

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Superior Court

Civil Action No. 23cv2900

JANE AND JOHN DOES 1-37,

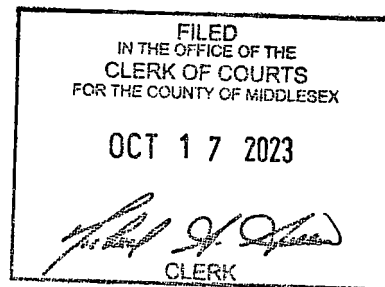
Plaintiffs,

v.

TRUSTEES OF BOSTON COLLEGE,
 BLAKE JAMES, in his official and
 individual capacity, and REGGIE TERRY,
 in his official and individual capacity,

*Defendants.*COMPLAINT

JURY TRIAL DEMANDED



Plaintiffs Jane and John Does 1-37 (collectively, "Plaintiffs" or "Does"), by their attorneys Nesenoff & Miltenberg, LLP, 101 Federal Street, 19th Floor, Boston, Massachusetts, respectfully allege against Defendants Trustees of Boston College (the "College," "Trustees," "BC," "Boston College" or "Defendant BC"), Blake James ("AD James" or "Defendant James"), and Reggie Terry ("AAD Terry" or "Defendant Terry") (collectively, "Defendants") as follows:

THE NATURE OF THIS ACTION

1. This case arises out of the actions taken by Defendants Trustees of Boston College, Director of Athletics Blake James, and the Senior Associate Athletics Director Reggie Terry, in suspending the entire men's and women's Swimming and Diving Team, based upon an allegation that hazing had occurred, prior to any investigation into the allegations being conducted let alone completed, and prior to any findings being made.

2. The 37 Plaintiffs in this action are elite swimmers and divers, highly skilled athletes who have devoted many years of their lives, and made many sacrifices along the way, to reach the Division One collegiate level.

3. Yet, the College arbitrarily brought their entire competition season to a screeching halt and end, before any investigation was concluded, and before any findings concerning the allegations were made.

4. On September 20, 2023, the Boston College Athletics Department indefinitely suspended the Swimming and Diving Team and then falsely and recklessly issued a public statement on the BC Athletics website, stating that “University administrators determined that ***hazing had occurred*** within the program.”

5. In fact, as of September 20, 2023, the College had only just begun an investigation into the allegations, and no determinations had been reached.

6. Defendants’ irresponsible decision to impose a blanket suspension on the entire Swimming and Diving Team — immediately halting their practices, training, and competition — without affording the students the proper and fair process to which they were entitled under both BC’s own policies as well as Massachusetts state law, has resulted in substantial and irreparable harm to the student athletes.

7. As a result of Defendants’ extreme, unwarranted, and draconian actions, Plaintiffs’ competitive swimming season is suspended indefinitely, with no end in sight. Their competitive goals, including, but not limited to competing at the Atlantic Coast Conference (“ACC”) championships, national championships, and Olympic trials, are currently unattainable due to the suspension.

8. Additionally, Plaintiffs have endured ridicule, scrutiny, and public shaming due to the unwarranted release of BC's public statement concluding that "...*hazing had occurred* within the program." (emphasis added).

9. Plaintiffs therefore bring this action to obtain relief based on claims for breach of contract, breach of basic fairness, estoppel, defamation, intentional infliction of emotional distress, and Title IX.

THE PARTIES

10. Plaintiffs Jane and John Does 1-37 are students currently enrolled at Boston College and are members of the 2023-2024 BC Swimming and Diving Team.

11. Plaintiffs Jane and John Does 1-37 comprise nearly half of the Boston College Men's and Women's Swimming and Diving Team, with 18 females and 19 males, and represent each class year with 6 freshmen, 10 sophomores, 12 juniors, and 9 seniors.

12. Boston College is a private Jesuit research university of higher education located in Chestnut Hill, Massachusetts, located in the County of Middlesex.

13. Upon information and belief, Trustees of Boston College is the legal name of the educational institution under the laws of the Commonwealth of Massachusetts and is located in Chestnut Hill, Massachusetts. The school is generally known as Boston College.

14. Upon information and belief, Blake James is a citizen of the Commonwealth of Massachusetts. During the relevant time period, Blake James served as the William V. Campbell Director of Athletics at Boston College, and still serves in this capacity as of the present time. See *Blake James*, BOSTON COLLEGE, <https://bceagles.com/staff-directory/blake-james/1648> (last visited Oct. 15, 2023). AD James enacted the indefinite suspension on the entire Boston College Swimming and Diving team which promulgated the present action.

15. Upon information and belief, Reggie Terry is a citizen of the Commonwealth of Massachusetts. During the relevant time period, Reggie Terry served as the Senior Associate Athletics Director - Administration at Boston College, and still serves in this capacity as of the present time. See *Reggie Terry*, BOSTON COLLEGE, <https://bceagles.com/sports/football/roster/coaches/reggie-terry/111> (last visited Oct. 15, 2023). Defendant Terry joined BC in 2013 and prior to his current role, he served as Associate AD for Football Player Personnel and Football Operations. *Id.*

16. Plaintiffs Jane and John Does 1-37 and Defendants Trustees of Boston College, Blake James, and Reggie Terry are sometimes hereinafter collectively referred to as the “Parties.”

JURISDICTION AND VENUE

17. This Court has personal jurisdiction over the Trustees of Boston College on the grounds that it is conducting business within the Commonwealth of Massachusetts, specifically within the county of Middlesex.

18. This Court has personal jurisdiction over Defendant James on the grounds that he is an employee at BC and personally acted within the Commonwealth of Massachusetts, in the County of Middlesex.

19. This Court has personal jurisdiction over Defendant Terry on the grounds that he is an employee at BC and personally acted within the Commonwealth of Massachusetts, in the County of Middlesex.

20. Venue for this action properly lies in this district because Boston College is considered to reside in this judicial district.

21. At all relevant times, the actions and events discussed herein transpired within the Commonwealth of Massachusetts, in the County of Middlesex.

22. Jurisdiction is proper in this court because the damages to Plaintiffs Jane and John Does 1-37 exceed \$50,000 and the Plaintiffs seek equitable relief.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

I. The Boston College Swimming and Diving Team

23. The Boston College Swimming and Diving program is in Division One (“D1”) of the National College Athletic Association (“NCAA”), within the Atlantic Coast Conference (“ACC”).

24. The Team is comprised of 67 students, 32 females and 35 males.

25. The Team is currently led by head coach Joe Brinkman (“Coach Brinkman”), who began at BC in the fall of 2022, along with diving coach Jack Lewis, and assistant coaches Brian Keane and Alexander Santana.

26. In order to be recruited to swim or dive at BC, a D1 NCAA school in the competitive ACC, swimmers and divers must be ranked at the top in their high school and/or club programs.

