Saad v Pace Univ.
2026 NY Slip Op 31310(U)
February 23, 2026
Supreme Court, New York County
Docket Number: Index No. 654638/2024
Judge: Nicholas W. Moyne
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NICHOLAS W. MOYNE** **PART** **41M**

Justice

----------X

KARL SAAD,

Plaintiff,

- v -

PACE UNIVERSITY,

Defendant.

----------X

INDEX NO. 654638/2024

MOTION DATE 11/15/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for DISMISSAL.

In this action, defendant Pace University (Pace) moves, pursuant to CPLR 3211 (a) (1) and (a) (7), to dismiss the complaint brought by plaintiff Karl Saad.

Factual Background

The following facts are drawn from the complaint and are assumed to be true for purposes of this pre-answer motion. Plaintiff is of Lebanese national origin and Middle Eastern ethnicity and is an undergraduate student at Pace (NY St Cts Elec Filing [NYSCEF] Doc No. 1, complaint ¶¶ 6, 64). Nonparty Michael Fuks (Fuks), a "white and Jewish" undergraduate student at Pace, "is a committed supporter of the state of Israel and of any action it takes, including its violence in Gaza," and "[o]n information and belief, … is Israeli and is President of the Students Supporting Israel at Pace Club" (*id.*, ¶¶ 8-9, 64). Fuks has allegedly "target[ed] [plaintiff] as a political opponent on matters related to a political nation-state, Israel, its treatment of Palestinians, and its waging of war in a region it completely surrounds, Gaza" (*id.*, ¶ 8).

The complaint alleges that Fuks has "falsely accused [plaintiff] of antisemitism as part of his project of chilling, censoring, and retaliating against all criticism of the nation-state of Israel" (*id.*, ¶ 108), and that plaintiff has been "targeted online for his perceived ethnic identity, religious identity, and physical appearance" (*id.*, ¶ 19). Fuks reportedly claimed that plaintiff is an anti-Semite and "on information and belief has 'doxed'" him by causing "Internet trolls," some of whom are Pace students, to send death threats and hate speech to plaintiff's email accounts and cell phone (*id.*, ¶¶ 14, 17-18). The complaint pleads that "[plaintiff] is not an antisemite [sic], but is certainly a critic of Israel and supports the Palestinian People" (*id.*, ¶ 13). Plaintiff reported the messages to Pace "but was told that nothing could be done" (*id.*, ¶ 18).

According to the complaint, Pace allegedly favors white, Jewish Israeli students like "Fuks … and people like him, but not [plaintiff], and people like him" (*id.*, ¶¶ 9, 64, 76). More particularly, Fuks, with Pace's enthusiastic assistance (*id.*, ¶¶ 34, 112), has "masterfully weaponized Pace's student conduct process to achieve his illegitimate goals against [plaintiff]" (*id.*, ¶ 26). This has resulted in Pace issuing a mutual no-contact order (the No-Contact Order) to plaintiff and Fuks, temporarily suspending plaintiff for violating the No-Contact Order, and suspending plaintiff for a full year after a formal hearing (*id.*, ¶¶ 4, 30, 50, 100, 112).

On January 23, 2023, Pace issued the No-Contact Order after Fuks filed a complaint with its Student Conduct Office alleging that plaintiff "had expressed antisemitic statements and uttered threatening words" in a private exchange on social media (*id.*, ¶ 27). The No-Contact Order prohibited incidental and unintentional contact in public, direct and indirect verbal communication, proxy communication, written communication, and walking, standing or sitting in close proximity to each other and directed each to immediately report any violations (NYSCEF Doc No. 8, Todd Smith-Bergollo (Smith-Bergollo) aff, exhibit A at 1-2). The No-Contact Order warned that a "violation … will be deemed to be more severe not only if those comments are directly threatening or menacing, but also if they are clearly intended to cause emotional harm, and/or further escalate conflict" (*id.* at 2). The No-Contact Order further warned:

> "It is essential that you use your best judgment to preserve the intention of this directive. Any voluntary action on your part which may reasonably be construed to initiate communication with or place you in proximity to Michael Fuks, particularly behavior which may be menacing, threatening, or otherwise harassing, will be considered a violation of this directive, and may result in disciplinary action against you.
>
> You are expected to take necessary actions to reduce the risk that you will have incidental contact with this person. This includes removing yourself from social media chat groups of which you are both members.
>
> Violating this directive may result in IMMEDIATE summary action, including possible removal from the residence halls for the remainder of the semester" (*id.*).

