ORIGINAL

MARK M. HATHAWAY
(CA 151332; DC 437335; NY 2431682)
JENNA E. EYRICH (CA 303560)
WERKSMAN JACKSON HATHAWAY & QUINN LLP
888 West Sixth Street, Fourth Floor
Los Angeles, California 90017
Telephone: (213) 688-0460
Facsimile: (213) 624-1942
E-Mail: mhathaway@werksmanjackson.com
E-Mail: jenna@werksmanjackson.com

Attorneys for Petitioner John Doe

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JOHN DOE, an individual,

Petitioner,

v.

AINSLEY CARRY, Ed.D., in his official capacity as Vice Provost of Student Affairs; GRETCHEN DAHLINGER MEANS, in her official capacity as Title IX Coordinator; PATRICK NOONAN, in his official capacity as Senior Compliant Investigator; UNIVERSITY OF SOUTHERN CALIFORNIA, a California corporation, and DOES 1 to 10 inclusive,

Respondents.

Case No.: BS163736

[Hon. Elizabeth White]

NOTICE OF RULING AND STATEMENT OF DECISION ON PETITION FOR WRIT OF ADMINISTRATIVE MANDATE

Date: December 20, 2017
Time: 9:30 a.m.
Place: Department 48

TO ALL PARTIES AND THEIR ATTORNEYS:

PLEASE TAKE NOTICE that on December 20, 2017, the matter of Petitioner's Writ of Administrative Mandate came regularly before the above entitled Court, Hon. Elizabeth White, judge presiding. Mark Hathaway, Werksman Jackson Hathaway & Quinn LLP, appeared for Petitioner; Apalla U. Chopra, O'Melveny & Myers, LLP, appeared for Respondents Ainsley Carry, Gretchen Dahlinger Means, Patrick Noonan, and the University of Southern California.

The record of the administrative proceedings having been lodged with the Court and

examined, and arguments having been presented and considered, the Court adopted its tentative ruling as the final ruling and statement of decision. A true and correct copy of the Court's ruling, now the final order of the Court, is attached hereto.

WERKSMAN JACKSON
HATHAWAY & QUINN LLP

Dated: December 20, 2017 By: _____
MARK M. HATHAWAY
Attorneys for Petitioner

12/22/2017

TENTATIVE RULING
DEPARTMENT 48

HEARING DATE: **December 20, 2017**

CASE: **John Doe v. Ainsley Carry et al.**

CASE NO.: **BS163736**

Opposed: **Yes**

PETITION FOR WRIT OF MANDATE

MOVING PARTY: Petitioner, John Doe

RESPONDING PARTY(S): Respondents Ainsley Carry, Gretchen Dahlinger Means, Patrick Noonan and University of Southern California.

GRANT PETITION, VACATE THE DETERMINATION –
REMAND FOR USC TO CONDUCT A FAIR AND IMPARTIAL INVESTIGATION

I. NATURE OF PROCEEDING

Administrative mandamus is a special civil proceeding used to challenge an agency's-in this case, a university's-adjudicatory decision. Code of Civil Procedure § 1094.5 codifies this form of judicial review and the specific procedural rules it entails. Under§ 1094.5, the Court's review is limited to whether the agency proceeded without or in excess of jurisdiction, whether there was a fair trial, and whether a prejudicial abuse of discretion occurred, as where the findings are not supported by substantial evidence in light of the whole record. Code Civ. Proc. § 1094.5(b)-(c).

In evaluating the record of the administrative proceeding, the Court independently determines whether Petitioner received a fair hearing, although "[t]his independent review is not a 'trial de novo.'" *Pomona Valley Hosp. Med. Ctr.* v. *Super. Ct.* (1997) 55 Cal.App.4th 93, 101.