27. Of the 37 Plaintiffs, many have placed in the top ten and/or won a state title in their home state.

28. To even be considered for recruitment to BC Swimming and Diving, the student athletes participated in rigorous training and practice schedules year-round, with minimal breaks, for numerous years prior to entering college.

29. At BC, the swimmers and divers continue to devote over 20 hours per week to training and practice in order to keep up their endurance, physique, and remain competitive.

30. The Swimming and Diving Team at BC is a team on the rise.

31. In its first year under Coach Brinkman, BC Swimming and Diving had a particularly successful year, which included breaking 3 school and 15 pool records at their rivalry

meet against Boston University in January 2023. See Athletic Communications, *Eagles Break All The Records In a Dominant Showing At The Terrier Classic*, BOSTON COLLEGE (Nov. 20, 2022), <https://bceagles.com/news/2022/11/20/swimming-eagles-break-all-the-records-in-a-dominant-showing-at-the-terrier-classic.aspx>.

32. The BC Swimming and Diving Team broke a total of 10 school records at the ACC Championships alone in February of 2023. See Athletic Communications, *Eagles Best 10 School Records at ACC Championships*, BOSTON COLLEGE (Feb. 18, 2023), <https://bceagles.com/news/2023/2/18/swimming-eagles-best-nine-school-records-at-acc-championships.aspx>.

33. Additionally, eight divers qualified to compete in the 2023 NCAA D1 Zone Championships. See Athletic Communications, *Eight Eagles Set to Dive at NCAA DI Zone A Championships*, BOSTON COLLEGE (Mar. 5, 2023), <https://bceagles.com/news/2023/3/5/swimming-eight-eagles-set-to-dive-at-ncaa-di-zone-a-championships.aspx>.

34. During the 2022-2023 season, 31 members of the BC Swimming and Diving Team were named to the All-ACC Academic Team, which requires at least a 3.0 grade point average, in addition to competing in either the ACC Championship or NCAA Championship in swimming and diving. See Athletic Communications, *31 Eagles Earn Swimming & Diving All-ACC Academic Team Honors*, BOSTON COLLEGE (Apr. 12, 2023), <https://bceagles.com/news/2023/4/12/31-eagles-earn-swimming-diving-all-acc-academic-team-honors.aspx>.

35. Also during the 2022-2023 season, the College Swimming and Diving Coaches Association of America named both the men's and women's teams to the 2022-2023 Fall School All-America Teams, based on the students earning grade point averages above 3.0.

36. John and Jane Does 1-37 were each recruited by Boston College to become members of the Swimming and Diving Team.

37. Many of the students declined offers and opportunities from other prestigious institutions, choosing instead to attend BC and join its swimming and diving program based on the information provided to them and assurances made by Boston College during the recruitment process.

38. John and Does 1-37 began their practices on August 30, 2023, and expected to begin the 2023-2024 season with a meet on September 23, 2023.

39. However, just as the season was about to begin, the Boston College Athletics Department took it upon themselves to put an end to it.

40. The BC Athletics Department unilaterally sought to dismantle the BC Swimming and Diving Team in its entirety, engaging in a series of unprecedented and egregious actions, which culminated in the unjustified suspension of the men's and women's swimming and diving program.

II. The BC Athletics Department Imposes an Unwarranted Suspension on the Junior Swim Boys Based Upon False Accusations

41. The Athletics Department initiated its campaign against the Swimming and Diving Team on or about September 11, 2023, when Defendant AAD Terry called a meeting with the seven junior boys on the swim team who live in an off-campus residence known as "Kirk."¹

42. During the meeting that afternoon, AAD Terry notified the boys that the Athletics Department was indefinitely suspending them from the swim team because of a statement someone made related to alleged alcohol consumption that occurred at their house.

¹ "Kirk," also called the "Swim House" refers to 44-46 Kirkwood Road, an off-campus multi-family home where 7 junior swim boys and 6 junior swim girls reside.

43. When the residents of that house asked AAD Terry who made the alleged statement, and on what date the event at issue occurred, he responded that he did not have this information but that the boys would be hearing from the Dean of Students' Office.

44. Oddly, during this meeting, Defendant Terry discussed an instance of an alleged rape that occurred on campus. This anecdote unquestionably lacked any relevance to the current matter, causing confusion amongst the seven swimmers who felt as though they were being compared to rapists.

45. In relaying the decision to suspend the seven swimmers, Defendant Terry clarified that it was the Athletics Department, not the school, that had decided to suspend the junior boys who lived in Kirk.

46. Based upon the allegations which were just that, mere allegations, and which had not yet been investigated, the Athletics Department arbitrarily suspended all of the male swimmers residing in Kirk.

47. BC consequently prohibited them from attending and participating in BC's alumni swim meet which took place on September 15, 2023.

48. This suspension came without any hearing or other opportunity for the junior swim boys to defend themselves, despite the lack of any evidence substantiating that any hazing ever took place at Kirk.

49. Moreover, the College never lifted the suspension of the seven male swimmers residing in Kirk, despite learning the following week that the events at issue actually occurred on campus, not in Kirk.

50. Instead, the suspension of the junior boys remained in effect, and continued even when AD James suspended the entire Swimming and Diving Team the following week.

III. The Office of the Dean of Students Initiates an Investigation Against the Swimming and Diving Team.

51. On September 19, 2023 at approximately 9:18 a.m., Coach Brinkman texted the members of the Swimming and Diving Team to notify them that they were required to attend a meeting the following morning at 8:00 a.m. with Defendants AD James and AAD Terry.

52. Also on September 19, 2023, the entire Swimming and Diving Team received a notice from Associate Dean Melissa Woolsey (“Dean Woolsey”) in the Office of the Dean of Students indicating that the office had received reports about alleged violations of the Student Code of Conduct (the “Code”) committed by members of the Swimming and Diving Team, in connection with events occurring during the weekend of September 1-4, 2023, in locations on and off campus.

53. The notice cited three particular events occurring on September 2, September 3, and September 4, 2023, allegedly involving underage drinking and hazing activities.

54. Dean Woolsey stated that after reviewing the report, she had identified potential violations of the Code including: (1) 9.3 Hazing, (2) 8.1 Alcohol Policy; (3) 11.2 Disorderly Conduct; (4) 11.1 Community Disturbance; and (5) Complicity.

55. The notice provided information on the College’s disciplinary process, noting that a staff member would be contacting each student in regard to next steps.

IV. The BC Athletics Department Engages in Unprecedented Action When it Indefinitely Suspends the Entire Team and Subsequently Issues a Public Statement About the Suspension Decision.

56. On September 20, 2023, the Swimming and Diving Team met with AD James for approximately seven minutes, during which AD James informed the Team that they were all indefinitely suspended from swimming and diving.

57. AD James admitted that the school did not yet have all of the relevant information and acknowledged that not everyone was involved, yet nonetheless called the students “disgusting” while berating and humiliating them.