It is alleged that Fuks has attempted to provoke plaintiff into violating the order so that Fuks could seek to have plaintiff suspended or expelled and that, "on information and belief," Pace has never enforced the order against Fuks (NYSCEF Doc No. 1, ¶¶ 31-33, 95).

On March 8, 2024, plaintiff, Fuks and Fuks's friend, nonparty Shun Hung (Hung), were involved in a verbal altercation outside a building where plaintiff and Fuks attend class (*id.*, ¶¶ 35-36, 38). Fuks and Hung were standing outside the building when

plaintiff exited to purchase lunch (*id.*, ¶ 38). As plaintiff walked past, Fuks allegedly called him "a 'p****,'" causing plaintiff to turn and look at Fuks, though plaintiff continued walking (*id.*, ¶ 39). When plaintiff returned to the building, plaintiff reciprocated and called Fuks "a 'p****'" (*id.*, ¶ 43). Fuks then shouted and "lunged" at plaintiff, and after plaintiff entered the building, Fuks and Hung shouted insults and gestured at plaintiff, which led plaintiff to lean out the door to continue the verbal altercation (*id.*, ¶ 45). Fuks filed a police report claiming that he had been physically assaulted and reported that plaintiff had violated the No-Contract Order to Pace (*id.*, ¶¶ 48-49).

Fuks' complaint resulted in plaintiff's immediate suspension, which prevented him from accessing any Pace property for any reason pending a hearing (*id.*, ¶ 50; NYSCEF Doc No. 10, Smith-Bergollo aff, exhibit C). Plaintiff appealed the interim suspension and on March 11, 2024, the suspension was modified to allow plaintiff to attend classes (NYSCEF Doc No. 1, ¶¶ 55-56; NYSCEF Doc No. 10 at 2; NYSCEF Doc No. 13, Smith-Bergollo aff, exhibit F at 1). By letter on March 9, 2024, Pace charged plaintiff with engaging in behavior prohibited by its Student Code, including its Non-Discrimination and Anti-Harassment Policy for Students (*id.*, ¶ 60).

The complaint identifies Dean of Students Jeffrey Barnett (Barnett) as "Pace's hostile spokesperson and agent in its inequitable and discriminatory dealings with [plaintiff]" (*id.*, ¶ 61). It is claimed that Barnett "clearly had an agenda, to reach a pre-determined outcome" (*id.*, ¶ 71). The complaint alleges that Barnett intervened in the disciplinary matter by "playing the role of judge and prosecutor" (*id.*, ¶ 62); "Barnett at all times has privileged Fuks over [plaintiff], prejudging each interaction and comunicating [sic] a belief that Fuks never lies, and that [plaintiff] always does" (*id.*, ¶ 63); "Barnett's predisposition to Fuks involves ethnic discrimination of the most insidious and in fact cliched type, associating [plaintiff] as a Middle Eastern individual with violence and danger, while regarding Fuks, who has never stopped trying to provoke Saad to try to get him suspended, as angelic and incapable of lying or wrong actions" (*id.*, ¶ 64); Barnett "took sides with Fuks from the outset" by refusing to listen to plaintiff, "addressing hostile comments to [plaintiff] and telling him 'how it is going to move forward' without ever seeking his account of the interactions" (*id.*, ¶ 65); "Barnett failed to answer most of [plaintiff's] questions about the process, and disregarded and failed to take actions on complaints [plaintiff] filed against Fuks growing out of this and other trolling incidents," including one instance where Barnett declined to direct Fuks to remove offensive material about plaintiff posted on the Students Supporting Israel Instagram page (*id.*, ¶¶ 67-68); and, Barnett took no action in response to plaintiff's complaints that Fuks had violated the No-Contact Order (*id.*, ¶¶ 70-71). After plaintiff proposed an informal mediation, as provided for in Pace's Student Code, Barnett purportedly insisted on personally conducting the mediation, with Barnett recommending a continuation of the modified suspension for as long as Fuks remained a Pace student as a resolution (*id.*, ¶¶ 72, 74-75). Plaintiff rejected the informal resolution and requested a formal hearing, but Barnett allegedly responded that plaintiff had waived this right, which plaintiff claims "clearly signaled his prejudice against and disdain for [plaintiff]" (*id.*, ¶ 78). After plaintiff's counsel complained to Pace about Barnett, Pace canceled the hearing and offered plaintiff a formal hearing (*id.*, ¶¶ 81-82).