12/22/2017

The Court assesses whether there was a fair hearing based on the "minimal requisites of fair procedure demanded by established common law principles." *Anton* v. *San Antonio Cmty. Hosp.* (1977) 19 Cal.3d 802, 830. Common law fair process, in tum, requires that Petitioner receive (1) notice of the allegations against him and (2) the opportunity to respond. *Pinsker,* 12 Cal.3d at 555-56. These requirements entail no "rigid procedure"-they "may be satisfied by any one of a variety of procedures which afford a fair opportunity for [a party] to present his position." *Id.* at 555. The agency "retain[s] the initial and primary responsibility for devising [that] method." *Id.* The Court reviews factual findings for "substantial evidence in light of the whole record." Code Civ. Proc.§ 1094.S(c). "On substantial evidence review, [the Court] do[es] not 'weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it.'" *Doe* v. *Regents of the Univ. of Cal.* (2016) 5 Cal.App.5th 1055, 1073 (quoting *Dov. Regents of the Univ. of Cal.* (2013) 216 Cal.App.4th 1474, 1492). Instead, USC's findings "come before [the Court] with a strong presumption as to their correctness and regularity," and "[o]nly if no reasonable person could reach the conclusion reached by the [University], based on the entire record before it, will a court conclude that the [University's] findings are not supported by substantial evidence." *Id.* In reviewing the record, the

Court must "accept all evidence which supports the successful party, disregard the contrary evidence and draw all reasonable inferences to uphold the verdict." *Id.* at 1074.

II. PETITIONER'S CLAIMS

Petitioner maintains that USC failed to afford him a fair hearing and because USC's determination is not supported by the evidence in this case. There are three bases on which Petitioner asserts he was not provided a fair hearing: first, petitioner claims an unacceptable

probability of actual bias underlying the USC Title IX Office's determination; second, USC failed to conduct a "fair, thorough, reliable, neutral and impartial investigation," as required by its own procedures; and third, USC improperly withheld evidence of an ex parte communication with Roe.

III. USC'S STUDENT HANDBOOK

a. SEXUAL MISCONDUCT POLICY

USC'S sexual misconduct policy (the "Policy"), as set forth in Part E of its student handbook, applies to "all forms of sexual and gender-based harassment and violence, dating violence, intimate partner violence, stalking and child abuse." (AR 1.) The policy specifies that "[s]exual activity and behavior which is non-consensual is sexual misconduct." (AR23 6.) A sexual act is "non-consensual" where "[t]here is no affirmative, conscious and voluntary consent, or consent is not freely given [or] [p]hysical force, threats, coercion or intimidation are used to overpower or control another." (AR 8.) The Policy further provides that "[a]ffirmative consent must be ongoing throughout a sexual activity and can be revoked at any time" and that"[t]he existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent." (AR 9.)

Sexual assault-defined as "any actual or attempted non-consensual physical sexual act including, but not limited to: i) vaginal, anal, or oral intercourse [or] ii) vaginal, oral or anal penetration using a body part or object"-violates the Policy. (AR 8.) The Policy does not excuse actions on the belief that there was affirmative consent based on intoxication or based on the failure to take reasonable steps to ascertain whether a person affirmatively consented. (AR 9.)

b. SEXUAL MISCONDUCT PROCEUDRES

USC's student handbook sets out its response to reports of sexual misconduct in three stages: (1) Investigation, (2) Determination of Responsibility and Sanctions, and (3) Appeal.

IV. STATEMENT OF FACTS.

A. ROE RENDEZVOUSED WITH PETITIONER AT HIS RESIDENCE.

Late in the evening of October 14, 2015, Roe went to Petitioner's fraternity house to spend the night with him. (AR 73; AR 717.) Up to this time, Petitioner and Roe had been in a "dating-ish"1 relationship for approximately two months, and Roe would spend nights with Petitioner at his fraternity house. (AR 50.) Roe and Petitioner attempted to have sexual intercourse twice prior to October 14,

2015. (See AR 342; see also AR 50 ["It had been something we had sort-of tried in the past"].) Petitioner and Roe "had talked about [having sex] multiple times." (AR 50.) Roe also told Petitioner that "[they] should take that step." (AR 50.)

