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No. 24-CV-0957

DISTRICT COURT OF COLUMBIA COURT OF APPEALS

DARRYL JENNINGS, JR.,

Appellant,

v.

HOWARD UNIVERSITY, et al.,

Appellees.

ON APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, CIVIL DIVISION, CASE NO. 2022-CA-003118-B
(HON. SHANA FROST MATINI)

APPELLANT'S REPLY BRIEF

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SUMMARY OF THE ARGUMENT

Appellees argued that summary judgment was proper because no genuine disputes of material fact existed and because Howard University's academic decisions are entitled to broad deference (Ap. Br. 21–25). They maintained that no express or implied contract required comprehensive examinations to be given only by "instructors of record," that Jennings could not rely on any alleged promise to that effect, and that his remaining claims—negligent supervision and tortious interference—were legally or factually deficient (Ap. Br. 26–50).

These contentions misapplied summary judgment standards and overextend judicial deference to academic discretion. Jennings produced admissible evidence—including sworn testimony, declarations, and University documents—showing a consistent departmental practice that comprehensive examinations were administered by instructors of record. Appellees acknowledged the 2013 Procedures yet dismissed them as "internal" and "nonbinding," even though instructors of record continued administering exams for years thereafter (Ap. Br. 29–30). Whether those procedures were binding or reasonably relied upon presents a genuine factual dispute that precludes summary judgment.

Appellees' claim that "no express or implied contract" existed ignored D.C. precedent holding that university bulletins and practices can form contractual terms (Ap. Br. 26–31). The Graduate School Rules and Department Handbook stated that exams are "administered by the department," which in context includes instructors of record. At minimum, this ambiguity warranted trial (Ap. Br. 30).

Appellees also mischaracterized the covenant of good faith and fair dealing by limiting it to prohibiting "bad faith." The duty ensures each party's right to the contract's benefits. Jennings's right—to fair evaluation under established departmental procedures—was destroyed when the University replaced his instructors with unrelated faculty, then dismissed him based on those results (Ap. Br. 30–31).

Their argument that promissory estoppel is barred because an express contract exists (Ap. Br. 37–38) misstated D.C. law, which allows estoppel when promises extend beyond contractual terms. Dr. Smith's assurances about instructors of record were distinct and reasonably induced reliance—issues of fact for a jury.

Appellees' defense of negligent supervision (Ap. Br. 40–45) fails because Jennings provided evidence that the University knew or should have known of Dr. Owolabi's biased and disruptive conduct yet took no corrective action. Common understanding—not expert testimony—can establish the University's duty to ensure fair examinations.

The claim that Dr. Owolabi could not tortiously interfere with a "nonexistent contract" (Ap. Br. 45–50) presumed the very issue in dispute. If University policies constituted a contract, Owolabi's deviation from those procedures to ensure

Jennings's failure supports an inference of malice.

Appellees thus attempted to convert academic deference into absolute immunity. Viewing the record in the light most favorable to Jennings reveals triable disputes over the governing rules, the reasonableness of reliance, and the fairness of his dismissal. The Court should therefore reverse summary judgment and remand for trial.

ARGUMENT

I. Appellees Misconstrue the Contract and the Governing Legal Standards

Appellees assert that the trial court correctly applied "general principles" of contract law, emphasizing that universities are entitled to broad judicial deference and that Jennings failed to prove a binding contractual obligation. (Ap. Br. at 26-28.).

Appellees' framing of the contractual relationship was far too narrow. D.C. courts have long recognized that the relationship between a university and its students is contractual and that the terms of that contract are supplied not only by express written agreements but also by institutional publications, official policies, and consistent practices. *Basch*, 370 A.2d at 1366. The Graduate School Rules and the Departmental Handbook expressly governed the administration of comprehensive examinations. The Rules provided that such examinations would be "administered by the department," and contemporaneous departmental procedures—the 2013 Procedures—clarified that administration meant by the "instructors of record." The combination of those documents, together with Howard's consistent conduct, created an implied contractual obligation to follow that structure. Whether those policies were binding or had become incorporated through custom is a fact question inappropriate for summary judgment.

