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FILED
Superior Court of California
County of Los Angeles
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Sherri R. Carter, Executive Officer/Clerk
By _____, Deputy
Jennifer De Luna

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JOHN DOE, an individual,

Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation; and DOES 1 through 20, inclusive,

Respondents.

Case No.: BS172217

[Hon. James C. Chalfant, Department 85]

NOTICE OF ORDER GRANTING STAY OF ADMINISTRATIVE ACTION

Date: May 24, 2018
Time: 9:30 a.m.
Place: Department 85

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the Court grants Petitioner's Motion to Stay, pursuant to the attached statement of decision, which is now final.

WERKSMAN JACKSON
HATHAWAY & QUINN LLP

Dated: April 4, 2018

By: _____
MARK M. HATHAWAY
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ATTACHMENT

DEPARTMENT 85 LAW AND MOTION RULINGS

Case Number: BS172217 **Hearing Date:** April 03, 2018 **Dept:** 85

John Doe v. Regents of the University of California, BS 172217

Tentative decision on motion for stay: granted

Petitioner John Doe ("Doe") moves to stay the administrative decision by Respondent Regents of the University of California ("Regents") which imposed a two-year academic suspension upon Doe.[1] The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

1. Petition

Petitioner Doe commenced this proceeding on February 13, 2018. The verified Petition alleges in pertinent part as follows.

Doe is a Chinese national Ph.D. Chemistry/Biochemistry student attending the University of California, Los Angeles ("UCLA") on an F-1 student visa. Pet. ¶60. Jane Roe ("Roe") and Doe began a long-term romantic relationship sometime during summer 2014. Pet. ¶61. During their romantic relationship, Doe supported Roe's lifestyle by showering Roe and her extended family with high-valued gifts as well as loaning her substantial amounts of money that were not repaid. Pet. ¶62.

Doe proposed marriage to Roe in December 2016, and she accepted. Pet. ¶63. In early February 2017, Doe learned that Roe had been cheating on him throughout their relationship. Pet. ¶64. Upon learning of the infidelity, Doe was devastated and confused. Pet. ¶65. Before ending the relationship, Doe sought confirmation from a third party, who provided Doe with evidence of the infidelity. Pet. ¶66.

Early in the morning on February 13, 2017, Doe and Roe agreed to meet. Pet. ¶68. Doe then learned that Roe had withdrawn the entire $8,000 balance from their joint bank account. Pet. ¶69. Later that morning, Roe showed up at Doe's teaching assistant's office and created a scene. Pet. ¶70. Doe informed her that she could not enter his office. Pet. ¶73. Roe demanded that Doe return her social security card and take back certain items that she brought with her. Pet. ¶71. Doe asked for return of her engagement ring, and Roe responded that she had thrown it in the ocean. Pet. ¶74.

Doe explained that he had to leave to teach a class. Pet. ¶77. Roe refused to let him leave and said she would not do so until Doe gave her the social security card and other items. Pet. ¶76. Doe responded that he would look for the items after teaching the class. Id. Roe tried to call the police but did not have cell service. Pet. ¶78. Eventually, Doe was able to leave for class, clutching papers for his lecture in one arm. Pet. ¶79. Roe followed him and tried to prevent him from entering the classroom. Id.

After Doe left, Roe called the police and reported that Doe had pushed her in the upper torso area and grabber her wrist and forearm. Pet. ¶80. UCLA police went to the classroom where Doe was teaching and arrested Doe for violation of Penal Code section 243(e)(1) (Domestic Battery). Pet. ¶81. Roe sustained no injuries as a result of her encounter with Doe. Pet. ¶83.

On February 20, 2017, although Roe was no longer a UCLA student, a UCLA Title IX Coordinator Jessica Price ("Price") discussed with Roe her options as a Title IX complainant, such as a no-contact order. Pet. ¶88. UCLA Title IX Investigator Danica Meyers ("Meyers") met with Roe and informed her about the investigation process. Pet. ¶93. Roe reported thirteen instances of misconduct by Doe, stretching back to fall 2014. Id.

On May 10, 2017, UCLA's Title IX Office issued a Notice of Charges to Doe. Pet. ¶97. On the same date, the Office of the Dean of Students issued an immediate interim suspension against Doe pending resolution of the allegations in the Notice of Charges. Pet. ¶98.