1. Roe's Accusations Regarding the Night of October 14, 2015.

Roe claimed that when she arrived at Petitioner's room, the two began making out and removed their clothes. (AR 50.) Roe alleged that, at some point, Petitioner suddenly "grabbed lube from his desk," jumped on her, and declared, "We're doing this tonight." *(Id.)* Roe indicated that she told Petitioner approximately 10 to 15 times, "No, not right now. Not tonight." *(Id.)* Although Roe claimed to have clearly told Petitioner "No," Roe later told another individual that she "wasn't super clear that [she] was opposed to it." (AR 246.) Roe had also admitted to Petitioner that she may have been less than clear on the night of the incident. (See AR 481 [indicating that Roe *"wanted* to tell [Petitioner] to stop," saying instead "hey can you please get off me" or "lets (sic) do this another night," before saying "okay let's stop"], emphasis.) Roe then accused Petitioner of physically holding her down during their interaction. (AR 52.) Roe claimed

that Petitioner "didn't listen and just kept going," but eventually stopped "after 45 minutes or however long" and then "just turned around and told [Roe] to get out of his room." (AR 50.) Roe also claimed that J.S., Petitioner's roommate, "had knocked a few times." *(Id.)* According to Roe, she left the room crying as J.S. was trying to open the door; J.S. "gave [Roe] this really confused face" because she had never left before in the middle of the night. *(Id.)*

2. Petitioner's Recollection of October 14, 2015.

Once inside Petitioner's room, Petitioner and Roe removed their clothes, touched each other's genitals, and "it led towards sex." (AR 341.) Petitioner and Roe discussed how they were going to have sex; Petitioner retrieved lubricant and told Roe, "This should make things feel better." (AR 340.) Roe replied affirmatively, stating, "I hope so." *(Id.)* By the time Petitioner and Roe were in his bed applying the lubricant, Roe "seemed down, like she had on the prior occasions." (AR 341.) Petitioner explained that he and Roe tried having sex two times that night; after the first time, Roe said stop, and Petitioner stopped. (AR 339.) Then they cuddled before trying a second time, unsuccessfully. *(Id.)* Petitioner described being very gentle during their interaction. (AR 340.) Petitioner eventually fell asleep with Roe in the room. (See AR 341.) No one knocked on the bedroom door while he and Roe were inside. *(Id.)* Roe left only after Petitioner had fallen asleep. (AR 339.) Petitioner did not kick her out. *(Id.)* When Petitioner woke up the next day, Roe was gone. *(Id.)*

3. Events Taking Place After October 141 2015.

The next day, Roe received a text message from Petitioner asking where she had gone. (AR 73.) Roe responded:

> You asked me to come over and cuddle and I went. It was clear all you wanted was to have sex and you wouldn't stop until you did, which was really uncomfortable for me and also unwanted. And even though I audibly said things like stop and no, you kept persisting. I had to physically push you off of me multiple times because you wouldn't

> stop on your own. In addition to being forceful, *you also tried to guilt trip me into feeling bad and having sex.* . . . It sucks to feel taken advantage of.
> (AR 73.)

Petitioner did not admit or accede to Roe's rendition of events; instead, in order to appease her and rebuild their relationship (see AR 341), he apologized for making her "so upset," "distressing" Roe, making an unspecified "mistake," and *possibly* having physically "crossed a line." (AR 74.)

Roe subsequently publicized some version of her recollection of the night to several individuals. Roe claimed she had only told her roommate about the incident the next morning. (AR 51.) Roe did not use the word "rape" because she *"was trying not to make it a big deal* and hadn't yet realized that it was a rape." *(Id.,* emphasis added.)