Smith-Bergollo, the Associate Vice President for Student Affairs (NYSCEF Doc No. 7, Smith-Bergollo aff, ¶ 1), conducted the formal hearing (NYSCEF Doc No. 1, ¶ 84). At the hearing, plaintiff and his counsel presented testimony, cross-examined Fuks and Hung, and viewed surveillance video capturing the March 8 incident (*id.*, ¶¶ 85, 87). Despite Fuks' "carefully prepared and canned responses, some of which defy the slightest credibility" (*id.*, ¶ 90) when compared to plaintiff's testimony, which "was modest, truthful and took responsibility for mistakes in judgment" (*id.*, ¶ 93), Smith-Bergollo found "Fuk's credible, and [plaintiff] dishonest" and ignored the record and plaintiff's testimony about other incidents involving Fuks (*id.*, ¶¶ 97-99). By letter dated July 18, 2024, Smith-Bergollo informed plaintiff that under a preponderance of the evidence standard, plaintiff had violated sections 1B, 1J and 5C of Pace's Guiding Principles of Conduct (the Guiding Principles) (NYSCEF Doc No. 13, Smith-Bergollo aff, exhibit F).

Section 1 of the Guiding Principles, titled "Civility, Responsibility and Respect," partially reads that "students are to respect the dignity of others, acknowledge their right to express differing opinions … and free expression on and off campus. These freedoms of expression extend as far as the expression does not infringe on the rights of other members of the community or the orderly and essential operations of [Pace]" (NYSCEF Doc No. 14, Smith-Bergollo aff, exhibit G at 7). Section 1B recites that "[m]embers of the University community are required to comply with the instructions of a University administrator, or other duly authorized agent of the University" (*id.*). Smith-Bergollo concluded that plaintiff was responsible for violating the No-Contact Order by purposefully instigating the interactions with Fuks on March 8 (NYSCEF Doc No. 13 at 1-2). Section 1J states, "Unfavorable Conduct: Conduct on or off campus in a manner that reflects harmfully or unfavorably on the University's good name and reputation is prohibited" (NYSCEF Doc No. 14 at 8). Smith-Bergollo concluded that plaintiff had behaved in an aggressive manner towards Fuks and Hung, used obscenities and threatened physical violence (NYSCEF Doc No. 13 at 2). Section 5 is titled "Physical and/or Mental Harm," and section 5C states, "Intimidation: Intentional behavior by a student or group of students that puts another student or group of students in fear of harm of person or property is prohibited on or off campus" (NYSCEF Doc No. 14 at 10). Smith-Bergollo determined that plaintiff's actions, which were intimidating in nature, supported a finding that he was the agitator aimed at provoking Fuks and Hung and threatened physical violence (NYSCEF Doc No. 13 at 2). Smith-Bergollo suspended plaintiff for one year beginning July 18, 2024 through July 1, 2025 (*id.* at 3). Pace has denied an administrative appeal of plaintiff's suspension (NYSCEF Doc No. 1, ¶ 102).

Plaintiff commenced this action on September 6, 2024 by filing a summons and complaint asserting three causes of action for breach of plaintiff's rights under *Tedeschi v Wagner College* (49 NY2d 652 [1980]) (*Tedeschi*) and for discrimination on the basis of race and national origin under the New York State Human Rights Law (NYSHRL) and the New York City Human Rights Law (NYCHRL).

Pace now moves for dismissal on the ground that plaintiff's claims can only be brought in a CPLR article 78 proceeding. Even if the court converts this plenary action to an article 78 proceeding, Pace contends that its disciplinary decisions were not

arbitrary and capricious, plaintiff received the due process to which he was entitled, and the discipline imposed was appropriate and was not an abuse of discretion. Last, Pace posits that plaintiff's claims for discrimination must be dismissed for failure to state a cause of action.

Plaintiff, in response, posits that his discrimination and *Tedeschi* claims are not restricted to article 78 review and focuses on the disadvantages such a proceeding presents to litigants with regards to limitations on discovery and the remedies available. Plaintiff argues that Pace improperly seeks to resolve all disputed facts as to whether its actions were arbitrary and capricious in its favor. Plaintiff also urges the court to view this action against the backdrop of the "Palestine exception" to free speech, which he claims chills speech criticizing Israel or supporting Palestine (NYSCEF Doc No. 17, plaintiff mem of law at 4).