On July 25, 2017, Title IX investigator Sonia Shakoori ("Shakoori") met with Doe and his advisors and informed Doe of an overview of his resources and options, including the investigation procedures. Pet. ¶106. Shakoori did not present Doe with any evidence. Id. Doe presented to Shakoori a written statement of events and responded to her questions. Id.

On August 3, 2017, Shakoori met with Roe and her university-provided CARE advocate to explain the timeline of the process and to provide Roe with the opportunity to review and respond to Doe's statement. Pet. ¶108.

On September 11 and 19, 2017, Shakoori provided Doe with limited access to the "summary of information on which [Shakoori] would rely upon when making [her] findings and a final opportunity to comment and/or provide new information." Pet. ¶¶ 110, 117.

On September 22, 2017, Shakoori issued her investigation report. Pet. ¶119. In her report, Shakoori concluded that Doe was not responsible for twelve of the thirteen allegations brought against him but was responsible for the February 13, 2017 encounter when Roe came to Doe's office unannounced to confront him. Id. Shakoori found that Roe suffered no bodily injury on February 13, 2017, but that she was placed in reasonable fear of serious bodily injury. Pet. ¶¶ 125-26. Shakoori found Doe responsible under UC Sexual Violence and Sexual Harassment ("SVSH") policy section II.B.1.c.i (Dating Violence). Pet. ¶142. Although not charged under these policies, Shakoori also found Doe responsible under UCLA Student Conduct Code sections 102.08 (Conduct that Threatens Health & Safety), 102.09 (Sexual Harassment), and 102.26 (Terrorizing Conduct). Pet. ¶133.

On September 26, 2017, Doe wrote to UCLA's Associate Dean of Students & Director of the Office of Student Conduct Jasmine Rush ("Rush") to urge her to reject Shakoori's recommendations. Pet. ¶140. Rush thereafter performed a paper-only review of Shakoori's investigation and findings. Pet. ¶141. On October 13, 2017, Rush issued her report, accepting Shakoori's findings of nonresponsibility for the twelve allegations and her finding of responsibility for the UC SVSH policy violation and UCLA Student Code section 102.08. Pet. ¶142. Rush determined that the preponderance of the evidence did not support Shakoori's recommendation as to sections 102.09 and 102.26. Pet. ¶143.

Rush issued a sanction against Doe suspending him from UCLA for two years. Pet. ¶149. This suspension is essentially a *de facto* expulsion because of Doe's F-1 visa status. Id.

On October 27, 2017, Doe timely filed an appeal to Rush's findings. Pet. ¶153. The appeal hearing was held (Pet. ¶164) and on December 13, 2017, Doe was notified that the Appeal Body denied his appeal. Pet. ¶170.

Respondent Regents' actions are invalid because it (1) failed to grant Doe a fair hearing, (2) committed a prejudicial abuse of discretion by failing to proceed in the manner required by law, (3) issued a decision not supported by the findings, and (4) made findings not supported by the evidence. Pet. ¶173. Further, the Regents' action is permeated with structural error. Pet. ¶181. The outcome of the Title IX misconduct investigation and adjudication process turned entirely on the personal opinion of the sole investigator, who conducted an inquiry using trauma-informed investigating and interviewing techniques that assume the "survivor" is a victim of sexual misconduct. Pet. ¶182. These investigations highlight evidence supporting the allegations of the "survivor" and disregarding all contrary and exculpatory evidence. Id. The investigator offers her personal opinion of the accused student's guilt for policy violations prior to the accused's access to all the evidence and without providing the accused a reasonable opportunity to question adverse witnesses. Pet. ¶183.

B. Applicable Law

1. Stay

Pursuant to CCP section 1094.5(g), the court may stay the operation of the administrative order or decision pending judgment, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. No stay shall be imposed or continued if the court is satisfied that it is against the public interest. *See* Board of Medical Quality Assurance v. Superior Court, (1980) 114 Cal.App.3d 272, 276.

