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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF JEFFERSON**

JANE DOE a minor by her
Mother and Natural Guardian
MARY DOE

Petitioner,

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules,

-against-

THE DIOCESE OF HOLY TRINITY
and **ST. JOSEPH'S ACADEMY**

Respondents.

Index No.: 2024-1234

**VERIFIED PETITION
PURSUANT TO CPLR
ARTICLE 78**

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The petition of Jane Doe, by her attorney, respectfully shows to this Court as follows:

PRELIMINARY STATEMENT

1. This Article 78 proceeding is brought to challenge and reverse the manifestly arbitrary and capricious decision of Respondents The Diocese of Holy Trinity and St. Joseph's Academy (collectively, "Respondents") to expel Petitioner Jane Doe on February 24, 2020, the very day she returned to class following a two-day suspension imposed for a single, isolated disciplinary infraction. In an egregious abuse of discretion, Respondents peremptorily expelled Petitioner - after she had already

served her suspension and been permitted to return to class - absent any intervening offense or escalation of her conduct to a higher disciplinary tier under the school's own rules. Respondents' draconian actions not only fly in the face of their published policies but reek of retaliation against Petitioner's mother, Mary Doe, who had the temerity to request a meeting with Respondents' principal to address ongoing mistreatment of Petitioner by her teacher.

2. As set forth in detail below, the record conclusively establishes that Respondents acted in an arbitrary and capricious manner, abused their discretion, and violated their own disciplinary procedures in expelling Petitioner. By imposing the ultimate sanction of expulsion for the same minor infraction for which Petitioner had already been suspended - and only after her mother complained of teacher misconduct - Respondents engaged in an unlawful and vindictive course of conduct that shocks the conscience and offends all notions of fairness. Their utter disregard for Petitioner's rights and due process cannot be countenanced.

3. Significantly, Respondents' expulsion decision was made in direct contravention of the three-tiered disciplinary system delineated on page 9 of St. Joseph's Academy Student Handbook, which constitutes the "law of the school" and gives rise to an implied contract between Petitioner and Respondents. *See VanHouten v Mount St. Mary Coll.*, 137 AD3d 1293 (2d Dept 2016). Under this binding disciplinary framework, Petitioner's alleged verbal outburst plainly fell within the Tier 2 category of offenses, for which the enumerated penalties are behavioral probation and/or suspension - not immediate expulsion. By imposing a sanction far exceeding that authorized for Petitioner's purported conduct, Respondents breached their own policies and violated the covenant of good faith and fair dealing implicit in the student-school relationship.

4. Moreover, Respondents' post-hoc attempt to justify the expulsion by vaguely alluding to "numerous" prior efforts to address Petitioner's behavior rings hollow.

The record is devoid of evidence that Respondents ever imposed the progressive discipline contemplated by the Handbook's tier system before resorting to the most extreme punishment available. Nor did Respondents provide Petitioner adequate notice and opportunity to be heard before summarily expelling her - a further violation of basic due process and the school's own rules.

5. Also troubling are the circumstances precipitating Petitioner's expulsion, which suggest a retaliatory motive. The day Petitioner returned from her brief suspension, her mother met with the dean to discuss the incident, during which Petitioner's teacher made disparaging comments about Petitioner's "ghetto ways." When Mary Doe then sought to address this inappropriate remark and the teacher's pattern of demeaning Petitioner, the principal abruptly expelled Petitioner without explanation. The temporal proximity between Mary Doe's complaint and the expulsion raises the specter of unlawful reprisal that cannot be ignored.

6. The record paints a disturbing portrait of a vulnerable student being harshly disciplined based on minor, first-time misconduct - only to then face retributive expulsion when her mother dared to speak up about a hostile educational environment. Such arbitrary and vindictive actions by educational institutions against children entrusted to their care simply cannot stand. This Court's intervention is urgently needed to right the grave injustice done to Petitioner and to send an unmistakable message that students have enforceable rights that schools ignore at their peril.

7. Accordingly, Petitioner seeks a judgment pursuant to CPLR Article 78:

(1) annulling her expulsion as arbitrary, capricious, and contrary to Respondents' disciplinary rules;

(2) directing Respondents to reinstate Petitioner and expunge the expulsion from her record; and

(3) awarding Petitioner the remaining value (\$21,300) of the academic scholarship she forfeited as a result of the expulsion.