Roe informed her friends T.F. (AR 179), Y.K. (see AR 216), J.H.K. (AR 236), C.V. (AR 254), R.P. (AR261), and C.S. (AR 290) the next day, and told her friends M.A. (AR 223), A.H. (AR 204), A.R. (AR 266), B.M. (AR 276), and D.B. (AR 278) after winter break in January of 2016. Notwithstanding her allegations against Petitioner, Roe continued her relationship with Petitioner, and also had sexual intercourse with him after the alleged October 14, 2015 incident. (AR 226; AR 339.) On November 14, 2015, Roe "broke things off." (AR 51.) Petitioner and Roe generally ceased communicating with each other until December 29, 2015, when Roe sent Petitioner an electronic message, accusing him of pinning her down and having "partial sex with [her] when [she] didn't want to." (See AR 51; AR 489-490.) From December 29, 2015 until January 6, 2016, Petitioner and Roe exchanged several hundred electronic communications through the social media platform Facebook, exhibiting Roe's and Petitioner's volatile and complicated relationship. (See AR 409-490.) Pertinently, Roe had expressed, "I specifically told you that hooking up with other people really hurt me and you wanted to continue doing it still

though," (AR 476) "I feel like I'm disrespecting myself by allowing you to have an awesome life and just forcing myself to be okay with that," (AR 486) and, "[I]n a twisted way, i want to gain happiness from knowing you're not doing okay." *(Id.)* Roe even expressed a desire to "start over" with Petitioner (AR 460), telling him that she would always be attracted to him, that they "have the potential to be really close," but she could not "go back to whatever kind of romantic but not official thing [they] were doing before." (AR 459.) Further, when Roe accused him of sexually assaulting her, Petitioner refuted the allegations, stating, "I disagree with your account of what happened between us" (AR 482), and "I apologized for hurting you ... I have never said that I sexually assaulted you and I maintain that to this day." (AR 483.) On January 18, 2016, Roe sent Petitioner an email, indicating that she was filing her sexual assault claim with USC's Title IX office. (AR 674.)

On January 28, 2016, Roe reported the October 14, 2015 incident to USC's Title IX Office and was interviewed by Title IX Investigator Kegan Allee in the presence of Roe's advisor, Paula Helu-Brown. (See AR 50-52.) Although Roe initially indicated that she wanted to open her case (see AR 52), she later retracted her request on February 3, 2016. (AR 58.) On March 3, 2016, Roe changed her mind and decided to open an investigation against Petitioner and interviewed with Title IX Investigator Patrick Noonan and Means. (See AR 63; AR 773.) After her meeting with Noonan and Means, Roe selectively submitted text message exchanges between her and Petitioner to Noonan. (See AR 72-82.) On March 22, 2016, Investigator Noonan sent Petitioner an email indicating that the Title IX Office received a report that he allegedly violated section 11.53 .C of the University Student Conduct Code on October 14, 2015. (AR 95-98.) With regard to Section 11.53.C., the email specifically alleged "Engaging in any actual or attempted non-consensual physical sexual act including, but not limited to vaginal, oral or anal

penetration using a body part or object; to wit penetration of [Roe's] vagina with his penis." (AR 96.) Investigator Noonan later met with Petitioner and his advisor on April 7, 2016. (See 11 AR 171-172.) During this meeting, Petitioner exercised his right to not make a statement until he had complete information about the allegation. (AR 171; see AR 22.) Petitioner sought "all the evidence that ha[d] been submitted"; Noonan, however, responded that they "will not be doing a full evidentiary review," but Petitioner would "have the opportunity later in the process to review everything that ha[d] been submitted." (AR 171.) Based on Noonan's response, Petitioner confirmed his decision to not provide a statement. (AR 172.) Between April 12, 2016 and May 4, 2016, Noonan continued his investigation, interviewing witnesses. (AR 177-179, 289, 203-209, 216-217, 223-228, 236-237, 252-256, 261-264, 266-267, 276-279, 287-288, 290-291, 315-316.) None of the 17 witnesses was present in Petitioner's room or saw Roe or Petitioner at or near the time of the incident; each had heard either a second-hand account from Roe (AR 177-178, 204, 216, 223, 236, 252, 253, 261, 263, 266, 276, 278, 290, 315) or a third-hand account from others. (AR 208, 225, 288.) Although Petitioner's roommate, J.S., was identified by Roe as a potential first-hand witness to events that occurred immediately after the subject conduct (see AR50 [indicating that J.S. witnessed Roe crying as she left the room]), Means declined to interview him for either party without providing any rationale for the decision. (See AR 210.) Noonan conducted a second interview with Roe on May 3, 2016 and reviewed all of the evidence with her. (See AR 292-294.) Noonan also met with Roe a third time on May 5, 2016 to discuss R.B.'s statement, since she was interviewed after Roe's second interview. (AR 313; see AR3 1 5-316.) Noonan later met with Petitioner and his advisor on May 10, 2016. (AR 334-345.) Noonan described this meeting as Petitioner's "opportunity to review and respond"; however, Petitioner was prohibited from "captur[ing] the information, whether by photography, transcription, or