In addition to CCP section 1094.5(g)'s express language, the common law for a stay requires a showing of irreparable harm and a reasonable prospect of success on the merits, referred to in federal court as a "colorable

claim." These common law elements are incorporated into CCP section 1094.5(g). Thus, a request for a stay under CCP section 1094.5(g) presents three elements: (a) a reasonable prospect of success (colorable claim) by the petitioner, (b) irreparable harm, and (c) a stay will not be against the public interest.

Regents characterize Plaintiff's necessary showing as one that has a likelihood of success on the merits. Opp. at 10. The standard is not so rigorous. A colorable claim is merely a plausible one. *See* Rogers v. Platt, (1988) 199 Cal.App.3d 1204, 1212 (characterizing a "colorable claim" as one that "is advanced in good faith on some plausible legal theory"); *see also* Firestone Tire and Rubber Co. v. Bruch, (1989) 489 U.S. 101, 119 (J. Scalia concurrence) (defining "colorable claim" as one which "raises the possibility" that petition will prevail in action); Grella v. Salem Five Cent Sav. Bank, (1st Cir. 1994) 42 F.3d 26, 35 (defining "colorable" as "sufficiently plausible"); Bennett v. MIS Corp., (6th Cir. 2010) 607 F.3d 1076, 1089 ("colorable federal defense need only be plausible"); U.S. v. Todd, (8th Cir. 2001) 245 F.3d 691, 693 ("For a defense to be considered colorable, it need only be plausible"); Magnin v. Teledyne Continental Motors, (11th Cir. 1996) 91 F.3d 1424, 1427 (colorable defense "need only be plausible; its ultimate validity is not to be determined ...").

C. Governing Law

1. University Discipline

Generally, a fair procedure requires "notice reasonably calculated to apprise interested parties of the pendency of the action... and an opportunity to present their objections." Doe v. University of Southern California, ("USC") (2016) 246 Cal.App.4th 221, 239, 240. With respect to student discipline, "[t]he student's interest is to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences.... Disciplinarians, although proceeding in utmost good faith, frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed. The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process." Goss v. Lopez, ("Goss") (1975) 419 U.S. 565, 579-80.

At a minimum, students facing academic discipline such as suspension or expulsion must be given notice and afforded a hearing. Goss, *supra*, 419 U.S. at 579. The notice required in a student disciplinary action must identify the specific rules that the student is alleged to have violated, and must also provide the factual basis for the accusation. USC, *supra*, 246 Cal.App.4th at 243-44. It is insufficient to provide the accused student with only a list of rules that may have been violated. Id.

The hearing need not be formal, but "in being given an opportunity to explain his version of the facts at this discussion, the student [must] first be told what he is accused of doing and what the basis of the accusation is." Goss, *supra*, 419 U.S. at 582. While California law does not require any specific form of disciplinary hearing, a university is bound by its own policies and procedures. Berman v. Regents of University of California, (2014) 229 Cal.App.4th 1265, 1271-72. The trial court's determination of whether the university complied with its own hearing requirements requires application of the rules of statutory interpretation and construction. Id. at 1271.

A student disciplinary hearing need not include all the safeguards and formalities of a criminal trial. Andersen v. Regents of University of California, (1972) 22 Cal.App.3d 763, 770. There is no right to counsel in an academic disciplinary proceeding. Charles S. v. Board of Education, (1971) 20 Cal.App.3d 83, 90. If a student has retained counsel, the university is not required to permit the attorney to participate in the disciplinary proceeding, and may in fact prohibit the attorney from speaking during the hearing. Doe v. Regents of University of California, ("UCSD") (2016) 5 Cal.App.5th 1055 at 1082.

Fair procedure in a student discipline matter requires a process by which the accused student may question the complaining student, particularly if the findings are likely to turn on the credibility of the complainant. UCSD, *supra*, 5 Cal.App.5th at 1084. However, there is no California authority requiring that the accused student be permitted to directly question the complainant. Goldberg v. Regents of University of Cal., ("Goldberg") (1967) 248 Cal.App.2d 867, 881. A procedure by which the accused student submits questions to be asked by the hearing officer or panel is sufficient to satisfy the fair procedure requirements. UCSD, *supra*, 5 Cal.App.5th at 1084. In disciplinary matters involving sexual assault, the United States Department of Education Office for Civil Rights ("OCR") "strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment." USC, *supra*, 246 Cal.App.4th at 245.