58. The same day, prior to the Office of the Dean of Students having initiated any formal investigation let alone reached any findings as to whether the purported allegations were substantiated, the BC Athletics Department published the following false and defamatory statement (the “Statement”) to the BC Athletics website:

The Boston College Men’s and Women’s Swimming and Diving program has been placed on indefinite suspension, after University administrators determined that ***hazing had occurred*** within the program.

(emphasis added).

59. It went on to state: “The University does not – and will not – tolerate hazing in any form.”

60. Indisputably, as of September 20, 2023, University administrators ***had not*** determined that any hazing had occurred, and the affected students were only first notified of such allegations the day prior.

61. Moreover, the imposition of the indefinite suspension and accompanying public press release came without any prior warning to the student athletes or their parents.

62. On the same day, September 20, 2023, the Office of the Dean of Students sent correspondence to the members of the Swimming and Diving Team noting that the “statement that was issued by Athletics was pertaining to the Swim and Dive Team’s status with the athletic department, and does not reflect the status of the Student Conduct Process.”

63. In an attempt to save face, also on September 20, 2023, the Athletics Department revised its statement to include one additional sentence, noting: “Consistent with University policy,

the matter will be investigated by the Office of the Dean of Students and adjudicated fairly and impartially through the student conduct process.”

64. The Athletics Department revised the statement for a third time on September 21, 2023, to now read: “Boston College Athletics has suspended the activities of the Men’s and Women’s Swimming and Diving teams following credible reports of hazing. Based on the information known at this time, Athletics has determined a program suspension is warranted, pending a full investigation by the University.”

65. However, these revisions were inconsequential as the reputational damage had already been done.

66. Within hours of the Athletics Department publishing its statement regarding the indefinite suspension of the Swimming and Diving Team, the story had been picked up by nearly every major local and national media outlet, including: the Boston Globe, the Boston Herald, The New York Times, Channel 7 News Boston, WCVB Channel 5, CBS News, ABC News, NBC News, CNN, ESPN, the BC Heights, SwimSwam, Swimming World Magazine, the Associated Press, Fox News, WBZ News Radio, Boston.com, and Swimmer’s Daily, among others.

67. The local and national print and television reports relied upon and cited to the statement first issued by the Athletics Department, inaccurately reporting that the BC Swimming and Diving Team had been indefinitely suspended “after administrators determined that ***hazing had occurred.***” (emphasis supplied).

68. Again, the Statement was demonstrably false as an investigation had not yet been completed, and no findings had been made, let alone any findings that every single member of the Swimming and Diving Team was responsible for the alleged violations, as implied by the overarching language of the Statement.

69. This Statement, and the ensuing media coverage generated significant attention on the student athletes, both from their peers within the Boston College community, as well as the media, directly causing reputational, social, mental, and emotional harm to the members of the Swimming and Diving Team and creating a hostile environment on campus.

70. Specifically, subsequent to the publication of the Statement, the students were subjected to hateful social media postings, ostracized by their peers, stalked by various local and national media seeking comments, mistreated by others on campus to the point that they were afraid to wear their swimming and diving gear in public, subjected to public humiliation and embarrassment, and have become concerned for their safety and well-being, all of which has impacted their ability to focus on their academics and training.

V. The Updated Notice of Investigation.

71. On September 28, 2023, the Office of the Dean of Students issued an updated Notice of Investigation which adjusted the address and location of one of the events under investigation.

72. Further, the Office of the Dean of Students requested that each student sign up by Saturday, September 30, 2023, for an investigation interview to take place during the week of October 2 through October 6.

73. The College retained an external law firm to conduct the first round of investigation interviews, which took place in part during the students' fall break.

74. Though the investigation was just beginning, on October 6, 2023, the College took further steps to double down, publicly canceling all remaining meets for the year on the program's online schedule.

75. Oddly, the College removed some of the noted “cancellations” on the Swimming and Diving Team’s online schedule later that same day.

VI. The College Violated its Student Code of Conduct.

76. Beyond the significant harm BC’s actions have caused to its own students, it also violated its own policies in its handling of this matter, particularly with respect to the imposition of an unprecedented and unwarranted indefinite suspension of an entire sports program.

77. Upon information and belief, the College has never suspended an entire sports program, and certainly has never done so based solely on uninvestigated allegations.

78. By way of example, the College cannot genuinely assert that it would suspend its football team—one of the College’s more lucrative programs—for an entire season based on allegations related to underage drinking.²

79. Yet, this is precisely what the College did when it violated its own policies as well as fundamental fairness, when indefinitely suspending the Swimming and Diving Team.

a. The College Deprived the Students of their Fundamental Rights to Defend Themselves and be Heard, Before Imposing a Disciplinary Suspension.

80. The College’s Student Code of Conduct provides that the Office of the Dean of Students coordinates the student conduct system and oversees all matters related to the conduct and behavior of Boston College students, “in order to maintain a community conducive to the overall mission of Boston College.”

81. Moreover, the Code describes that the purpose of the student conduct system is to “help foster an environment that promotes the intellectual, personal, ethical, psychological, social,

² This point is notable given Defendant Terry’s ties to the football team, including that he worked as a part of that team for seven years and that his son is presently a student athlete on the BC football team.

and spiritual development of all students,” and that the conduct system is “first and foremost, educational in nature.”

82. Section 1.3 of the Code assures that in the case of conduct procedures, students have the right to “be informed of any charges of misconduct, an opportunity to respond to the charges, hear evidence in support of the charges, present evidence against the charges, and be informed of the outcome of a conduct proceeding.” *Code*, § 1.3.

83. The Code describes that the purpose of conduct proceedings is to investigate the facts of the matter and to determine responsibility for alleged violations, under a preponderance of the evidence standard. *Code*, §1.5.

84. Presumably, as part and parcel of the College’s obligation to afford its students a fair process is the obligation to provide these rights before imposing any disciplinary action.

85. Yet here, the College suspended an entire team approximately less than one day after notifying the students that they were being investigated and prior to affording them a fair opportunity to defend themselves and be heard.

b. BC Violated its Policies When it Imposed an Unjustified, and Unprecedented, Suspension of an Entire Sports Program.

86. Section 2.3 of the Code details the circumstances in which interim administrative action may be taken. Specifically, the Dean of Students or its designee “may take interim administrative action when a student is deemed to threaten the health, safety, or well-being of the University community, threaten or impair the effective functioning of the University, or when a student has been charged with a serious criminal offense.” *Code*, § 2.3.

87. The Code explains that an interim administrative action “is intended to help protect the University and members of the community until a matter can be investigated and adjudicated,

and remains in effect only as long as the Dean of Students or designee determines there is a need for it or until the matter has been investigated, adjudicated, or otherwise resolved.”