Petitioner also requests a trial on any disputed issues of fact and the recovery of attorneys' fees and costs.

For the reasons that follow, the petition should be granted in its entirety.

JURISDICTION, VENUE, AND PARTIES

1. This Court has jurisdiction over the instant proceeding pursuant to CPLR 7801 et seq. Petitioners' claims are timely under the applicable statute of limitations set forth in CPLR 217.

2. Venue is properly laid in Jefferson County under CPLR 7804(b) and 506(b), as it is the judicial district where Respondents made the determination complained of and where one of the parties resides.

3. Petitioner Jane Doe is a 16-year-old minor residing with her mother and natural guardian, Mary Doe, at 123 Main St., Anytown, Jefferson County, NY 12345.

4. Respondent St. Joseph's Academy is a private Catholic school located at 456 Church Ave., Somewhere, NY 67890.

5. Upon information and belief, Respondent The Diocese of Holy Trinity is a religious corporation with its principal place of business at 789 Clergy Rd., Elsewhere, NY 13579. The Diocese operates respondent St. Joseph's Academy.

STATEMENT OF FACTS

6. Petitioner Jane Doe is a 16-year-old student who previously attended St. Joseph's Academy on a full academic scholarship awarded by the Student Sponsor Partners for low-income children. Petitioner matriculated at St. Joseph's as a freshman in September 2018 and began her sophomore year in September 2019.

7. On February 18, 2020, Petitioner walked into her history class a few minutes late. As she took her seat, the teacher, Rebecca Smith, announced to the class, "Look who decided to grace us with her presence - the ghost is here."

8. Later in the lesson, Ms. Smith called on Petitioner to answer a question about the day's material. When Petitioner could not provide the answer, Ms. Smith declared in front of the entire class, "Even Tom and Lisa know the answer, and that's why you had to go to summer school," improperly disclosing Petitioner's private educational information.

9. Feeling humiliated, Petitioner began to pack up her belongings to exit the classroom. Ms. Smith then stated, "I see you're all packed up, just go ahead and leave."

10. As she left the room in tears, Petitioner muttered under her breath, "Screw this place." For this single verbal remark not directed at any individual, Respondents imposed a two-day suspension on Petitioner, lasting until February 20, 2020.

11. On February 20, 2020, Petitioner's mother Mary Doe attended a meeting with the dean, Richard Johnson, as contemplated by the Student Handbook after a disciplinary suspension. During this meeting, Ms. Smith unexpectedly arrived and made the inflammatory comment, "Now I see where [Petitioner] gets her ghetto ways from." Dean Johnson asked Ms. Smith to leave after this remark.

12. Following the meeting with the dean, Mary Doe requested to speak with the school principal, Michael Williams, to report Ms. Smith's ongoing harassment and belittling of Petitioner, including frequently referring to Petitioner as "the ghost" during classes dating back to the prior academic year.

13. Astonishingly, rather than hear out Mary Doe's legitimate concerns about the discriminatory treatment of her daughter, Principal Williams began preparing a "behavioral contract" in the middle of Mary Doe's complaint, and demanded that she sign it. Only after Mary Doe added a single sentence to the document about Ms. Smith's inappropriate name-calling did Principal Williams abruptly expel Petitioner from St. Joseph's Academy, effective immediately, and order Mary Doe out of his office. *See* Exhibits "C" and "D" (suspension and expulsion letters).

14. Critically, Mary Doe never challenged or disagreed with any aspect of the behavioral contract itself - she merely sought to document and address the unacceptable bullying and ridicule Petitioner had been subjected to by a faculty member. In a blatant abuse of power, Principal Williams responded by reflexively expelling Petitioner, solely due to her mother's reasonable efforts to advocate for her.

15. In an act of contrition, Petitioner proceeded to Principal Williams' office following her removal from class and offered to sign the behavioral contract, pleading for the chance to remain at St. Joseph's Academy. Principal Williams coldly rejected her entreaty, stating, "No. It's your mother." This revealing response lays bare that Petitioner's expulsion was not based on her behavior, but rather in retaliation against her mother for speaking up.