Discussion

The court on a motion to dismiss for failure to state a claim under CPLR 3211 (a) (7) "must give the complaint a liberal construction, accept the allegations as true, and, providing plaintiffs with the benefit of every favorable inference, examine the adequacy of the pleadings" (*Moore Charitable Found. v PJT Partners, Inc*., 40 NY3d 150, 153 [2023]). "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*Connaughton v Chipotle Mexican Grill, Inc*., 29 NY3d 137, 142 [2017]). The court may grant a motion to dismiss brought under CPLR 3211 (a) (1) "where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*Sander v Westchester Reform Temple*, — NY3d —, 2025 NY Slip Op 06958, *7 [2025]).

It is well settled that "[c]ourts retain a 'restricted role' in dealing with and reviewing controversies involving colleges and universities" (*Maas v Cornell Univ*., 94 NY2d 87, 92 [1999] [citation omitted]). As such, a CPLR article 78 proceeding is the proper vehicle in which to challenge a university's administrative decision (*id.*). As relevant here, "[w]here the allegedly discriminatory acts are directly related to the academic or disciplinary determinations made by defendants, or to the procedures followed in reaching those determinations, they must be brought in an article 78 proceeding, rather than a plenary action" (*Kickertz v New York Univ*., 110 AD3d 268, 278 [1st Dept 2013]), citing *Gary v New York Univ*., 48 AD3d 235, 236 [1st Dept 2008]). Thus, where the core allegations in a complaint, though framed as a claim for unlawful discrimination, raise a direct challenge to an administrative decision, the complaint will be dismissed (*see Dawson v New York Univ*., 160 AD3d 555, 555 [1st Dept 2018]; *accord Doe v State Univ. of N.Y., Binghamton Univ*., 201 AD3d 1075, 1076 [3d Dept 2022], quoting *Meisner v Hamilton, Fulton, Montgomery Bd. of Coop. Educ. Servs*., 175 AD3d 1653, 1655 [3d Dept 2019] ["'[c]ourts have repeatedly addressed student … challenges to [disciplinary action] from institutions of higher learning through the conduit of a CPLR article 78 proceeding'"]). Where the discriminatory acts are related to

nonacademic matters, though, the plaintiff is free to pursue a plenary action for damages (*Kickertz*, 110 AD3d at 278).

According to the complaint, *Tedeschi* rights are "the rights of a student against a private university based on commitments and promises made in the student code" (NYSCEF Doc No. 1, ¶¶ 4-5). They include an implied obligation of good faith and fair dealing, due process, equal protection and academic freedom, and freedom from "retaliat[ion] against students for their First Amendment protected personal opinions stated in academic or nonacademic environments" (*id.*, ¶¶ 105-107). As a first cause of action, plaintiff alleges that Pace breached his *Tedeschi* rights when it "endorsed, joined and executed Fuks' project, including by issuing the stay away order, the interim limited suspension and the final disposition of absolute suspension" (*id.*, ¶ 112). The second and third causes of action under the NYSHRL and the NYCHRL, respectively, allege that Pace's actions have subjected plaintiff to discrimination and harassment based on race and national origin and have deprived him of full and equal access to education programs, activities, opportunities and benefits that Pace provides to other students (*id.*, ¶ 118-120, 123).

These causes of action all relate to what plaintiff perceives is discrimination related to Pace's disciplinary decisions. Because the claims directly challenge Pace's actions on disciplinary matters, a CPLR article 78 proceeding is the appropriate vehicle for adjudication of these claims (*see Rutkoski v New York Univ.*, 235 AD3d 602, 602 [1st Dept 2025]; *Attallah v New York Coll. of Osteopathic Medicine*, 189 AD3d 1324, 1325 [2d Dept 2020]; *Dawson*, 160 AD3d at 555; *Alrqiq v New York Univ.*, 127 AD3d 674, 674 [1st Dept 2015], *lv denied* 27 NY3d 910 [2016]; *Padiyar v Albert Einstein Coll. of Medicine of Yeshiva Univ.*, 73 AD3d 634, 635 [1st Dept 2010], *lv denied* 15 NY3d 708 [2010]).