other means." (AR 334.) Petitioner's advisor was also precluded from taking any notes. *(Id.)* After Petitioner's meeting with Noonan, Petitioner provided Noonan with all emails, text messages, and Facebook messages between him and Roe, which Petitioner obtained through computer software (see AR 368-667, 672-675, 686-709, 713), and communications between Roe and another student, A.A. (AR 669-671.)

Roe and Petitioner were provided temporary and limited access to the collected evidence through the University's server, OneHub (see AR 718, 721, 751), and each responded to the evidence. (AR 726,752.) Noonan subsequently closed the investigation on May 20, 2016. (AR 754.)

V. THE DECISION TO EXPEL PETITIONER

Petitioner received a letter dated June 7, 2016, providing Noonan's investigative report along with the evidence he considered in support of his decision. (AR 760.) Notably, Noonan omitted from the report 154 pages of communications between Roe and Petitioner that Petitioner had submitted to him. (See AR 936-937.) Noonan also accused Petitioner of misrepresenting and manipulating the information provided to him by providing two text messages to him in non-sequential order; Noonan stated this diminished Petitioner's credibility. (See AR 778.) This assumption is unfounded and erroneous as Petitioner obtained the messages using computer applications and printed the information the way he received them from the applications. (AR 454.)Noonan ultimately concluded, "There is sufficient evidence that [Petitioner] knew or reasonably should have known that [Roe] did not consent to the sexual penetration on October 14, 2015." (AR 779.) USC's Student Equity Review Panel subsequently adopted Noonan's decision and issued the sanction of "Expulsion: Permanent termination of student status ... A permanent notation of expulsion will appear on the student's transcript." (AR2 937.) Title IX

Coordinator Means and Noonan also communicated the findings to Petitioner and his advisor in a conference call on June 7, 2016. (AR 938.) At the conclusion of the conversation, neither party terminated the phone call, and Means and Noonan engaged in a colloquy in which Means asked, "Who do those motherfuckers think they are?" and, "Does that college motherfucker know who I am?" (AR8 989.) Both Noonan and Means referred to Petitioner as "motherfuckers." *(Id.)* Noonan and Means also described Roe as "a catch" and expressed, "[She is] so cute and intelligent. What was she doing with that (referencing Petitioner)?" (AR 990.)

Petitioner appealed the determination on June 21, 2016. (AR 939.) Roe later responded to Petitioner's appeal (AR 960-961), and Petitioner filed a supplemental document on July 8, 2016 to address Roe's responses. (AR 985.) Petitioner, however, received an email from Roopali Malhotra, the USC Senior Advisor to the Vice President for Student Affairs, indicating that the appeal panel would not consider his supplemental document on the basis that supplemental appeals are not permitted. (AR16 1009.) On July 18, 2016, the anonymous Student Behavior Appeal Panel upheld the finding of responsibility and sanction of expulsion. (AR IO 16.)

VI. PETITIONER WAS NOT AFFORDED A FAIR HEARING

As the court observed in *Doe v. University of Southern California* (2016) 246 Cal.App.4th 221, 245, "[t]here are few cases defining fair hearing standards for student discipline at private universities." Nevertheless, the court found instructive the Supreme Court's decision in *Goss v. Lopez* (1975) 419 U.S. 565, 581 holding that "in student disciplinary proceedings, due process requires 'an 'informal give-and-take' between the student and the administrative body dismissing him that would, at least, give the student 'the opportunity to characterize his conduct and put it in what he deems the proper context.' " (*Id.* at 245-46.) In

determining whether an agency provided a petitioner with a fair hearing, a reviewing court independently evaluates whether "the administrative proceedings were conducted in a manner consistent with the minimal requisites of fair procedure demanded by established common law principles." *(Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1442, noting *John A. v. San Bernardino City Unified School Dist.* (1982) 33 Cal.3d 301.) That is, the petitioner is entitled to an independent judicial determination of the issue.