16. It bears emphasizing that the Student Handbook does not provide for, or even mention, a meeting with the principal or the use of a behavioral contract after a short-term suspension for minor infractions. By deviating from the school's established re-entry procedures and concocting ad hoc conditions, Respondents deprived Petitioner

of any notice or opportunity to be heard before imposing the draconian penalty of expulsion. Such lack of due process only compounds the arbitrariness of their actions.

17. In the two months since the expulsion, Mary Doe has diligently attempted to resolve this matter with Respondents in good faith to no avail, while also searching for an alternative educational placement for her daughter. Regrettably, securing admission to another accredited school midway through the academic year has proven extremely difficult. As a result, Petitioner has now been out of school since February 24, 2020, causing her to fall behind her peers and jeopardizing her ability to fulfill graduation requirements.

18. Making matters worse, Respondents' capricious expulsion of Petitioner has resulted in the loss of her full-tuition scholarship, valued at \$21,300. Petitioner earned this competitive award through her academic merit and potential, only to have it revoked because of a single disciplinary incident for which she had already been punished. The forfeiture of this scholarship, which was expressly conditioned on Petitioner maintaining enrollment at Respondents' school, has dire consequences for Petitioner's educational future and cannot be remedied absent judicial intervention.

19. Tellingly, despite vaguely referencing "numerous attempts" to correct Petitioner's alleged misbehavior in the expulsion letter, Respondents have not cited or produced evidence of any prior disciplinary violations by Petitioner, of efforts to remediate her purported conduct through means other than suspension/expulsion, or of compliance with the graduated tier system that is the backbone of the Student Handbook's disciplinary policy. This glaring lack of progressive discipline preceding the extreme act of expulsion only highlights the arbitrary and disproportionate nature of Respondents' actions.

20. In sum, the record establishes that Petitioner was an honor student who had never before been subject to serious discipline. In the one documented instance of

misconduct - a spur-of-the-moment verbal outburst provoked by her teacher's pattern of bullying and humiliation - Petitioner readily accepted responsibility and served the two-day suspension meted out by Respondents. It was only after her mother met with the school to protest the hostile learning environment Petitioner endured that Respondents vindictively expelled Petitioner, manufacturing a pretext that this first-time offense warranted the most draconian sanction available. As set forth below, such an arbitrary abuse of discretion cannot withstand Article 78 scrutiny.

REQUEST FOR IMMEDIATE INJUNCTIVE RELIEF AND TEMPORARY RESTRAINING ORDER

21. Petitioner seeks an immediate temporary restraining order and injunctive relief pursuant to CPLR 6301 et seq. to preserve the status quo pending the outcome of this proceeding. Specifically, Petitioner requests that the Court:

(1) Issue a TRO and preliminary injunction directing Respondents to immediately reinstate Petitioner as a student in good standing at St. Joseph's Academy and restore her \$21,300 academic scholarship pending the determination of this Article 78 petition; and

(2) Issue a TRO and preliminary injunction prohibiting Respondents from imposing any further disciplinary measures against Petitioner or engaging in any retaliatory conduct toward Petitioner or her mother as a result of this proceeding.

22. The Court should grant this emergency relief in order to prevent irreparable harm to Petitioner's educational progress and prospects if she were to remain expelled throughout the pendency of this litigation. Each additional day that Petitioner is banned from attending school causes her mounting academic prejudice, as she falls further behind in her coursework and misses crucial college preparatory milestones. Without access to the rigorous college-prep curriculum and faculty support at St.

Joseph's, Petitioner's higher education opportunities and career goals will be irretrievably damaged. No amount of monetary compensation could repair such harm.

23. Moreover, the balance of equities overwhelmingly favors a TRO and injunctive relief here. Petitioner's interest in continuing her education free from arbitrary and vindictive discipline far outweighs any purported burden on Respondents in allowing her to attend classes while this proceeding is pending. Any alleged strain on school resources is of Respondents' own making, as they did not hesitate to enroll Petitioner and accept her scholarship funds for two full years before abruptly expelling her for contrived reasons. In contrast, Petitioner stands to lose a once-in-a-lifetime educational opportunity at a pivotal moment in her academic and social development if the expulsion remains in force.