Plaintiff, in response, fails to distinguish, let alone address, how his claims are predicated on nonacademic, non-disciplinary matters such that he can pursue a plenary action (*see Kickertz*, 110 AD3d at 278 [allowing plaintiff to pursue discrimination claims unrelated to the disciplinary decision]). Indeed, the complaint pleads that "[t]his is an action against Pace … on the grounds that it breached … [plaintiff's] Tedeschi Rights and engaged in discrimination based on ethnicity in suspending him for the 2024-2025 academic year" (NYSCEF Doc No. 1, ¶ 4).

The second cause of action cites Executive Law § 291 as a basis for the NYSHRL claim (*id.*, ¶ 115). The statute declares the opportunity to obtain education free from discrimination as a civil right (*see* Executive Law § 291 [2]). Although plaintiff alleges that he has been deprived of access to Pace's programs (NYSCEF Doc No. 1, ¶ 116), this lack of access is attributed to the year-long suspension imposed as a disciplinary sanction. Thus, the NYSHRL claim is tied directly to a disciplinary determination and must be brought in an article 78 proceeding.

As to the third cause of action, Administrative Code of the City of New York § 8-107 (4) concerns public accommodations, and Administrative Code § 8-107 (4) (f) provides that "[t]he provisions of this subdivision as they relate to unlawful

discriminatory practices by educational institutions shall not apply to matters that are strictly educational or pedagogic in nature." Therefore, claims that are "strictly educational or pedagogic in nature" are not subject to the NYCHRL. In the context of this case, plaintiff's NYCHRL claim falls "squarely within" this exception because the claim concerns Pace's disciplinary determinations (*Mirza v College of Mount St. Vincent*, 85 Misc 3d 1234[A], 2025 NY Slip Op 50342[U], *14 [Sup Ct, Bronx County 2025], *rev on other grounds* 241 AD3d 1163 [1st Dept 2025]).

Plaintiff unpersuasively argues that an article 78 proceeding is not the exclusive vehicle where he may assert a claim for breach of his *Tedeschi* rights, especially as he seeks money damages (NYSCEF Doc No. 1 at 14). The Court of Appeals has explained that "when a university has adopted a rule or guideline establishing a procedure to be followed in relation to suspension or expulsion that procedure must be substantially observed" (*Tedeschi*, 49 NY2d at 660). However, the failure to follow internal rules and guidelines in student disciplinary matters does not support a breach of contract claim (*see Kickertz*, 110 AD3d at 274 ["to the extent plaintiff's breach of contract claim challenges NYU's decision to expel her based on a violation of its disciplinary rules …, it is 'not cognizable in a breach of contract action'"] [citation omitted]) or a claim for money damages (*see Tedeschi*, 49 NY2d at 661-662 [dismissing "[s]o much of the complaint as sought money damages"]). Instead, a "breach of contract cause of action, the essence of which is that the College failed to comply with its internal rules and procedures … is properly asserted and evaluated as a cause of action under CPLR article 78" (*Matter of Zanelli v Rich*, 127 AD3d 774, 775 [2d Dept 2015]; *Wander*, 99 AD3d at 894 [reasoning that "plaintiffs are only entitled to CPLR article 78 review" on their contract claim alleging that defendant had violated its internal rules and procedures]; *Gertler v Goodgold*, 107 AD2d 481, 486 [1st Dept 1985], *affd* 66 NY2d 946 [1985] [stating that "private colleges and universities are accountable in a CPLR article 78 proceeding … to the extent that appropriate inquiry may be made to determine whether they abided by their own rules, and whether they have acted in good faith or their action was arbitrary or irrational"]).

To the extent plaintiff asserts that Pace implemented punitive measures against him so as to chill speech criticizing Israel or supporting Palestinian rights (NYSCEF Doc No. 17 at 4), the court observes that plaintiff has not pleaded a violation of his First Amendment right to free speech. In any event, "[n]either private universities nor their employees are 'state actors' for the purpose of constitutional claims, including claims alleging violation of the right to free speech" (*Mitchell v New York Univ. ("NYU")*, 129 AD3d 542, 544 [1st Dept 2015], *lv denied* 26 NY3d 908 [2015]).

CPLR 103 (c) empowers the court to convert a plenary action to an article 78 proceeding, provided that the four-month statute of limitations applicable to such a proceeding has not yet expired (*see Rutkoski*, 235 AD3d at 602-603). In this case, the court declines to dismiss the complaint and elects to convert the action into a special proceeding under CPLR article 78 (*see Wander*, 99 AD3d at 894). Pace notified plaintiff

of the full-year suspension on July 18, 2024, and plaintiff commenced this action on September 6, 2024[1] (NYSCEF Doc No. 1).