The court finds that there was an unacceptable probability of actual bias in the manner in which the hearing was conducted. USC's Title IX Office is the actual entity that rendered the determination against Petitioner, and the office was improperly biased against Petitioner and in favor of Roe. Additionally, Title IX Coordinator Means held an adversarial position in relation to Petitioner, rendering her advisory role with the purportedly neutral Student Equity Review Panel (hereinafter "review panel") improper.

A hearing conducted by a biased reviewer is but one manner by which the fairness of a hearing may be compromised. (See *Rosenblit v. Superior Court, supra,* 231 Cal.App.3d at p. 1448 ["The right to a fair procedure includes the right to impartial adjudicators."].) Additionally, an adversarial party acting as an *advisor* to a supposedly neutral decision maker can create an appearance of unfairness and bias. (See *Nightlife Partners v. City of Beverly Hills* (2003) 108 Cal.App.4th 81 [hereinafter *"NightlifePartners"].)* A petitioner who establishes "an unacceptable probability of actual bias on the part of those who have actual decision making power over their claims" may successfully prevail on a claim that he or she was deprived of a fair hearing. *(Nasha L.L.* C. *v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 483 [hereinafter *Nasha].)* Actual bias need not be proven; only an unacceptable probability of actual bias. *(Id.;* see also *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 101

In this case, the review panel did not issue any rationale for "its" determination and, instead, summarily adopted the findings of the Title IX investigator. (See AR 937; see also AR 26.) Further eroding USC's attempt to portray the review panel as an independent decision-making body is the student conduct code provision mandating that the review panel "will be advised by the Title IX Coordinator, who is present during the [review panel's] deliberations." (AR 26.) In sum, the panel is merely a proxy for the Title IX Office, which actually rendered the underlying decision. Against this background, it is clear that the determination in the instant case was the product of a biased adjudicator, as Title IX Investigator Noonan's and Title IX Coordinator Means' comments against Petitioner- referring to him as a "motherfucker"-and in favor of Roe-described as a "catch"-amply demonstrate an unacceptable *probability* of actual bias. (See *Nasha, supra,* 125 Cal.App.4th at p. 483.)

According to Respondents, USC's disciplinary process "prevents bias from tainting the outcome." (Opp., at p. 15.) Relying on *Kloepfer v. Comm 'non Judicial Performance* (1989) 49 Cal.3d 826, 834-835, Respondents argue that their system is comprised of independent decision-makers, which protects against the risk of bias. *(Id.)* Respondents, however, ignore that the Title IX Office is involved *in each stage of the decision-making process.* The Title IX Office completes and submits a report containing *its findings* of fact to the student equity review panel. (AR 26 at E.8.V.a.) The panel, in turn, is advised by the Title IX Coordinator, in this case Gretchen Means. *(Id.)* Further, as Respondents concede, Coordinator Means also served as an advisor to the appeals panel. (Opp., at p. 15.) Thus, it is disingenuous to argue that USC's review process prevents bias from tainting the outcome when Coordinator Means-a person who has expressed vitriol against Petitioner and favoritism towards Roe-is permitted to advise each purported decision maker in Petitioner's disciplinary proceeding.