24. Finally, Petitioner has demonstrated a clear likelihood of success on the merits of her Article 78 claim, for the reasons detailed in the Argument section below. Where, as here, a school's disciplinary decision is arbitrary, capricious, and violative of its own rules and basic fairness, judicial intervention is warranted - and urgently necessary to safeguard the paramount interest in the uninterrupted education of youth. See *Kickertz*, 25 NY3d at 944.

25. Accordingly, in order to avert severe and irreparable educational harm to Petitioner during the pendency of this proceeding, the Court should issue an immediate TRO and preliminary injunction restoring Petitioner's status as an enrolled student and scholarship recipient at St. Joseph's while her petition is adjudicated on the merits. See *Padiyar v Albert Einstein Coll. of Med. of Yeshiva Univ.*, 73 AD3d 634, 634 (1st Dept 2010) (affirming preliminary injunction "enjoining defendant from dismissing plaintiff from medical school prior to holding a disciplinary hearing").

ARGUMENT

I. RESPONDENTS' DECISION TO IMPOSE THE EXTREME PENALTY OF EXPULSION FOR A FIRST-TIME, LOW-LEVEL OFFENSE WAS ARBITRARY, CAPRICIOUS, AND CONTRARY TO THEIR OWN DISCIPLINARY RULES

A. The Handbook Establishes A Binding Contract That Respondents Breached

26. "When a student is admitted to a private school, an implied contract arises between the student and the school." *VanHouten v Mount St. Mary Coll.*, 137 AD3d 1293, 1294 (2d Dept 2016). The terms of this contract are supplied by the "bulletins, circulars and regulations made available to the student." *Vought v Teachers Coll., Columbia Univ.*, 127 AD2d 654, 655 (2d Dept 1987). Accordingly, the disciplinary rules and procedures promulgated in respondent St. Joseph's Academy's Student Handbook created binding contractual obligations that Respondents were required to follow in disciplining Petitioner.

27. Under the Handbook's three-tiered discipline system (Exhibit "A"), a verbal outburst of the type allegedly committed by Petitioner clearly falls within the Tier 2 category, as it indisputably did not constitute "physical abuse," "possession of weapons," or the other serious Tier 3 offenses that could arguably justify immediate expulsion. For Tier 2 infractions, the prescribed penalties are behavioral probation and/or suspension - not expulsion, which is an available sanction only for Tier 3 misconduct. By imposing expulsion for a textbook Tier 2 offense, Respondents unilaterally (and ex post facto) elevated Petitioner's infraction to a Tier 3 violation, in clear breach of their own disciplinary rubric. This ultra vires action flies in the face of the discretion afforded by the Handbook's tier system and violates the fundamental rule that "where a university has adopted a rule or guideline establishing the procedure

to be followed in relation to suspension or expulsion that procedure must be substantially observed." *Tedeschi v Wagner Coll.*, 49 NY2d 652, 660 (1980).

B. Respondents Acted Arbitrarily and Capriciously by Expelling Petitioner for the Same Conduct That They Had Already Sanctioned Her for by Imposing a Suspension

28. Not only did Respondents' expulsion decision violate their own disciplinary procedures, but it was also arbitrary and capricious in light of their prior suspension of Petitioner for the very same conduct. By meting out a two-day suspension, Respondents implicitly determined this was the appropriate sanction for Petitioner's Tier 2-level offense. Having made this definitive disciplinary judgment, Respondents could not then take a second bite at the apple and expel Petitioner for the identical misbehavior merely because her mother had the temerity to subsequently complain about a hostile educational environment.