"'[P]rivate schools are afforded broad discretion in conducting their programs, including decisions involving the discipline, suspension and expulsion of their students'" (*Matter of Pittman v Adelphi Univ.*, 240 AD3d 908, 910 [2d Dept 2025] [citation omitted]). "A disciplinary determination will only be disturbed when the university acts arbitrarily and not in the exercise of its honest discretion, when it fails to abide by its own rules, or when the penalty is so excessive that one's sense of fairness is shocked" (*Matter of Storino v New York Univ.*, 193 AD3d 436, 439 [1st Dept 2021]; *Matter of Doe v Cornell Univ.*, 163 AD3d 1243, 1245 [3d Dept 2018] ["[w]here … no hearing is required by law, a court reviewing a private university's disciplinary determination must determine whether the university substantially adhered to its own published rules and guidelines for disciplinary proceedings so as to ascertain whether its actions were arbitrary or capricious"] [internal quotation marks and citation omitted]; *Matter of Kickertz v New York Univ.*, 99 AD3d 502, 507 [1st Dept 2012], *mod* 25 NY3d 942 [2015] [limiting judicial review of disciplinary decisions to whether the university "'substantially adhered to its own published rules and guidelines' and whether the determinations are based on 'a rational interpretation of the relevant evidence'"] [citations omitted]; *Matter of Quercia v New York Univ.*, 41 AD3d 295, 296 [1st Dept 2007] ["judicial review of an educational institution's disciplinary determination involving nonacademic matters is limited to whether the institution substantially adhered to its own published rules and guidelines and was not arbitrary and capricious"]). An action is considered arbitrary or capricious when it is taken "without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). The court must sustain a determination if it is supported by a rational basis even if it would have reached a different result (*Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]).

"A student subject to disciplinary action at a private educational institution is not entitled to the 'full panoply of due process rights'" (*Matter of Kickertz v New York Univ.*, 25 NY3d 942, 944 [2015]). The school need only show that it "'substantially observed'" its published rules (*id.*, quoting *Tedeschi*, 49 NY2d at 660).

Pace's Student Handbook sets forth the Guiding Principles students must follow and recites that "[s]trict compliance with all rules, policies and practices promulgated and/or adopted by the University is required" and that "[a]ny member of the University community who violates the University's rules, policies or practices, including, among others, the Guiding Principles of Conduct, may be subject to disciplinary action" (*id.* at 13).

[1] Plaintiff did not set forth the date on which Pace denied his administrative appeal (NYSCEF Doc No. 1, ¶ 102). To the extent plaintiff appears to challenge the No-Contact Order issued in January 2023 and the interim suspension imposed in March 2024 (*id.*, ¶ 112), those challenges are not timely.

Charges for violating the Guiding Principles may be resolved in four ways: (1) Acceptance of Responsibility; (2) Administrative Resolution; (3) Informal Resolution; or (4) Formal Resolution (*id.* at 18). An Acceptance of Responsibility is a resolution for "first-time low-level violations" whereby a student agrees to the violation and sanction (*id.* at 20). An Administrative Resolution is "a good faith attempt … to resolve all problems informally, first, by the appropriate department" and "may include informal discussions with the alleged violator and faculty members, deans or staff members involved and where appropriate, with supervisors or administrators at sequentially higher levels" (*id.* 21-22). If an Administrative Resolution cannot be reached, a student may request an Informal or Formal Resolution (*id.* at 21). In contrast to an Informal Resolution, which involves an investigation by a Case Resolution Facilitator,[2] a Formal Resolution resembles an adversarial proceeding (*id.* at 22). Each side may make opening and closing statements, testify and cross-examine witnesses, present evidence and retain an attorney as an advisor (*id.* at 22-23). The hearing is also recorded (*id.* at 23). The burden rests with "the complainant to show that it is more likely than not that the alleged respondent committed the violation(s) contained in the charge" (*id.* at 23). With a Formal Resolution, the Case Resolution Facilitator is tasked with finding whether a student committed a violation based on a fair preponderance of credible evidence and issue a written decision within five business days (*id.*).