Appellees overstated the degree of judicial deference owed to universities. Deference does not equate to blanket immunity from contractual scrutiny. *Alden v. Georgetown Univ.*, 734 A.2d 1103 (D.C. 1999), and *Allworth v. Howard Univ.*, 890 A.2d 194 (D.C. 2006), do not hold that courts must rubber-stamp every academic decision. Rather, they teach that deference applies to academic judgments about a student's performance, not to whether the university followed its own procedural rules. When the issue is compliance with contractual obligations—such as who may administer examinations—courts apply ordinary contract principles. See *Jung v. George Washington Univ.*, 875 A.2d 95, 108 (D.C. 2005) (judicial deference does not extend to nonacademic disputes). Jennings does not challenge Howard's academic assessment of his work; he challenges its failure to follow its own procedural commitments. That distinction is dispositive.

Appellees' suggestion that Jennings bore the burned to show Howard "intended to be bound" (Ap. Br. at 26) ignored that the University manifested such intent by publishing mandatory rules and by consistently treating them as governing documents. Universities cannot require students to comply with written procedures while simultaneously disclaiming their own obligation to do so. The principle of mutuality—central to any contract—prevents such a one-sided result.

II. The 2013 Procedures Were Binding by Incorporation and Custom

Appellees assert that the 2013 Procedures "were not part of the parties' contractual arrangement" and that Jennings "never knew of the 2013 Procedures while at the University and they were never circulated to students." (Ap. Br. at 29s.) They further claim that the Procedures were "non-binding internal guidelines, to be used only in 2013," and that Jennings therefore could not have intended to be bound by them. (Id.) These contentions misstate both the nature of the Procedures and the evidentiary record.

Appellees' argument relied on an unduly formalistic view of contract formation that ignores how university contracts operate. D.C. law recognizes that the student–university relationship is governed not by a single document but by the collection of policies, bulletins, and established practices that define each party's rights and obligations. *Basch v. George Washington Univ.*, 370 A.2d 1364, 1366 (D.C. 1977). Even if the 2013 Procedures originated as an internal departmental memorandum, they were part of the continuing framework through which the Department administered its Ph.D. program. The record demonstrates that the Department followed those same Procedures in subsequent years, thereby transforming what Appellees call "internal guidelines" into operative policy. When a university consistently enforces a policy and applies it to its students, that policy becomes part of the contractual understanding between the institution and its enrollees.

Appellees' reliance on Jennings' deposition testimony that he "had not personally seen" the 2013 Procedures before enrolling does not defeat contractual incorporation. (Ap. Br. at 29.) Knowledge may be inferred from the surrounding circumstances and course of performance. Students are entitled to rely on the procedures that the University represents as governing its programs, whether or not each student physically receives every internal memorandum. The Department's practice—repeatedly assigning instructors of record to prepare and grade comprehensive examinations—manifested the continuing force of the 2013 Procedures. When institutional behavior consistently reflects adherence to a policy, that policy is part of the implied contract. *See Dyer v. Bilaal*, 983 A.2d 349, 356 (D.C. 2009) (mutual intent to be bound may be inferred from conduct and surrounding circumstances).

Appellees' characterization of the 2013 Procedures as a one-time guideline is contradicted by their own admissions. The University acknowledged that the 2013 Procedures were issued for the Spring 2014 examinations and that no subsequent written rule expressly revoked them. In fact, Howard continued to permit instructors of record to serve as examiners for multiple years afterward. This continued application demonstrates that the Procedures were not "discarded," as Appellees now contend, but rather carried forward by departmental custom and ratification. The existence of that custom alone created a genuine issue of material fact that precludes summary judgment.

Appellees' argument overlooked the principle of reasonable expectation. Universities are held to the same standard of good faith as any contracting party: they must not act in a manner that defeats the student's justified expectations under the academic contract. *Paul v. Howard Univ.*, 754 A.2d 297, 310 (D.C. 2000). Jennings enrolled in the Ph.D. program based on the University's representation—reinforced by faculty and prior practice—that examinations would be administered by instructors of record. It was reasonable for him to expect that the Department would follow its own procedures unless formally amended. Appellees' post hoc declaration that the 2013 Procedures were "never binding" cannot extinguish those expectations.