88. Further, the Code provides examples of when an interim suspension may be imposed, which includes instances of: “physical violence, sexual misconduct, disruption of the educational or civil living environment of the University, significant damage to property, and possession and distribution of controlled substances.” *Code*, § 2.3.

89. It is without question that the members of the Swimming and Diving Team could not be considered threats to the health, safety, or well-being of the University community (the allegations concerned events occurring during Labor Day weekend, rather than any ongoing conduct of concern), there was no threat to the effective functioning of the University, and none of the student athletes have been charged with a serious criminal offense.

90. Moreover, and equally as important, there was no alleged “victim” of the conduct being investigated as the allegations were not brought forth by any member of the Swimming and Diving Team to begin with.

91. Instead, upon information and belief, the investigation was initiated after a professor purportedly overheard students speaking about their activities over Labor Day weekend.

92. There has been no indication that the Dean of Students has made the requisite assessment as to whether the criteria for an interim suspension have been met.

93. In fact, had the circumstances warranting interim administrative action been present, the Dean of Students could have chosen to impose an interim suspension. Tellingly, it did not do so.

94. Moreover, the Code does not explicitly authorize the Athletics Department to impose interim administrative action (such as a full program suspension), during the pendency of a conduct investigation as the Athletics Department did here.

95. Nor could the Athletics Department be considered a “designee” of the Dean of Students office, as confirmed by the Dean of Students’ September 20, 2023, letter which declared that the Statement issued by the Athletics Department “[did] not reflect the status of the Student Conduct Process.”

96. To the contrary, Section 5.1.1 provides that status related sanctions, such as the suspension of a student group, “are issued at the Discretion of the Office of the Dean of Students...” *Code*, § 5.1.1.

97. Accordingly, the imposition of interim administrative action in the form of a full sports program suspension was not only improper but was also a violation of the College’s policies.

c. Additional Policy Violations.

98. The College further violated its Code when it failed to notify the Plaintiffs’ parents about the decision to suspend the entire program.

99. Section 2.2 provides that the Office of the Dean of Students or designee, at the Dean’s discretion, may notify parents or guardians of conduct matters, including those involving a finding of responsibility and related sanctions. *Code*, § 2.2.

100. Here, despite its decision to suspend the entire Swimming and Diving Team, the College chose to announce the indefinite suspension to the public by posting a statement on the Athletics Department’s website, rather than notifying the swimmer’s parents beforehand.

101. This failure of common decency also amounted to a violation of the College’s policies.

102. Additionally, the College violated its obligations surrounding confidentiality when it published the Statement online.

103. Section 3.5 states that “disclosure of information or evidence, whether written or oral, learned through an investigation or conduct process should not be disclosed, and any such disclosures by participants to persons not involved in the hearing process... may be dealt with as a subsequent charge...” *Code*, § 3.6.

104. Without question, the disclosure of information concerning the allegations, and the misrepresentation that hazing had been substantiated, was a direct violation of the College’s own policies concerning privacy.

105. Finally, Section 3.7 states that a responding student in a conduct matter will be sent written notification of any decisions and/or sanctions reached as a result of a hearing within ten (10) business days after a hearing. *Code*, § 3.7.

106. The Code assures students that matters will be investigated and heard before a finding is made, and the outcome conveyed in writing to the student.

107. Accordingly, the issuance of the Statement to the public, falsely affirming that university administrators had concluded hazing allegations were substantiated was a further violation of the College’s own policy.

COUNT I

BREACH OF CONTRACT **(Against Defendant BC)**

108. Plaintiffs Jane and John Does 1-37 repeat and reallege each and every allegation hereinabove as if fully set forth herein.

109. To establish a breach of contract claim under Massachusetts law, the plaintiff must demonstrate that: 1) “there was an agreement between the parties”; 2) “the agreement was

supported by consideration”; 3) “the plaintiff was ready, willing, and able to perform his or her part of the contract”; 4) “the defendant committed a breach of the contract”; and 5) “the plaintiff suffered harm as a result[.]” *Viken Detection Corp. v. Videray Techs. Inc.*, No. CV 19-10614-NMG, 2019 WL 2491618, at *6 (D. Mass. June 14, 2019), *quoting Bulwer v. Mount Auburn Hosp.*, 473 Mass. 672, 46 N.E.3d 24, 39 (2016).

110. Moreover, it is well established in Massachusetts that the relationship between a student and a school is contractual in nature. *See Massachusetts Inst. of Tech. v. Guzman*, 90 Mass. App. Ct. 1102, 56 N.E.3d 894 (2016); *Mangla v. Brown Univ.*, 135 F.3d 80, 83 (1st Cir.1998); *Dinu v. President & Fellows of Harvard College*, 56 F.Supp.2d 129, 130 (D.Mass.1999).

111. The terms of the contract can include written policies such as the university’s policies related to conduct and disciplinary proceedings. *Id.*

112. In determining whether a university breached any provision of its educational contract, the court is to examine whether the college’s actions met the reasonable expectations of the student. *Cloud v. Trustees of Boston Univ.*, 720 F.2d 721, 724 (1st Cir.1983).

113. BC recruited each of the Plaintiffs, Jane and John Does 1-37, to join BC’s Swimming and Diving Team. Plaintiffs committed and chose to enroll at BC and join its Swimming and Diving Team and paid all associated fees and expenses.

114. The Plaintiffs did so in reliance on, and with the understanding and reasonable expectation that BC would implement and enforce the provisions and policies set forth in its official publications, including its Student Code of Conduct and related policies.

115. Accordingly, an express contract or, alternatively, a contract implied in law or in fact was formed between each of the Plaintiffs and Defendant BC.

116. The contract contained an implied covenant of good faith and fair dealing. It implicitly guaranteed that any proceedings would be conducted with basic fairness.

117. Nonetheless, and based on the aforementioned facts and circumstances, Defendant BC breached express and/or implied agreement(s) with Plaintiffs, and the covenant of good faith and fair dealing contained therein.

118. Defendant BC has committed several breaches of its agreement with Plaintiffs, including the following:

a. The College Deprived the Students of their Fundamental Rights to Defend Themselves and be Heard, Before Imposing a Disciplinary Suspension.

119. Section 1.3 of the Code assures that in the case of conduct procedures, students have the right to “be informed of any charges of misconduct, an opportunity to respond to the charges, hear evidence in support of the charges, present evidence against the charges, and be informed of the outcome of a conduct proceeding.” *Code, § 1.3.*

120. The Code describes that the purpose of conduct proceedings is to investigate the facts of the matter and to determine responsibility for alleged violations, under a preponderance of the evidence standard. *Code, §1.5.*

121. Presumably, as part and parcel of the College’s obligation to afford its students a fair process is the obligation to provide these rights before imposing any disciplinary action.