There is no formal right to discovery in student conduct review hearings. Goldberg, *supra*, 248 Cal.App.2d at 881–83. However, the accused student is entitled to the names of the witnesses who will testify against the student, and a summary of the witnesses' proposed testimony. USC, *supra*, 246 Cal.App.4th at 246. The student is not necessarily entitled to the names of non-testifying witnesses, or to the investigator's notes of the witness interviews unless the failure to disclose such information would prejudice the student. UCSD, *supra*, 5 Cal.App.5th at 1095-96. An accused student is also entitled to copies of all of the evidence presented to or considered by the hearing panel, including any investigative report prepared by the university. USC, *supra*, 246 Cal.App.4th at 247. This information must be provided by the university prior to the hearing, and the university may not require the accused student to specifically request this information. USC, *supra*, 246 Cal.App.4th at 246.

D. Statement of Facts

1. Petitioner's Evidence

a. Doe Declaration

Doe will suffer irreparable harm if he is separated from his academic programs, professors, and contacts indefinitely. Doe Decl. ¶7. Doe's reputation will also suffer as members of the UCLA community will wonder about the reasons for his involuntary absence and likely attribute this absence to misconduct. Id. Those who learn that he was suspended will likely perceive this punishment as substantiated by credible evidence and their opinions of him will thereby suffer. Id.

Doe has been devastated by this investigation and disciplinary process and wants to be able to move forward in the U.S. with his education and career plans intact. Doe Decl. ¶8.

2. Respondent's Evidence

On February 16, 2017, Shakoori's office became aware of an incident reported to the University of California Police Department ("UCPD") on February 13, 2017. Shakoori Decl. ¶3. Shakoori thereafter conducted an outreach to the complainant. Shakoori Decl. ¶4. Title IX Investigator Meyers met with the complainant. Id. Following the meeting, Rush, Director of the Office of Student Conduct, and Price, Interim Title IX Coordinator, decided to pursue a formal investigation into the complainant's report and issued a Notice of Charges on May 10, 2017. Shakoori Decl. ¶4; Rush Decl. ¶5, Ex. A.

On May 11, 2017, Meyers contacted Doe and requested to meet with him and provide him with a complete statement of the allegations and to conduct an interview. Shakoori Decl. ¶5, Ex. A. On June 26, 2017, Shakoori took over the investigation from Meyers. Shakoori Decl. ¶6; Rush Decl. ¶6. As a result, Meyers never met with Doe. Shakoori Decl. ¶6.

On July 25, 2017, Shakoori interviewed Doe. Shakoori Decl. ¶7. Doe was represented by two attorney advisors at the meeting. Id. Shakoori was accompanied by a note-taker at the meeting who recorded the interview with Doe verbatim. Shakoori Decl. ¶8. A note-taker was also present at all interviews with other witnesses, including Roe, except for one. Shakoori Decl. ¶9. The note-taker was not present for one follow-up meeting near the end of the investigation. Id.

At the July 25, 2017 meeting, Shakoori gave Doe the opportunity to respond orally to the allegations and evidence against him and to ask her questions about the evidence and investigation process. Shakoori Decl. ¶10. Doe provided a written statement at the meeting. Shakoori Decl. ¶11. When asked follow-up questions about the written statement, Doe became nervous. Id. Doe and his attorneys took a break at one point, and Doe left the room. Id. One of the attorneys informed Shakoori that Doe was nervous and having difficulty responding to her questions because English was not his first language. Id. Shakoori offered to meet at a later date or provide an interpreter to assist with translation. Id.

At the meeting, Doe identified a fellow student as a potential witness ("Witness 3") to the February 13, 2017 incident. Shakoori Decl. ¶13. On July 31, 2017, Shakoori contacted Witness 3 and requested an interview. Id. Witness 3 declined to speak with Shakoori and informed her that everything she recalled about the incident was memorialized in a written statement provided to Doe's counsel and the police. Id., Ex. C. Doe provided a copy of this statement to Shakoori. Shakoori Decl. ¶14.