Respondents claim that their investigation was thorough, despite failing to obtain a statement from the only individual-J.S.-to purportedly see Roe immediately after the incident. Respondents argue that interviewing J.S. was not appropriate and that J.S. was not available to be interviewed, and their decision not to interview J.S. was in compliance with USC's policy, which is to"interview witnesses 'as appropriate' and if available." (See Opp., at p. 16.) However, a statement from J.S. was appropriate in the instant case, as a material disputed fact existed-Roe claimed J.S. saw her distressed as she left Petitioner's room (AR 50) while Petitioner denied J.S.'s presence and USC nonetheless failed to obtain a statement that would corroborate or undermine Roe's claim. (See AR 10.) Respondents' attempt to characterize J.S. as unavailable is not persuasive. In Means' email to Noonan regarding J.S., J.S. is not characterized as unavailable; instead, Means' statement that "we will not interview him for either party" demonstrates a deliberate decision not to interview him. (See *id.)*

Moreover, there is no evidence in the record to support Respondents' claim that J.S. was out of the country for a semester and unresponsive to Noonan's request for a statement other than Roe's uncorroborated claim in her response to Petitioner's administrative appeal; Roe would not know why J.S. was not interviewed by USC because Noonan indicated that he was supposedly precluded by FERPA from disclosing its rationale for excluding J.S. as a witness. (See AR 342-343.) Furthermore, USC provided no records of whether or when it attempted to communicate with J.S. via email. (See Opp., at p. 16; AR 460.)

Respondents contend that Petitioner had no right to question Roe, arguing that this case does not turn on Roe's credibility in light of Petitioner's purported admission and because Petitioner did not take advantage of any purported opportunity to question Roe. (See Opp., at pp. 17.) These arguments fail.

Respondents incorrectly characterize Petitioner's communications with Roe as "admissions of wrongdoing." It is true that Petitioner offered apologies for making Roe so "upset," "distressing" Roe, making an unspecified "mistake," and possibly having physically "crossed a line," and by making other similar statements. (See AR 74.) Respondents' reliance on Petitioner's communications as admissions is therefore without support. Similarly, Respondents' reliance on Noonan's "opportunities" to question Roe are not supported by the record. (See Opp., at p. 17, citing AR 171-172 and 334-345.) Noonan never offered Petitioner an opportunity to submit questions to Roe. (See AR 171-172, 334-335.) In fact, Noonan informed Petitioner that "this is not the discovery process" and would did not permit Petitioner to take notes during his interview, precluding Petitioner from drafting any questions to Roe at his meeting with Noonan. (See AR 334.)

VI. FINDINGS AND INDICATED RULING

The court finds that USC did not adhere to the policies found in the Student Handbook at E8. Specifically, it did not obtain all information relevant to the investigation (E81J): did not allow Petitioner the opportunity to review all information to be used at a disciplinary proceeding (E81l); and did not provide a fair, thorough, reliable neutral and impartial investigation (E8IIc). As such the court would vacate the findings and order USC to conduct a new fair and impartial investigation.

PROOF OF SERVICE

STATE OF CALIFORNIA)
)ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 888 West Sixth Street, Suite 400, Los Angeles, California 90017.

On December 20, 2017, I served the foregoing document described PETITIONER'S NOTICE OF RULING AND STATEMENT OF DECISION ON PETITION FOR WRIT OF ADMINISTRATIVE MANDATE on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

Apalla U. Chopra
O'Melveny & Meyers LLP
40 South Hope Street
Los Angeles, CA 90071-2899
Telephone: (213) 430-6082
Facsimile: (213) 430-6407
Email: achopra@omm.com
ATTORNEYS FOR RESPONDENT

☐ **BY FACSIMILE TRANSMISSION** from FAX number (213) 624-1942 to the fax number set forth above. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(i), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

☒ **BY MAIL** by placing a true copy thereof enclosed in a sealed envelope addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE** by delivering a copy of the document(s) by hand to the addressee or I cause such envelope to be delivered by process server.

☐ **BY EXPRESS SERVICE** by depositing in a box or other facility regularly maintained by the express service carrier or delivering to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served.

☒ **BY ELECTRONIC TRANSMISSION** by transmitting a PDF version of the document(s) by electronic mail to the party(s) identified on the service list using the e-mail address(es) indicated.

☒ I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on December 20, 2017 in Los Angeles, California

Yesenia N. Alvarado

12/22/2017