122. Yet here, the College suspended an entire team one day after notifying the students that they were being investigated and prior to affording them a fair opportunity to defend themselves and be heard.

123. As of the time the suspension was imposed, the College had only recently initiated its conduct proceedings, a process that begins with interviews of the parties and witnesses and culminates in a hearing where a determination as to responsibility is made.

124. The imposition of a season-ending suspension on the entire Swimming and Diving Team, when the investigative process had only just begun that same day, was an egregious overstepping of the College's Athletics Department.

125. The impropriety of this interim action is further exemplified by the fact that numerous members of the Swimming and Diving Team may ultimately be deemed not responsible for any policy violations. Notwithstanding, by the time the conduct process concludes, they will have potentially lost out on an entire swim season, severely and permanently jeopardizing their future opportunities.

b. BC Violated its Policies When it Imposed an Unjustified, and Unprecedented, Suspension of an Entire Sports Program.

126. Section 2.3 of the Code details the circumstances in which interim administrative action may be taken. Specifically, the Dean of Students or its designee "may take interim administrative action when a student is deemed to threaten the health, safety, or well-being of the University community, threaten or impair the effective functioning of the University, or when a student has been charged with a serious criminal offense." *Code*, § 2.3.

127. The Code explains that an interim administrative action "is intended to help protect the University and members of the community until a matter can be investigated and adjudicated, and remains in effect only as long as the Dean of Students or designee determines there is a need for it or until the matter has been investigated, adjudicated, or otherwise resolved."

128. Further, the Code provides examples of when an interim suspension may be imposed, which includes instances of: "physical violence, sexual misconduct, disruption of the educational or civil living environment of the University, significant damage to property, and possession and distribution of controlled substances." *Code*, § 2.3.

129. It is without question that the members of the Swimming and Diving Team could not be considered threats to the health, safety, or well-being of the University community (the allegations concerned events occurring during Labor Day weekend, rather than any ongoing conduct of concern), there was no threat to the effective functioning of the University, and none of the student athletes have been charged with a serious criminal offense.

130. Yet, there is no indication that the Dean of Students has made any such assessment as to whether the criteria for an interim suspension have been met.

131. In fact, had the circumstances warranting interim administrative action been present, the Dean of Students could have chosen to impose an interim suspension. Tellingly, it did not do so.

132. Moreover, the Code does not explicitly authorize the Athletics Department to impose interim administrative action (such as a full program suspension), during the pendency of a conduct investigation as the Athletics Department did here.

133. Nor could the Athletics Department be considered a “designee” of the Dean of Students office, as confirmed by the Dean of Students’ September 20, 2023, letter which declared that the Statement issued by the Athletics Department “[did] not reflect the status of the Student Conduct Process.”

134. To the contrary, Section 5.1.1 provides that status related sanctions, such as the suspension of a student group, “are issued at the Discretion of the Office of the Dean of Students...” *Code*, § 5.1.1.

135. Evidently, the indefinite suspension was not imposed at the discretion of the Office of the Dean of Students, but instead was unilaterally and arbitrarily issued by the Athletics Department, against the College’s policies.

136. Accordingly, the imposition of interim administrative action in the form of a full sports program suspension was not only improper but was also a violation of the College's policies.

c. Additional Policy Violations.

137. The College further violated its Code when it failed to notify the Plaintiffs' parents about the decision to suspend the entire program.

138. Section 2.2 provides that the Office of the Dean of Students or designee, at the Dean's discretion, may notify parents or guardians of conduct matters, including those involving a finding of responsibility and related sanctions. *Code*, § 2.2.

139. Here, despite its decision to suspend the entire Swimming and Diving program, the College chose to announce the indefinite suspension to the public by posting a statement on the Athletics Department's website, rather than notifying the swimmer's parents beforehand.

140. This failure of common decency also amounted to a violation of the College's policies.

141. Additionally, the College violated its obligations surrounding confidentiality when it published the Statement online.

142. Section 3.5 states that "disclosure of information or evidence, whether written or oral, learned through an investigation or conduct process should not be disclosed, and any such disclosures by participants to persons not involved in the hearing process... may be dealt with as a subsequent charge..." *Code*, § 3.6.

143. Without question, the disclosure of information concerning the allegations, and the misrepresentation that hazing had been substantiated, was a direct violation of the College's own policies concerning privacy.

144. The foregoing constituted a clear violation of Plaintiffs' rights to confidentiality and privacy in the process.

145. Finally, Section 3.7 states that a responding student in a conduct matter will be sent written notification of any decisions and/or sanctions reached as a result of a hearing within ten (10) business days after a hearing. *Code*, § 3.7.

146. The Code assures students that matters will be investigated and heard before a finding is made, and the outcome conveyed in writing to the student.

147. Accordingly, the issuance of the Statement to the public, falsely affirming that university administrators had concluded hazing allegations were substantiated was a further violation of the College's own policy.

148. The foregoing violations, individually and in the aggregate, deprived Plaintiffs of a fair and impartial process, presumed every member of the Swimming and Diving Team to be guilty, disregarded Plaintiffs' right to privacy and confidentiality, and have resulted in substantial ongoing and irreparable harm.

149. As a direct and proximate result of the above conduct, Jane and John Does 1-37 have sustained tremendous damages, including, without limitation, emotional and psychological distress, loss of educational, athletic, and other career opportunities, past and future economic injuries, reputational damages, and other direct and consequential damages.

COUNT II

DENIAL OF BASIC FAIRNESS **(Against Defendant BC)**

150. Plaintiffs Jane and John Does 1-37 repeat and reallege each and every allegation hereinabove as if fully set forth herein.

151. Massachusetts courts have long held as part of the implied covenant of good faith and fair dealing that school disciplinary proceedings must be “conducted with basic fairness.” *Cloud v. Trs. of Bos. Univ.*, 720 F.2d 721, 725 (1st Cir. 1983) (citing *Coveney v. President & Trs. of Holy Cross Coll.*, 445 N.E.2d 136, 139 (Mass. 1983)); *Schaer v. Brandeis Univ.*, 735 N.E.2d 373, 380 (Mass. 2000).

152. While “[b]asic fairness] is an uncertain and elastic concept, and there is little case law to serve as guideposts in conducting the fairness inquiry” (*Doe v. Brandeis Univ.*, 177 F. Supp. at 601), “[i]n this context, at least, there are two principal threats to the ‘fairness’ inquiry. The first is procedural fairness — that is, whether the process used to adjudicate the matter was sufficient to provide the accused student a fair and reasonable opportunity to defend himself. The second is substantive fairness — that is, even if the procedure was fair, whether the decision was unduly arbitrary or irrational, or tainted by bias or other fairness.” *Id.* at 602.

153. Additionally, a private university may not act “arbitrarily or capriciously” in disciplining a student. *Doe v. Brandeis Univ.*, 177 F. Supp. 3d 561, 600 (D. Mass. 2016).