29. Simply put, once Respondents exercised their discretion to impose suspension as the penalty for Petitioner's infraction, their disciplinary inquiry was at an end. It is well-settled that where a "university has not reserved the right to change its decision, nor is there any showing of additional facts being presented to the university which would justify a change, the university is bound by its initial decision and may not modify it." *Powers v St. John's Univ. Sch. of Law*, 25 NY3d 210, 216 (2015). Here, Respondents have not identified any "additional facts" or aggravating circumstances coming to light after Petitioner served her suspension that would warrant revisiting the matter and escalating the punishment to permanent expulsion. Imposing a second, far harsher penalty for the same isolated incident, without any intervening misconduct, is the very epitome of arbitrary and capricious decision-making. *See Katz v Board of Regents of the Univ. of the State of N.Y.*, 85 AD3d 1277, 1279 (3d Dept 2011) ("when a university has adopted a rule or guideline establishing the procedure to be followed in relation to suspension or expulsion[,], that procedure must be substantially

observed"); *VanHouten*, 137 AD3d at 1294-95 (reversing college's expulsion of student where penalty was disproportionate to offense and school failed to abide by its own disciplinary procedures).

C. Respondents' Expulsion Determination Was Improperly Based On Retaliation Against Petitioner's Mother Rather Than Petitioner's Actual Conduct

30. Even more disturbing, the record strongly suggests that Respondents' draconian expulsion decision was a retaliatory act intended to punish Petitioner's mother for raising legitimate concerns about a teacher's mistreatment of Petitioner. The temporal proximity between Mary Doe's complaint to the principal about Ms. Smith's bullying and the principal's sudden escalation of Petitioner's punishment to expulsion is telling. As the Court of Appeals has admonished, a school's disciplinary actions must be "predicated on the conduct of the individual [student] and in furtherance of the school's educational goals." *Tedeschi*, 49 NY2d at 658. Here, there is every indication that Petitioner's expulsion was improperly motivated by animus toward her mother rather than Petitioner's own behavior.

31. Courts have recognized that the implied contract between a student and educational institution encompasses a covenant of good faith and fair dealing, which prohibits schools from "act[ing] arbitrarily or irrationally in exercising [the] discretion" afforded by their rules and regulations. *Id.* at 659. Expelling Petitioner to retaliate against her parent plainly violates this fundamental contractual duty. Indeed, punishing a student based on her mother's protected act of petitioning the school to redress a hostile educational environment gives rise to an inference of unconstitutional retaliation against Petitioner for the First Amendment-protected activities of her parent. *See Molock v. Whole Foods Mkt. Grp., Inc.*, 297 F Supp 3d 114, 128 (D.D.C. 2018).

32. Moreover, Respondents' failure to provide any process whatsoever before rashly expelling Petitioner - such as notice of what conduct justified the upgraded sanction and an opportunity to be heard in opposition - is itself indicative of arbitrary and capricious decision-making untethered to legitimate disciplinary considerations. *See Gray v Canisius Coll. of Buffalo*, 76 AD2d 30, 36 (4th Dept 1980) (expulsion of student was arbitrary and capricious where college failed to inform student of nature of charges against him and denied him "an opportunity to present his case before an impartial tribunal").

33. If Respondents genuinely believed that additional facts had come to light warranting Petitioner's expulsion rather than the initial suspension, basic due process dictated that they inform Petitioner of those grounds and permit her to respond. *See Mary M. v Clark*, 100 AD2d 41, 43-44 (3d Dept 1984). Their failure to do so, coupled with their inability to articulate any changed circumstances justifying a heightened penalty, leads inexorably to the conclusion that Petitioner's expulsion was an arbitrary act of reprisal rather than a reasoned disciplinary determination.

D. The Cases Relied on by Respondents in Opposition to the Petition Are Inapposite

34. In opposition to the petition, Respondents rely heavily on two distinguishable Third Department cases for the mistaken proposition that private schools have "absolute discretion" in disciplinary matters. *See Hutcheson v Grace Lutheran Sch.*, 132 AD2d 599 (3d Dept 1987); *Rensselaer Soc. of Engrs. v Rensselaer Polytechnic Inst.*, 260 AD2d 992 (3d Dept 1999). Those decisions in no way support the breathtaking scope of unchecked authority Respondents lay claim to.

35. Critically, both *Hutcheson* and *Rensselaer* involved colleges exercising express contractual rights - to wit, a written tuition refund policy and a student "bill of rights" that the schools had explicitly reserved the power to unilaterally amend. Here, in

contrast, the Handbook that governs the relationship between Petitioner and St. Joseph's contains no provision granting Respondents unbridled discretion to disregard their own rules or to arbitrarily impose different sanctions for the same offense. Absent such an express reservation of authority, Respondents remained bound to substantially comply with the disciplinary procedures they voluntarily instituted. *Powers*, 25 NY3d at 216.