Sanctions range from the issuance of a verbal warning to temporary suspension to expulsion (*id.* at 23-25). Factors to consider in determining the type of sanction include the "[n]ature, scope and severity of violation(s)" and "[a]ggravated, intentioned, repeated or multiple violation(s)" (*id.* at 27-28). A student who has been found responsible for a violation and been disciplined may appeal the determination on the following grounds:

> "The original meeting was not conducted in conformity with applicable procedures.
>
> The record before the Case Resolution Facilitator did not establish that it was more likely than not that the student committed the violation(s).
>
> The sanctions imposed were not appropriate for the violation(s), which the student was found to have committed.
>
> New Information, not known previously to the student, is sufficient to require that the decision and/or sanction be modified or vacated.

[2] A "Case Resolution Facilitator may be an Assistant Residence Director, Residence Director, Assistant Director, or a Director within Student Affairs, a Senior Assistant Dean for Students, and a VP/Dean for Students, or the Associate Director of Community Standards" (NYSCEF Doc No. 14 at 21).

> Resolution sanctions applied as a result of informal resolution as described in this Handbook may not be appealed" (*id.* at 29).

In addition, the Dean for Students may impose an interim suspension pending resolution of a disciplinary matter (*id.* at 18). The Dean's decision must be sent by email to the student, who has 10 days to challenge the decision to continue or modify the action (*id.* at 19). If the Dean does not terminate the summary suspension and the matter is not resolved via an Administrative Resolution, a student is entitled to immediate Informal or Formal Resolution (*id.* at 19-20). If the student fails to designate the type, "the Dean may convene a Formal Resolution upon written notice sent at least ten (10) business days prior to the date of [the] Case Resolution meeting" (*id.*).

Here, Pace substantially complied with its published rules (*see Matter of Pittman*, 240 AD3d at 910; *Matter of Bondalapati v Columbia Univ.*, 170 AD3d 489, 490 [1st Dept 2019]; *Matter of Zartoshti v Columbia Univ*., 79 AD3d 470, 470 [1st Dept 2010], *lv denied* 17 NY3d 702 [2011]; *Matter of Quercia*, 41 AD2d at 297), and any claim that plaintiff was not afforded due process (NYSCEF Doc No. 17 at 12 n 4) is unavailing (*see Matter of Green v City Univ. of N.Y.*, 145 AD3d 547, 548 [1st Dept 2016]). Pace immediately suspended plaintiff based on a complaint that plaintiff had violated the No-Contact Order and notified plaintiff of the pending charges (NYSCEF Doc No. 1, ¶¶ 50, 60). Contrary to plaintiff's contention, whether plaintiff constituted a danger to personal safety or property of others is not the only basis for taking interim action (*id.*, ¶ 50), as the Student Handbook states that "[a] student may also be subject to interim suspension if, following a warning by a faculty, staff, or administrator of the University to desist, they continue to engage in conduct that violates the University's rules and regulations" (NYSCEF Doc No. 14 at 18). Plaintiff does not dispute that Pace had issued the No-Contact Order before the March 8 incident or that he promptly appealed the summary suspension.

Plaintiff claims he proposed a written reprimand or a period of probation as a potential resolution, but Barnett suggested continuing the modified suspension, which plaintiff refused (NYSCEF Doc No. 1, ¶¶ 72-73, 75). This informal discussion comports with the Administrative Resolution process described in the Student Handbook (NYSCEF Doc No. 14 at 20-21).

Next, plaintiff complains that Barnett advised that plaintiff could not pursue a Formal Resolution because the email "came in a few minutes too late, and … used the wrong word … to refer to the formal process" (NYSCEF Doc No. 1, ¶ 78). Pace, though, informed plaintiff of the interim suspension by email on March 9, 2024 (NYSCEF Doc No. 10 at 2). Thus, plaintiff had 10 business days from that date to advise whether he sought to pursue an Informal or Formal Resolution (NYSCEF Doc No. 14 at 19). Plaintiff does not state whether he complied with this rule. In any event, the Student Handbook provides that if plaintiff failed to timely elect a Formal Resolution, Pace may convene a Formal Resolution on 10 days' written notice (*id.*). Smith-Bergollo notified plaintiff in writing on June 25 that a formal hearing would be held on July 8.