154. Consistent with the implied covenant of good faith and fair dealing, the Code also explicitly promises to “provide a fair process for resolving student conduct complaints.” *Code*, § 3.0.

155. Thus, Defendant Boston College, and by proxy its agents and employees Defendants James and Terry, had a duty, either under an express or implied contract, or as a matter of common law, to ensure that the College conducted proceedings against the Plaintiffs in good faith and with basic fairness.

156. Defendant BC, through the actions of the Defendant agents James and Terry, breached their common law duty of good faith and basic fairness, as well as their own stated

policies, when they failed to afford Plaintiffs basic fairness by suspending all team activities, including practices and competition, less than one day after issuing a notice of investigation — well before any meaningful investigation could occur — and, far before any findings as a result of that investigation had been dispensed.

a. Prior to Enforcing a Sanction, BC Unfairly Failed to Adjudicate the Matter in a Sufficient Manner by Not Affording the Plaintiffs an Opportunity to Defend Themselves.

157. First, BC unfairly suspended the Plaintiffs prior to adjudicating the matter in a fair and sufficient manner. More specifically, BC failed to afford them a fair opportunity—or any opportunity at all—to defend themselves prior to the issuance of the suspension.

158. Defendant BC did not provide Plaintiffs with fair process because the Plaintiffs did not receive *any* process prior to the imposition of the suspension.

159. As part of a fair process, it is imperative that students have an opportunity to set forth their account of events that transpired, and to defend themselves against the allegations, including the submission of any evidence.

160. Here, BC had just notified the Plaintiffs one day prior that an investigation process would take place and had not given them any opportunity to provide evidence in support of their defense against the allegations, before indefinitely suspending the entire program.

161. Without the ability to present a defense against the allegations and without opportunity to submit any relevant evidence, BC unfairly stripped the student athletes of a fair process prior to dispensing a sanction of suspension of the entire team.

b. Defendant James, acting as Representative of the College, Imposed a Drastic, Unfair, and Unprecedented Sanction Upon the Entire Swimming and Diving Team.

162. Second, AD James unfairly suspended the entire team prior to any findings being made, an unprecedented act made without any justification.

163. The students did not pose a threat to the effective functioning of the University, or well-being of the University community, and importantly, none of the student athletes have been charged with a serious criminal offense.

164. Upon information and belief, the College arbitrarily and unfairly imposed a sanction of suspension upon the entire team of 67 student athletes, several of whom did not even attend the events that brought about the allegations.

165. As a result, it cannot be construed that BC acted rationally by imposing the suspension on the entire team prior to any meaningful investigation whatsoever.

166. Even further, the student athletes had no indication that Defendant James could act in such a manner, as Section 5.1.1 of the Code provides that status related sanctions, such as the suspension of a student group, “are issued at the Discretion of the Office of the Dean of Students...”, not the Director of Athletics. *Code*, § 5.1.1.

167. The foregoing constituted violations of Plaintiffs’ right to a fair process.

168. As a direct and proximate result of the above conduct, Jane and John Does 1-37 have sustained tremendous damages, including, without limitation, emotional and psychological distress, loss of educational, athletic, and other career opportunities, past and future economic injuries, reputational damages, and other direct and consequential damages.

COUNT III
ESTOPPEL
(Against Defendant Boston College)

169. Plaintiffs Jane and John Does 1-37 repeat and reallege each and every allegation hereinabove as if fully set forth herein.

170. To establish a claim of equitable estoppel in Massachusetts, a plaintiff must demonstrate: (1) a representation, or conduct amounting to a representation, intended to induce a course of conduct on the part of the person to whom the representation was made, (2) an act or omission resulting from the representation by the person to whom the representation was made, and (3) detriment to the person as a consequence of the act. *Boutilier v. John Alden Life Ins. Co.*, 2000 WL 1752623, at *9 (D. Mass. Sept. 29, 2000).

171. BC's Code of Conduct constitutes representations and promises that BC should have reasonably expected the Plaintiffs to rely upon when they accepted the College's offers of admission, chose to join the Swimming and Diving Team, and paid the required tuition and fees associated with matriculation at the College.

172. Each of the Plaintiffs relied upon the representations made to them by the College when participating in the recruitment process for the Swimming and Diving Team.

173. Many of the students declined offers and opportunities from other prestigious institutions, choosing instead to attend BC and become a part of its Swimming and Diving program.

174. Had they known that the College would fail to abide by its own policies, publicly disclose false and defamatory information about the Swimming and Diving Team, deprive the students of confidentiality and privacy, rob them of the ability to participate in the sport that has been a central focus for the majority of their lives, and then fail to protect them when the College's

own actions created a hostile environment for every member of the Swimming and Diving Team, Plaintiffs would have declined BC's offers.

175. Based on the foregoing, BC is liable to Plaintiffs based on Estoppel.

176. As a direct and proximate result of the above conduct, Jane and John Does 1-37 have sustained tremendous damages, including, without limitation, emotional and psychological distress, loss of educational, athletic, and other career opportunities, past and future economic injuries, reputational damages, and other direct and consequential damages.

COUNT IV

DEFAMATION

(Against Defendants Boston College, James, and Terry)

177. Plaintiffs Jane and John Does 1-37 repeat and reallege each and every allegation hereinabove as if fully set forth herein.

178. To prevail on a defamation claim under Massachusetts law, a plaintiff must show that: (1) "[t]he defendant made a statement, concerning the plaintiff, to a third party"; (2) "[t]he statement could damage the plaintiff's reputation in the community"; (3) "[t]he defendant was at fault in making the statement"; and (4) "[t]he statement either caused the plaintiff economic loss (traditionally referred to as 'special damages' or 'special harm'), or is actionable without proof of economic loss." *Ravnikar v. Bogojavlensky*, 438 Mass. 627, 629–30, 782 N.E.2d 508 (2003) (internal footnotes and citations omitted). *Hi-Tech Pharms., Inc. v. Cohen*, 277 F. Supp. 3d 236, 243 (D. Mass. 2016), *as amended* (Oct. 28, 2016).

179. There are four types of actionable statements without proof of economic loss, including "statements that constitute libel" and "statements that may prejudice the plaintiff's profession or business." *Alharbi v. Theblaze, Inc.*, 199 F. Supp. 3d 334, 351 (D. Mass. 2016) (citing *Ravnikar*, 782 N.E.2d at 511).

180. Statements that are provable as false are actionable. *Alharbi*, 199 F. Supp. 3d at 353, citing *Veilleux v. Nat'l Broad. Co.*, 206 F.3d 92, 108 (1st Cir. 2000), quoting *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19 – 20, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990).

181. Indisputably, Boston College's Athletics Department, consisting of Defendants James and Terry in their roles as Director of Athletics and Senior Associate Athletics Director, respectively, published a false statement concerning the Plaintiffs to innumerable third parties, on September 20, 2023.