36. Moreover, unlike in *Hutcheson* and *Rensselaer*, Petitioner is not seeking to compel Respondents to take any particular action (e.g. issue a tuition refund or modify a student conduct code). Rather, her petition merely asks this Court to review whether Respondents abided by their own published standards - a determination well within the ambit of Article 78 review. See *Gertler v Goodgold*, 107 AD2d 481, 486 (1st Dept 1985), aff'd 66 NY2d 946 (1985) (Article 78 petition challenging medical school's failure to follow its own procedural rules stated cognizable claim).

37. Accordingly, Respondents' reliance on cases involving factually dissimilar contractual disputes to evade judicial review of their actions is misplaced. Where, as here, the record demonstrates that a private school "failed to abide by its own policies and procedures in expelling petitioner," reversal of the expulsion is warranted. *VanHouten*, 137 AD3d at 1295; see also *Chu v Skidmore Coll.*, 2019 NY Slip Op 32441[U], at *4-5 (Sup Ct, Saratoga County 2019) (Article 78 petition granted where college breached its own disciplinary rules).

II. RESPONDENTS' DENIAL OF ANY PROCESS TO PETITIONER BEFORE IMPOSING THE EXTREME PENALTY OF EXPULSION VIOLATED FUNDAMENTAL FAIRNESS

38. Separate and apart from violating their own disciplinary rules, Respondents' actions in expelling Petitioner without notice or opportunity to be heard offend basic principles of fairness and due process. Although Respondents are not formally bound

by due process guarantees in light of their status as a private institution, New York courts have long recognized that the relationship between a school and its students is imbued with constitutional overtones and carries an implied requirement of "fundamental fairness." *See Tedeschi*, 49 NY2d at 659 n 4; *Warner v Elmira Coll.*, 59 AD3d 909, 910-11 (3d Dept 2009) (despite private college's "broad discretion" over discipline, "its actions must still comport with notions of basic fairness").

39. Here, the record is devoid of any indication that Petitioner received even minimal procedural protections, such as written notice of the charges against her and an opportunity to present her side of the story, before being permanently banished from the school. Courts have consistently held that imposing the "drastic sanction[]" of expulsion in such summary fashion, without any process whatsoever, is fundamentally unfair and cannot be sustained. *Matter of Hyman v Cornell Univ.*, 82 AD3d 1309, 1310 (3d Dept 2011); *see also Papaspiridakos v Educ. Affiliates, Inc.*, 2013 NY Slip Op 30457[U], at *6 (Sup Ct, Queens County 2013) (expulsion overturned where student not afforded "a meaningful opportunity to defend herself").

40. This precept applies with special force where, as here, a school expels a student for conduct far less serious than that enumerated in its disciplinary code as potential grounds for expulsion. *See Gruen v Chase*, 215 AD2d 481, 481 (2d Dept 1995) (in case involving expulsion by private college, "although the student's conduct was less than exemplary, the penalty of expulsion is shocking to one's sense of fairness and disproportionate to the charged infractions"). Having initially determined that a minor sanction was appropriate for Petitioner's alleged outburst, Respondents could not abruptly change course and inflict the most draconian punishment available without first affording Petitioner a chance to seek reconsideration and argue against the extreme penalty. *See James v Alderton Dock Yards*, 256 NY 298, 305 (1931) (even at private institution, expulsion may not be carried out with "unfairness or oppression").

41. Notably, Respondents do not offer any justification for their failure to accord Petitioner rudimentary procedural protections before taking the momentous step of expelling her. They point to no exigent circumstances or threat to institutional integrity that compelled them to act in such precipitous fashion upon Petitioner's readmittance to school. *See Coleman v Hackley Sch.*, 2019 NY Slip Op 31472[U], at *4 (Sup Ct, Westchester County 2019) (private school's removal of student from campus without any process was arbitrary and capricious where no emergency existed). To the contrary, having just permitted Petitioner to return to class that very morning, Respondents cannot possibly claim her continued attendance posed any immediate danger. In these circumstances, their denial of any "avenue of redress" before ejecting Petitioner from the school was fundamentally unfair and arbitrary. *Warner*, 59 AD3d at 910-11.