As to the question of whether the 2013 Procedures remained operative, it is factual. It requires assessing credibility, departmental custom, and institutional intent—matters ill-suited for resolution on summary judgment. Appellees' position that the Procedures were irrelevant is belied by the University's own continued partial compliance and by its failure to adopt any replacement procedure until years later. The evidence therefore raised a genuine dispute over the meaning and effect of the 2013 Procedures, one that should have been resolved by a trier of fact, not by judicial fiat.

III. Appellees Misconstrued the Scope of the Duty of Good Faith and

Fair Dealing

Appellees asserted that even if a contract existed, Jennings could not prevail because "the duty of good faith and fair dealing does not create obligations that are not inconsistent with the contract's terms" and "cannot be used to impose those duties beyond the express agreement." (Ap. Br. at 30-31.)

The implied covenant of good faith and fair dealing is not limited to prohibiting bad faith in express terms of a contract. Rather, it requires that each party act in a manner consistent with the justified expectations created by the agreement as a whole. *Paul v. Howard Univ.*, 754 A.2d 297, 310 (D.C. 2000) ("Neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract."). The "fruits" of the academic contract include fair and consistent evaluation under the institution's published and customary procedures. When a university abruptly deviates from those procedures—particularly in the administration of high-stakes examinations—it deprives the student of the central benefit of the bargain.

Appellees' assertion that the absence of explicit "instructor-of-record" language defeats the covenant misread the law. The implied duty is triggered precisely where the contract is silent but one party exercises discretionary authority affecting the other's rights. *Allworth v. Howard Univ.*, 890 A.2d 194, 202 (D.C. 2006). Howard's discretion to designate examiners carried a corresponding duty to exercise that discretion fairly and consistently with departmental practice. By appointing non-instructors without notice, the University exercised its discretion in a way that nullified Jennings' reasonable expectations and undermined the integrity of the evaluation process. That constitutes a triable issue of bad faith and arbitrary conduct.

Appellees mischaracterized the role of judicial deference in this context. Deference to academic judgment applies to the evaluation of academic performance, not to the fairness or consistency of administrative procedure. *Wright v. Howard Univ.*, 60 A.3d 749, 754–55 (D.C. 2013), emphasizes that deference does not extend to "arbitrary or capricious" acts unrelated to academic merit. Here, Jennings does not challenge Howard's academic standards; he challenges its failure to follow its own procedures and its selective application of rules. Whether that failure was arbitrary or motivated by bad faith is a factual question.

Appellees' argument that Jennings "presented no evidence" of bad faith (Ap. Br. at 31) disregarded the record. The evidence included testimony and documentary proof that Howard (1) departed from its longstanding practice of using instructors of record; (2) failed to notify Jennings of this change; (3) denied him access to preparatory materials provided to other students; and (4) retroactively justified those deviations only after his dismissal. This pattern of conduct easily meets the *Wright* standard for arbitrary or capricious action and raises an inference of bad faith.

Additionally, whether Howard's actions were "arbitrary and capricious" under *Allworth* and *Wright* is inherently factual. The trial court erred by resolving that question on summary judgment. Viewing the evidence in the light most favorable to Jennings, a reasonable factfinder could conclude that the University's procedural deviations were neither rational nor in good faith, but rather inconsistent with its own commitments to fairness and transparency.

IV. The Voluntary Dismissal of the Hubsch Claim Does Not Bar Review, and the Damages Ruling Was Erroneous

Appellees argue that Jennings' claim regarding Dr. Hubsch's administration of the Mathematical Methods examination was "a nullity" because he voluntarily dismissed it in the trial court, leaving nothing to appeal. (Ap. Br. at 32.) They further asserted that his related challenge to the court's *in limine* order limiting damages must also be disregarded for the same reason. (Id.)

Appellees' reliance on the "nullity" doctrine is misplaced. Jennings' voluntary dismissal of the Hubsch claim was not a waiver of his right to appellate review—it was a procedural step taken to obtain a final, appealable judgment following the trial court's adverse *in limine* ruling. The Supreme Court has expressly held that a voluntary dismissal following an interlocutory ruling does not preclude appellate review of that ruling. *Waetzig v. Halliburton Energy Servs., Inc.*, 604 U.S. 305, 312–13 (2025) (holding that a voluntary dismissal without prejudice does not extinguish appellate rights where it serves as a vehicle to secure review of prior rulings). Here, the trial court's *in limine* order effectively stripped the Hubsch claim of all economic value by restricting damages to nominal sums. Faced with that ruling, Jennings dismissed the claim to create finality. Under *Waetzig* and D.C. precedent, that procedural posture preserves, not forfeits, appellate review.