182. Defendant James, as the Director of Athletics, holds the highest position within the Athletics Department. By virtue of his role, a statement from the Athletics Department is a statement from him. Upon information and belief, AD James was involved in the preparation and crafting of the Statement prior to publication.

183. Upon information and belief, Defendant Terry, as Senior Associate Athletics Director, participated in the preparation and crafting of the Statement prior to publication.

184. Shortly after the students received notification that a conduct investigation would commence, the BC Athletics Department published the following false statement to the BC Athletics website:

“The Boston College Men's and Women's Swimming and Diving program has been placed on indefinite suspension, after University administrators determined that ***hazing had occurred*** within the program.” (emphasis added)

185. Indisputably, as of September 20, 2023, College administrators ***had not*** determined that any hazing had occurred.

186. As such, the declaration that the College's Swimming and Diving Team had in fact engaged in hazing and had been suspended as a result of this finding, was demonstrably false.

187. The College, specifically the Athletics Department, for which Defendants James and Terry are in part responsible due to their roles, did not act reasonably in publishing these statements, as they knew or should have known that such a claim was false.

188. This defamatory statement caused direct and substantial harm to the Plaintiffs, particularly with respect to their reputations. *See Barrows v. Wareham Fire Dist.*, 82 Mass. App. Ct. 623, 627, 976 N.E.2d 830, 836 (2012) (highlighting that “[t]he gravamen of the tort of defamation does not lie in the nature or degree of the misconduct but in its outcome, i.e., the injury to the reputation of the plaintiff”).

189. Specifically, the members of the Swimming and Diving Team have been ostracized by their peers, subjected to hateful social media postings, stalked by various local and national media seeking comments, mistreated by others on campus to the point that they were afraid to wear their swimming and diving gear in public, subjected to public humiliation and embarrassment, and have become concerned for their safety and well-being, all of which has also impacted their ability to focus on their academics and training.

190. Moreover, within hours of the publication of the Statement regarding the indefinite suspension of the Swimming and Diving Team, the story had been picked up by nearly every major local and national media outlet, including: the Boston Globe, the Boston Herald, The New York Times, Channel 7 News Boston, WCVB Channel 5, CBS News, ABC News, NBC News, CNN, ESPN, the BC Heights, SwimSwam, Swimming World Magazine, the Associated Press, Fox News, WBZ News Radio, Boston.com, and Swimmer’s Daily, among others.

191. The local and national print and television reports relied upon and cited to the Statement, inaccurately reporting that the BC Swimming and Diving Team had been indefinitely suspended “after administrators determined that ***hazing had occurred.***” (emphasis added).

192. Again, the Statement was demonstrably false as an investigation had not yet been completed, and no findings had been made, let alone any findings that every single member of the Swimming and Diving Team was responsible for the alleged violations, as implied by the overarching language of the Statement.

193. As such, the Statement has permanently tarnished the Plaintiffs' reputations, both within the Boston College community and outside of it.

194. Defendants are therefore liable to Plaintiffs for defamation.

COUNT V

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS **(Against Defendants Boston College, James, and Terry)**

195. Plaintiffs Jane and John Does 1-37 repeat and reallege each and every allegation hereinabove as if fully set forth herein.

196. To make out a claim of intentional infliction of emotional distress in Massachusetts, a plaintiff is required to show (1) that defendants, knew, or should have known that their conduct would cause emotional distress; (2) that the conduct was extreme and outrageous; (3) that the conduct caused emotional distress; and (4) that the emotional distress was severe. *See Howell v. Enterprise Publ. Co.*, 455 Mass. 641, 672, 920 N.E.2d 1 (2010); *Sena v. Commonwealth*, 417 Mass. 250, 263–264, 629 N.E.2d 986 (1994); *Polay v. McMahon*, 468 Mass. 379, 385, 10 N.E.3d 1122, 1128 (2014).

197. The College, Defendant James, and Defendant Terry knew or should have known that abruptly suspending the entire Swimming and Diving Team, prior to any investigation being conducted and prior to any findings being reached, and on the eve of the start of their season in an Olympic year, would cause emotional distress to the members of the Swimming and Diving Team,

all of whom have dedicated a significant portion of their lives to the sport over the past decade, or more.

198. Imposing an indefinite suspension on an entire athletic program, comprised of over 67 students, without having gathered all the necessary information and without having made any determinations regarding the veracity of the allegations was extreme and outrageous conduct and has resulted in severe emotional distress.

199. Additionally, Defendant Boston College, Defendant James, and Defendant Terry knew or should have known that publicizing false information in the Statement which stated that the Swimming and Diving Team had been found responsible for hazing, prior to any investigation being conducted and prior to any findings being reached, would cause emotional distress to the members of the Swimming and Diving Team.

200. The issuance of the false and defamatory Statement, which was inevitably picked up by every major local and national media outlet, without having gathered all the necessary information and without having made any determinations regarding the veracity of the allegations, was also extreme and outrageous conduct and has resulted in severe emotional distress.

201. Defendant Terry knew or should have known that likening them to “rapists” would cause severe emotional distress to the members of the Swimming and Diving Team.

202. Defendant James knew or should have known that calling the Swimming and Diving Team “disgusting” would cause them severe emotional distress.

203. As a direct result of the suspension, the students have suffered immensely.

204. The students have been ostracized by their peers, stalked by various local and national media seeking comments, mistreated by others on campus to the point that they were afraid to wear their swimming and diving gear in public, subjected to public humiliation and

embarrassment, and have become concerned for their safety and well-being, all of which has impacted their ability to focus on their academics and training.

205. For instance, many are harassed on social media and in person. They have been pointed at and called “hazers”, ridiculed, and have suffered the result of vicious rumors being circulated online.

206. In fact, many of the students no longer wear their BC Swimming and Diving athletic apparel out of concern that they will suffer further harassment and find it difficult to go through the motions of daily life, such as attending classes, and eating in the dining hall, for they fear what ridicule they may face.

207. Due to the emotional distress, many of the Plaintiffs have had trouble focusing not only during their classes, but also while doing their course work, including important assignments and examinations. One student even dropped a course due to a low mark that came directly after BC abruptly enacted the suspension—something that this particular student had never once done before.

208. Additionally, the students are suffering immensely from the weight of their potentially crushed dreams due to the suspension. Many hoped to qualify for the ACC Championship, US Open, NCAA nationals, and swim at the Olympic Trials. With the suspension in place, the students cannot properly train in order to compete at the level necessary to obtain qualifying spots at these prestigious and coveted meets, and also cannot compete to obtain qualifying times and scores in order to earn a spot at the aforementioned competitions.

209. Many also fear that a simple Google search of “BC Swimming and Diving” by any prospective employer or graduate school may impact their chances of becoming employed or obtaining admission so long as the suspension on the entire program remains in place.