III. THE COURT SHOULD ANNUL THE EXPULSION AND REINSTATE PETITIONER'S ENROLLMENT AND SCHOLARSHIP

42. For all the foregoing reasons, the Court should grant the petition and annul Respondents' expulsion of Petitioner as arbitrary, capricious, and in violation of fundamental fairness and Respondents' own disciplinary rules. *See* CPLR 7803(3). Where, as here, a private school's disciplinary actions transgress the boundaries of its discretion and deviate from its established procedures, judicial intervention is warranted to vindicate the rights of the affected student. *See Kickertz v New York Univ.*, 25 NY3d 942, 944 (2015); *Galiani v Hofstra Univ.*, 118 AD2d 572, 572 (2d Dept 1986).

43. Critically, there is no evidence that Petitioner poses any ongoing threat or disruption to the school community, such that her reinstatement would imperil institutional interests. Petitioner had an unblemished disciplinary record prior to this single incident for which she has already been suspended, and she took immediate accountability for her mistakes by offering to abide by a behavioral contract. The

Court should therefore "impose a less extreme sanction" than "the totally disproportionate penalty of expulsion" for Petitioner's isolated and uncharacteristic misbehavior. *Matter of Murray v Elmira Bd. of Educ.*, 2010 NY Slip Op 30291[U], at *11 (Sup Ct, Chemung County 2010).

44. Finally, in addition to annulling Petitioner's expulsion and reinstating her as a student in good standing, the Court should direct Respondents to restore the full value (\$21,300) of Petitioner's academic scholarship, which she forfeited as a direct result of the unlawful expulsion. But for Respondents' arbitrary actions, Petitioner would have remained eligible for this substantial financial aid - which was critical to her ability to access a quality education. Having wrongfully stripped Petitioner of her scholarship, Respondents should be ordered to make her whole by funding the full remainder of this four-year award. *See Papelino v Albany Coll. of Pharmacy of Union Univ.*, 633 F3d 81, 94 (2d Cir 2011) (compensatory damages available for private school's breach of enrollment agreement).

CONCLUSION

45. The eyes of New York students and families are trained on this case, anxiously awaiting a ruling that reaffirms the fundamental precept that enrollment in a private school is not a license for administrators to play judge, jury, and executioner in disciplinary matters. Judicial intervention is imperative to curb the disturbingly common abuses of discretion by school officials who place expedience over fairness and fealty to rules. The Court should grant the petition and restore Petitioner's enrollment status and scholarship, while issuing a clear directive that all New York schools - public and private - must handle disciplinary issues with restraint, consistency, and solicitude for the best interests of their students. The time has come to level the playing field and ensure that our state's schools remain bastions of

reasoned and equitable discipline, not crucibles for the unilateral imposition of life-altering sanctions.

WHEREFORE, Petitioners Jane Doe and Mary Doe respectfully request that the Court enter judgment pursuant to CPLR Article 78:

- (1) Adjudging and declaring that Respondents' expulsion of Petitioner was arbitrary, capricious, lacking a rational basis, and in violation of Respondents' own disciplinary procedures and the covenant of good faith and fair dealing;
- (2) Directing Respondents to annul the expulsion, reinstate Petitioner as a student in good standing, and expunge all references to the expulsion from Petitioner's educational records;
- (3) Directing Respondents to restore Petitioner's \$21,300 academic scholarship;
- (4) Issuing an immediate TRO and preliminary injunction:
 - (a) Directing Respondents to reinstate Petitioner as an enrolled student in good standing and restore her scholarship pending the outcome of this proceeding; and
 - (b) Prohibiting Respondents from taking any further disciplinary action against Petitioner or engaging in any retaliatory conduct toward Petitioner or her mother during the pendency of this proceeding;
- (5) In the alternative, remanding for a hearing pursuant to CPLR 7804(h) on any triable issues of fact;
- (6) Awarding Petitioners costs, disbursements, and reasonable attorneys' fees; and
- (7) Granting such other and further relief as the Court deems just and proper.

Dated: May 22, 2020
Jefferson, New York

Respectfully submitted,