On August 30, 2017, Shakoori met with Doe a second time. Shakoori Decl. ¶15. Doe was accompanied again by two attorney advisors. Id. A Mandarin language translator provided by UCLA was also present. Id. During the course of the interview, Shakoori observed that Doe appeared to understand her explanation of the investigation procedures and the questions asked without assistance from the interpreter. Shakoori Decl. ¶16.

Doe responded to questions without waiting for the interpreter to translate and spoke in fluid English. Id. Doe asked questions if he did not understand something and, while he conferred with the interpreter several times, he did not generally rely on the interpreter for assistance. Id. Doe provided an additional written statement following this meeting. Shakoori Decl. ¶17. The statement did not raise a concern about the adequacy of the translation at the meeting. Id.

On September 6, 2017, Shakoori met with Doe for a third time. Shakoori Decl. ¶18. Doe's two attorney advisors were present. Id. The interpreter was not present but could be reached by telephone throughout the meeting. Id. One of the attorneys objected to the interpreter's absence, at which time Shakoori asked Doe if he understood the questions being asked and whether he would like to continue. Shakoori Decl. ¶19. Doe said yes to both questions. Id. Shakoori reminded Doe that the interpreter was available telephonically should he require an interpreter's assistance. Id.

On September 8, 2017, Shakoori emailed Doe informing him that he would have an opportunity to review the summary of the information relied upon by Shakoori in making her findings and to provide further comments or new information. Shakoori Decl. ¶20, Ex. D. Doe opted to review the information remotely and agreed not to copy or download the documents due to confidentiality concerns. Shakoori Decl. ¶21, Ex. E. Doe was provided a 24-hour period to access the information and provide an additional statement or additional evidence. Shakoori Decl. ¶22. Doe raised no concern regarding the accuracy or completeness of Witness 3's statements. Shakoori Decl. ¶23.

On September 15, 2017, Shakoori again emailed Doe informing him that he would have a second opportunity to review the summary of the information. Shakoori Decl. ¶24, Ex. F. Doe was provided a 24-hour period to access the information. Shakoori Decl. ¶25.

On the same date, Rush and Price sent Doe a letter informing him that UCLA was issuing an amended notice of charges against Doe clarifying the allegations against him. Rush Decl. ¶7, Ex. B.

On September 22, 2017, Rush and Price sent Doe a letter stating that UCLA had completed its investigation and described the investigator's findings. Rush Decl. ¶8, Ex. C. The letter stated that Doe had seven days to respond. Id.

On September 29, 2017, Doe provided a written statement in response to the investigation report and met with Rush in person. Rush Decl. ¶9.

On October 13, 2017, Rush sent Doe a letter with her decision regarding the allegations against him. Rush Decl. ¶10, Ex. D. Rush concluded that she agreed with the investigator's determination that Doe violated section II.B.1.c.i (Dating Violence) of the UC SVSH policy, as well as section 102.08 (Conduct that Threatens Health or Safety) of the UCLA Student Conduct Code. Id. Rush did not accept the investigator's determination that Doe violated sections 102.09 (Sexual Harassment) and 102.26 (Terrorizing Conduct) of the UCLA Student Conduct Code. Id. Rush also informed Doe that she concluded that an appropriate sanction for his conduct was a two-year suspension effective from Fall 2017 to Fall 2019. Rush Decl. ¶11. Rush informed Doe that the decision would become final within ten days unless Doe appealed. Id.

On October 27, 2017, Doe appealed the decision. Rush Decl. ¶12. On November 14, 2017, the Appeal Body Chair sent Doe a letter providing him notice of his Appeal Hearing. Rush Decl. ¶13, Ex. E.

On December 8, 2017, Doe's appeal was heard before a three-member Appeal Panel. Rush Decl. ¶14. At the hearing, Rush testified that she did not view Doe's risk of deportation as an "exceptional circumstance" warranting lesser sanctions because such circumstances typically involve conduct during the incident, not effects that a sanction may have. Rush Decl. ¶15.

On December 11, 2017, the Appeal Panel issued its decision upholding the University's findings and disciplinary sanctions. Rush Decl. ¶17, Ex. F.