210. Furthermore, they have suffered reputational damage as a result of the unsubstantiated Statement published on BC's website, not only within the BC community, but also nationwide. Reporters from major news outlets, as well as individuals all over the country, have barraged the Plaintiffs with questions about the suspension.

211. Moreover, the Plaintiffs turn to swimming and diving as not only their means of physical fitness, but also to aid their mental health. It provides many of them with a healthy and planned stress release through physical activity and to have it ripped away so suddenly has caused them immense emotional distress.

212. The Plaintiffs have also felt that they have been treated with a sense of disdain from the College and its employees. For instance, contact made to Defendant AD James by the Plaintiffs themselves has gone unanswered.

213. As a direct and proximate result of the above conduct, Jane and John Does 1-37 have experienced severe emotional distress.

COUNT VI

Title IX – Selective Enforcement **(Against Defendant BC)**

214. Plaintiffs Jane and John Does 1-37 repeat and reallege each and every allegation hereinabove as if fully set forth herein.

215. Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et. seq., provides, in relevant part that, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

216. Title IX applies to all public and private educational institutions that receive federal funding.

217. Upon information and belief, Defendant Boston College, at all times relevant to this Complaint, received and continues to receive federal funding and is therefore subject to liability under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a).

218. Title IX bars the imposition of university discipline where gender is a motivating factor in the decision to discipline. *Yusuf v. Vassar Coll.*, 35 F.3d 709, 715 (2d Cir. 1994).

219. The First Circuit recognizes different theories upon which plaintiffs may challenge university disciplinary proceedings based upon sex discrimination, including: (1) “erroneous outcome” cases, in which the claim is that the plaintiff was innocent and wrongly found to have committed an offense and gender bias was a motivating factor behind the erroneous findings; and (2) “selective enforcement” cases, in which the claim asserts that, regardless of the student’s guilt or innocence, the severity of the penalty and/or decision to initiate the proceeding was affected by the student’s gender. *Id.*

220. The BC Swimming and Diving Team is a co-ed sports team, composed of 32 females and 35 males.

221. In the instant matter, the College subjected the Plaintiffs to disparate treatment in comparison to teams comprised solely of male student athletes and imposed a more severe sanction upon them.

222. The BC Swimming and Diving Team is similarly situated to other male dominated sports teams at BC as they are all a part of the NCAA D1 Athletics Department.

223. Upon information and belief, other teams made up of solely male student athletes at BC have engaged in behavior that could amount to an alleged violation of the College’s Code.

224. Upon information and belief, prior to the imposition of a disciplinary sanction upon members of the male teams for similar allegations, those student athletes received an investigation process that amounted to more than what the Plaintiffs in the instant matter received.

225. Upon information and belief, the act of suspending an entire team without an investigation process is unprecedented in BC's history.

226. Yet, in the instant matter, the College unfairly imposed a disciplinary sanction of a full team suspension upon a co-ed sports team prior to any investigation being conducted and prior to any findings being made.

227. Defendants' decision to impose a full team suspension was motivated by the fact that the Swimming and Diving Team is a co-ed program.

228. This unlawful discrimination in violation of Title IX proximately caused Plaintiffs to sustain substantial injury, damage, and loss, including, but not limited to: emotional distress, psychological damages, loss of education, loss of future educational, athletic, and career opportunities, reputational damages, economic injuries and other direct and consequential damages.

229. As a result of the foregoing, Plaintiffs are entitled to damages in an amount to be determined a trial, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements, as well as injunctive relief directing BC to: (i) reverse the sanction of suspension upon the team; (ii) remove any notation of this suspension from the records of Boston College and the individual records of the Plaintiffs; (iii) publicly issue a retraction of the Statement; and (iv) any and all further actions required to return Plaintiffs to the status quo ante.

PRAYER FOR RELIEF

WHEREFORE, for the following reasons, Plaintiffs Jane and John Does 1-37 demand judgment against the Defendants as follows:

(i) On the first cause of action for breach of contract, damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of education, career, and athletic opportunities, and loss of future career prospects, in an amount to be determined at trial, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(ii) On the second cause of action for denial of basic fairness under contract and common law, damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of education, career, and athletic opportunities, and loss of future career prospects, in an amount to be determined at trial, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

(iii) On the third cause of action for estoppel, a judgment awarding Plaintiff damages in an amount to be determined at trial, including, without limitation, damages to past and future economic losses, loss of education, career, and athletic opportunities, loss of future earning capacity, plus prejudgment interest, attorneys' fees, expenses, costs, and disbursements;

(iv) On the fourth cause of action for defamation, judgment awarding Plaintiff damages in an amount to be determined at trial, including, without limitation, damages to past and future economic losses, loss of education, career, and athletic opportunities, loss of future earning capacity, plus prejudgment interest, attorneys' fees, expenses, costs, and disbursements;

(v) On the fifth cause of action for intentional infliction of emotional distress, judgment awarding Plaintiff damages in an amount to be determined at trial, including, without limitation,

damages to past and future economic losses, loss of education, career, and athletic opportunities, loss of future earning capacity, plus prejudgment interest, attorneys' fees, expenses, costs, and disbursements;

(vi) On the sixth cause of action for violations of Title IX, a judgment awarding Plaintiff damages in an amount to be determined at trial, including without limitation, damages to physical well-being, damages to reputation, past and future economic losses, loss of educational, athletic, and career prospects, plus prejudgment interest, attorneys' fees, expenses, costs, and disbursements and injunctive relief to: (a) reverse the sanction of suspension upon the team; (b) remove any notation of this suspension from the records of Boston College and the individual records of the Plaintiffs; (c) publicly issue a retraction of the Statement; and (d) any and all further actions required to return Plaintiffs to the status quo ante; and

(vii) Any such other and further relief as the Court deems just as proper.

JURY TRIAL DEMANDED

Plaintiffs herein demand a trial by jury of all triable issues in the present matter.

Dated: October 17, 2023
Boston, Massachusetts

Respectfully submitted,

NESENOFF & MILTENBERG, LLP

Attorneys for Plaintiffs Jane and John Does 1-37

By: /s/ Andrew T. Miltenberg

Andrew T. Miltenberg, Esq.

(pro hac vice forthcoming)

Stuart Bernstein, Esq.

(pro hac vice forthcoming)

363 Seventh Avenue, Fifth Floor

New York, New York 10001

(212) 736-4500

amiltenberg@nmllplaw.com

sbernstein@nmllplaw.com

By: /s/ *Tara J. Davis*

Tara J. Davis, Esq. (BBO No. 675346)
Regina M. Federico, Esq. (BBO No. 700099)
101 Federal Street, Nineteenth Floor
Boston, Massachusetts 02110
(617) 209-2188
tdavis@nmlplaw.com
rfederico@nmlplaw.com