining in the semester remedies such danger. Finally, Plaintiffs have never faced any other disciplinary or criminal charges that would suggest they pose a risk to anyone or are unable to follow Miami's rules moving forward such that a suspension is warranted. As such, the potential harm to Plaintiffs is enormous and incalculable, while Miami faces no adverse consequences, which favors the granting of injunctive relief.

iv. *Issuing the injunction will serve public interest.*

Public interest always favors the application for relief if the applicant demonstrates both a likelihood of success on the merits and irreparable injury. *AT&T Co. v. Winback & Conserve Program*, 42 F.3d 1421, 1427 n.8 (3rd Cir. 1994). More significantly, it is axiomatic that the public interest always favors the application of connotational norms and protections. *See Am. Freedom Def. Initiative v. SMART*, 698 F.3d 885, 896 (6th Cir. 2012); *Left Field Media LLC v. City of Chicago,* 137 F.Supp.3d 1127, 1133 (N.D. Ill., 2015). Here, the American public has a strong interest in ensuring that its colleges and universities establish policies that are in accordance with fairness, constitutional ideals and norms, and equity.

III. Conclusion

Due to Miami's breach of contract, and desecration of even the appearance of good faith and fair dealing, Plaintiffs have been wrongfully suspended from Miami University, will be prohibited from a timely graduation, face loss of post-graduate schooling options, and delayed work force entry. Plaintiffs have a strong claim against Miami and, as such, have clearly demonstrated a reasonable likelihood of success on the merits of this claim. Due to the severity of the irreparable harm, particularly when compared to the non-existent impact injunctive relief

would have on Miami, Plaintiffs should be granted injunctive relief enjoining Miami from continuing the suspension during the pendency of this litigation.

Such injunctive relief would not only serve to maintain Plaintiffs' status quo from an educational and career prospects standpoint, but will also allow them to challenge the disciplinary process through the judicial system consistent with an overwhelming public interest in ensuring that citizens receive basic fairness and that the parties adhere to their contractual obligations in these situations.

Respectfully submitted,

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