3. Reply Evidence

On two or three occasions, UCLA's Title IX Office provided Doe with a secure online link to view evidence. Doe Supp. Decl. ¶3. Doe was not permitted to download or to print any of the evidentiary documents. Id. Each time, Doe was only given 24 hours to view the information and provide written responses to the documents. Id. This quick turnaround was challenging in part because the investigator had months and weeks to compile this information and Doe only had 24 hours. Id.

Doe was never provided with verbatim transcripts of Shakoori's meetings with him or other witnesses. Doe Supp. Decl. ¶4. Doe was only provided with summaries of these meetings. Doe Supp. Decl. ¶5. At his appeal hearing, Doe was also not provided with these verbatim transcripts. Doe Supp. Decl. ¶6.

If the stay is not granted, the resulting delay may cause Doe's scientific research to become stale before he can submit and defend his Ph.D. dissertation. Doe Supp. Decl. ¶8. The delay may also prevent him from submitting his research papers to academic journals for publication. Id.

E. Analysis

Petitioner Doe moves to stay the administrative decision by Respondent UC Regents which imposed a two-year academic suspension upon Doe.

1. Colorable Claim/Reasonable Prospect of Success

Doe contends that Shakoori failed to cite to evidence that he placed Roe in reasonable fear of serious bodily injury during the February 13, 2017 incident. Mot. at 9. Doe contends that the push was only consistent with Witness 1's account, not supported by Witness 2's account, and contradicted by Witness 3's account. Reply at 5. Doe also contends that Shakoori substituted her own opinion for the witness by concluding that "yelling plus forceful pushing" makes it more likely than not that Roe was placed in reasonable fear of serious bodily injury. Id. Doe contends that Shakoori's speculation or opinion is not substantial evidence. Id.

The three witnesses provided statements to Shakoori concerning the push as follows. Witness 1 saw Roe reaching into a tote bag and attempting to give something to Doe and demand her social security card. She heard Doe raise his voice and yell very loudly "You don't come to my office" multiple times. Witness 1 saw Doe push Roe forcefully by placing his hands on her upper body, near her shoulders. Shakoori Decl. Ex. G, p.23. At some point, she heard Doe saying "you cheated on me while we were engaged." Id. After Doe pushed Roe, Witness 1 rushed to him and said "Sir, you can't put your hands on people." Id. She got involved because the altercation was "stunning to see" and she felt compelled to say something. Shakoori Decl. Ex. G, p.24.

Witness 2 stated that he heard voices getting louder and noticed there was obviously a conflict among Doe, Roe, and Witness 3. Shakoori Decl. Ex. G, p.25. Witness 2 intervened because of their raised voices. Id. Witness 2 did not see any physical aggression, and did not remember it as a "major incident." Id. He acknowledged that "things could have escalated" when he left because his intervention did not accomplish anything. Id.

Witness 3, who was present throughout the altercation, stated that Doe did not do anything that could have caused injuries to Roe. Id. Witness 3 stated that she would have noticed if Doe did anything to injure Roe in any way. Id. Witness 3 stated that Roe did not suffer pain and redness on her face and neck and that Witness 3 did not see any injuries to Roe. Id.

"Substantial evidence" is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, ("California Youth Authority") (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal.App.4th 267, 305, n.28. The trial court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency's decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585.

Substantial evidence supports Shakoori's position that a push occurred. Witness 1 plainly attests to the push, and Witness 2 admits that he was not present throughout the altercation. Witness 3's statements, while not confirming the push, do not refute the push either. Witness 3's statement that Doe did not cause Roe injury does not foreclose the possibility that Doe pushed Roe, because a push does not necessarily cause injuries. Witness 3's statement that Roe suffered no pain or redness to her face or neck also is consistent with Witness 1's statements that the push was to Roe's upper torso. Hence, Shakoori's conclusion was reasonable that Witness 1's version of events was most credible.

The question is whether UCLA's test for Dating Violence was met. Dating Violence is defined as abuse by a person in a romantic or intimate relationship with another. Id., p. 7. In turn, "abuse" means in part "placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another." Id. Such Dating Violence is prohibited conduct. Id., p. 8.