The conduct of the hearing also conformed to the procedures detailed in the Student Handbook. The transcript reveals that plaintiff had retained an attorney as his advisor (NYSCEF Doc No. 12, Smith-Bergollo aff, exhibit E at 12). Plaintiff declined to make an opening statement but made a closing statement (*id.* at 17, 67-68). Plaintiff's advisor questioned Fuks and Hung about the incident, and plaintiff also testified about the incident (*id.* at 18, 22-62). Surveillance videos of the incident were entered into evidence (*id.* at 18) and each witness testified about their actions as captured on those videos. Smith-Bergollo notified plaintiff in writing of his decision on July 18 (NYSCEF Doc No. 13 at 1). Although Smith-Bergollo should have notified plaintiff of the determination within five business days after the hearing (NYSCEF Doc No. 14 at 22), plaintiff has not shown any "prejudice resulting from the deviation from literal compliance with the Student Handbook procedures" (*Matter of Zartoshti*, 79 AD3d at 471). Furthermore, plaintiff appealed the determination as provided for in the Student Handbook (NYSCEF Doc No. 1, ¶ 102).

Pace's decision to suspend plaintiff was not arbitrary and capricious and was rationally based on the evidence presented (*see Matter of Storino*, 193 AD3d at 441). Pace substantially adhered to with its published guidelines, discussed above (*see Matter of Pittman*, 240 AD3d at 910; *Matter of Storino*, 193 AD3d at 441). Plaintiff "had ample opportunity at the hearing to defend his conduct and explain his actions" (*Matter of Bondalapati*, 170 AD3d at 490). And while plaintiff contends that Fuks' testimony at the hearing is not credible, "a hearing officer's determination of credibility is largely unreviewable" (*Matter of Blythe-Baugh v City of New York*, 173 AD3d 601, 602 [1st Dept 2019]; *accord Matter of Flores v New York Univ.*, 79 AD3d 502, 503 [1st Dept 2010] [credibility issues are "largely unreviewable" in an article 78 proceeding that does not involve a hearing mandated by law]). Smith-Bergollo was in the best position "to perceive the inflections, the pauses, the glances and gestures – all the nuances of speech and manner that combine to form an impression of either candor or deception" (*Matter of Berenhaus v Ward*, 70 NY2d 436, 443 [1987]). Smith-Bergollo was also entitled to credit testimony from Hung, an eyewitness to the March 8 incident (*see Matter of McGuinness v Waters*, 209 AD3d 436, 436 [1st Dept 2022]).

The penalty of suspension imposed after the hearing does not shock the conscience. A penalty shall be set aside where "the measure of punishment or discipline imposed is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness" (*Matter of Pell*, 35 NY2d at 233 [internal quotation marks and citation omitted]). The No-Contact Order expressly warned that a violation can result in disciplinary action, including interim suspension (NYSCEF Doc No. 2 at 8). Given the warnings in the No-Contact Order (NYSCEF Doc No. 8 at 1-2), the penalty of suspension does not shock the conscience nor is the penalty of suspension disproportionate to the misconduct (*see Matter of Storino*, 193 AD3d at 441; *Matter of Bondalapati*, 170 AD3d at 490).

Last, even under the generous notice pleading standard applied in discrimination cases (*see Vig v New Hairspray Co., L.P.*, 67 AD3d 140, 145 [1st Dept 2009]), plaintiff's allegations of discrimination based on ethnicity and national origin are wholly conclusory and unsupported by specific facts sufficient to state a claim (*see Kola v City of New*

York, — AD3d —, 2026 NY Slip Op 00194, *1 [1st Dept 2026]; *Matter of England v New York City Dept. of Envtl. Protection*, 150 AD3d 996, 997 [2d Dept 2017] [granting motion to dismiss an article 78 proceeding where the petition "offers no more than speculation and bare legal conclusions without any factual support" of a discrimination claim]).

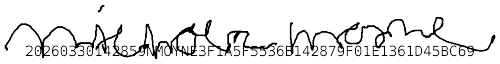
Accordingly, it is

ORDERED that pursuant to CPLR 103 (c), this action is hereby converted to a CPLR article 78 proceeding; and it is further

ORDERED that the motion brought by defendant Pace University to dismiss the petition is granted; and it is

ADJUDGED that the petition is denied and the proceeding is dismissed.

This constitutes the decision, order, and judgment of the court.



2/23/2026
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	X	**CASE DISPOSED**			**NON-FINAL DISPOSITION**		
	X	**GRANTED**		**DENIED**	**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**