Did Doe's push of Roe place her in reasonable apprehension of imminent serious injury? Roe and Doe were "emotionally charged" in light of their tumultuous relationship when Roe came unannounced to Doe's office. Shakoori Decl. Ex. G, p.39. From this fact, Doe's raised voice, and his "forceful pushing" of Roe, Shakoori found that Roe was in reasonable fear of serious bodily injury. Id., p. 40. The Appeal Panel agreed, finding

that Witness 1's eyewitness account of the pushing would cause a reasonable person to feel fear. Rush Decl. Ex. F, p.13.[2]

This is not good enough. What do we know? By Roe's account, Doe grabbed her biceps and pushed her. Shakoori Decl. Ex. G, p. 18. By Witness 1's account, Doe pushed Roe. No witness said that Doe pushed Roe and let go such that she stumbled and was in danger of falling or hitting her head. In fact, we know that Roe did not fall down. Id., p. 39. So, the push apparently did not cause a risk of injury from fall.

Did Doe grab Roe by her biceps and push without letting go? How would that fact cause Roe to fear serious bodily harm? Did she fear that matters were going to escalate and that Doe was about to hit her? Pursuant to the definition of Dating Violence, a reasonable fear of an imminent punch or similar blow after the push would meet the definition of abuse. *See* Shakoori Decl. Ex. G, p. 7. But there literally is nothing in Roe's statement, Shakoori's witness accounts, Shakoori's analysis, or the Appeal Panel's decision to support that conclusion. Instead, Shakoori drew an inference that Roe was in fear of imminent serious bodily injury solely from the emotionally charged atmosphere and forceful push. Shakoori Decl. Ex. G, p. 40. This is not enough to constitute substantial evidence.

At the appeal hearing, Shakoori added that Roe called the police, from which Shakoori concluded that Roe must not have felt safe being alone. Rush Decl. Ex. F, p.10. This conclusion is unwarranted for several reasons. First, Roe was not alone; there were other witnesses present. Second, Doe went off to teach his class and was not even present. Third, Roe had another reason to call the police -- she wanted her social security card. It is much more likely that Roe called the police because Doe would not return her social security card than because she felt unsafe.[3]

The Appeal Panel concluded that (a) Shakoori provided a reasonable explanation, (b) Roe alleged that she experienced bodily harm, and (c) "it follows that [Roe] also feared bodily harm." Rush Decl. Ex. F, p. 13. This is a *non-sequitur*. Shakoori found Roe's allegation of actual harm to be unsupported. If the Appeal Panel relied on Shakoori's explanation, it cannot conclude from Roe's discounted allegation of suffering bodily harm that she must have been fearful of serious bodily harm.

The Appeal Panel also relied on Witness 1's account as a "key piece of evidence." Rush Decl. Ex. F, p. 13. The Panel concluded that Witness 1's description would "cause a reasonable person to feel fear." Id. This conclusion does not follow from Witness 1's statement that Doe forcefully pushed Roe. Witness 1 also said that she "felt 'compelled' to say something" when she saw the events. Shakoori Decl., Ex. G, p. 24. Merely feeling compelled to speak does not appear like the kind of situation where Witness 1 was worried that Roe was at risk of serious bodily injury.

Based on the evidence presented, it seems that Doe grabbed and pushed Roe while yelling at her, all in the presence of at least two other people. He most probably grabbed her biceps and did not let go during the push, and let go only after it was completed. While this is an assault that could have led to harm, the forceful push could not by itself put Roe in fear of serious bodily harm. There must be more, and maybe the record does have more. The police report showing why the police were called, or a witness statement from Roe that she was afraid he would hit her, might suffice. But an inference that Roe was in fear of serious bodily harm cannot be drawn from the evidence presented.

The evidence presented for purposes of a stay does not show that Roe feared serious bodily injury.[4]

2. Public Interest

Doe contends that the public interest in ensuring due process in Title IX administrative proceedings and in protecting Doe's right to his education is at least as significant as any public interest in stemming violence on college campuses. Mot. at 12-13. Doe contends that Roe's access to her education will not be affected by the stay since she is not a UCLA student. Mot. at 13.

Regents contend that a stay contravenes the interest shared by the university, its students, and the public. Opp. at 19. A university possesses a "very wide latitude in disciplining its students and ... this power should not be encumbered with restrictions which would embarrass the institution in maintain good order and discipline among members of the student body and a proper relationship between the students and the school itself." Charles S. v. Board of Education, (1971) 20 Cal.App.3d 83, 90. Court interference with the internal affairs and operations of a university should only occur for the most compelling reasons. Id.

Regents contend that Doe's suspension serves as a means of enforcing UCLA's expectations regarding student conduct. Opp. at 19. Regents also contend that the suspension sends a message to the UCLA community that UCLA will not tolerate acts of sexual violence. Id.

The Regents' position is unpersuasive. The evidence showing a reasonable prospect of success casts UCLA's deterrence objective as unfair because it suggests that students should be afraid of discipline for unsubstantiated claims. UCLA's protection objective hinges on the prospect that Doe will or is likely to commit an assault again, which seems unlikely if Roe is no longer a UCLA student.
The proposed stay is not against the public interest.

3. Irreparable Harm

If a stay is not imposed, Doe contends that he will suffer irreparable harm academically because he will be separated from his academic programs, professors, mentors, and contacts. Mot. at 13. Doe contends that he faces potential deportation from the United States which would render this suspension into a *de facto* expulsion. Id. Doe also contends that his reputation will suffer, as members of the UCLA community will wonder about the reasons for his involuntary absence and attribute the absence to misconduct. Id., Doe Decl. ¶7. Doe contends that this harm may be irreversible even if he ultimately prevails at trial. Id.
Regents contend that Doe cannot show irreparable harm. Opp. at 18. Regents contend that Doe seeks to alter the current status quo by forcing UCLA to allow him to re-enroll in order to complete his remaining degree requirements. Id. They argue that Doe has not shown that he actually or imminently faces deportation as a result of the suspension, and cite Doe's moving papers where he acknowledges that he is seeking an adjustment of his visa status allowing him to remain in the United States. Id. Regents contend that Doe's alleged reputational harms are speculative as they assume that Doe's colleagues will draw unwarranted negative conclusions about his suspension. Id.
Doe has a stronger argument. If the injunction is granted, UCLA does not deny that Doe may be deported and never acquire his Ph.D. from UCLA. At a minimum, the suspension will delay his acquisition of a Ph.D from UCLA or another university. This constitutes reasonably foreseeable irreparable harm. Further, the reputational harms deriving from Doe's involuntary absence from his university studies are reasonably foreseeable. If his colleagues learn about his involuntary absence, they could only draw a negative conclusion about his reputation/
Doe will suffer irreparable harm.

F. Conclusion

The motion for a stay of the Regents' decision is granted.

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[1] Doe seeks to conditionally seal documents in this action. Doe has not brought an application to do so, and this failure is normally dispositive. However, the court orders the documents to be sealed in light of the obvious reason for sealing Doe's identity.
[2] Roe claimed that she suffered real injury for which she went to the emergency room with a rib fracture the next day, but Shakoori did not find her account proven. Shakoori Decl. Ex. G, p. 39. Roe also asserted in a written statement to the Appeal Panel that she was in substantial fear of bodily injury during the incident. Rush Decl. Ex. F, p. 10. However, Shakoori found both Doe and Roe not credible. Shakoori Decl. Ex. G, p. 26. It is worth noting that Roe asked for UCLA to impose a greater sanction than a two year suspension, which is somewhat indicative of vindictive motive. Rush Decl. Ex. F, p. 10.
[3] Neither Shakoori nor the Appeal Panel attached the police report to ascertain why Roe called them.
[4] Doe presents numerous contentions that the disciplinary proceeding was procedurally unfair — Doe was only provided a "paper hearing," he had no opportunity to cross-examine witnesses, he did not receive all of the evidence, Shakoori failed to interview a relevant witness, Shakoori failed to ascertain that Roe was not a UCLA student, Doe was unable to cross-examine Roe, UCLA failed to provide an adequate translator, UCLA failed to show that its decisionmakers are unbiased, and the UCLA Title IX sexual misconduct process is permeated with structural error. The court need not address these issues for the instant motion.

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 April 4, 2018, I served the foregoing document described NOTICE OF ORDER GRANTING STAY OF ADMINISTRATIVE ACTION on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

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GENERAL COUNSEL FOR RESPONDENTS

☐ **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 April 4, 2018 in Los Angeles, California

Yesenia N. Alvarado