Appellees' assertion that "there was no ruling by the court below on the Hubsch claim" (Ap. Br. at 32) ignored the trial court's express *in limine* order, which ruled that Jennings could not present any evidence of economic loss. That ruling was a substantive determination on damages, which is an integral component of a breach-of-contract claim. The dismissal of the underlying count did not erase the prejudicial effect of that ruling. To the contrary, it was the *in limine* ruling that compelled dismissal; review of that issue is therefore both necessary and proper.

The trial court erred in excluding Jennings' damages evidence. The record contained a reasonable basis for estimating loss: Jennings testified that the University's breach deprived him of four years of academic progress, delayed his earning potential, and forced him to reenroll elsewhere to continue his degree. Those losses are measurable through standard economic methodology, and the absence of a retained expert does not bar recovery where the nature of the harm is clear and supported by testimony. *See Garcia v. Llerena*, 599 A.2d 1138, 1142–45 (D.C. 1991) (plaintiff's own testimony may suffice when damages are not speculative).

Appellees' reliance on *Croley v. Republican Nat'l Comm.*, 759 A.2d 682 (D.C. 2000), was misplaced; *Croley* involved complex projections of future earnings, not a straightforward measure of lost educational time and opportunity.

Appellees' suggestion that Jennings' damages theory was "speculative" (Ap. Br. at 33) ignored the evidence that his dismissal from Howard forced him to incur additional tuition costs, repeat coursework, and delay completion of his Ph.D. Such losses are neither abstract nor conjectural—they are concrete consequences of the University's procedural breach. Whether the precise amount could have been refined through expert testimony goes to weight, not admissibility. The jury, not the court, should have been allowed to determine their value.

Appellees' factual assertion that "Dr. Hubsch was the instructor of record" and thus could not have breached any obligation (Ap. Br. at 33–34) misunderstood the claim. Jennings did not allege that Dr. Hubsch's grading alone was improper; rather, he asserted that the examination itself was administered contrary to departmental procedure—without proper oversight, fairness, or consistency with the practices governing other subjects. Whether Dr. Hubsch's dual role as preparer and grader violated those procedures is a factual question that cannot be resolved on summary judgment.

Appellees' attempt to treat Jennings' dismissal as a full waiver of damages misconstrued both the procedural record and fundamental fairness. A litigant who dismissed a claim after an adverse evidentiary ruling does not thereby concede the ruling's correctness; rather, the dismissal serves as the only mechanism to obtain appellate review. To hold otherwise would insulate erroneous pretrial orders from scrutiny and frustrate the appellate process.

V. Appellees Mischaracterized Jennings' Contract Claims and Misused the Educational Malpractice Bar

Appellees asserted that Jennings' "laundry list" of additional contract claims were "insufficiently addressed" in his appeal brief and thus should be deemed waived. (Ap. Br. at 35.).

Appellees' suggestion that Jennings' arguments were "perfunctory" misrepresented his briefing. The opening brief articulated each claim as a manifestation of the University's broader breach of its contractual and implied duties—including failure to follow departmental procedures, provide fair evaluation, and maintain consistency in the administration of examinations. The brief specificallt cited the record, including portions of Jennings' deposition and the Department's own policies, to demonstrate how these cumulative procedural deviations reflected arbitrary and bad-faith conduct. Appellees' reliance on *Gabramadhin v. United States*, 137 A.3d 178 (D.C. 2016), is misplaced; that case concerned appellants who failed to identify any relevant authority or factual basis. Jennings did both. His claims were concise because they flowed from a unified contractual theory—not because they were abandoned or inadequately presented.

Appellees' attempt to reframe these issues as "educational malpractice" misapprehended their nature. Jennings does not challenge the quality of his education or the adequacy of his instruction. He challenges the University's procedural and administrative breaches—its failure to apply uniform examination rules, its inconsistent treatment of doctoral candidates, and its disregard of internal policies governing exam content and access. D.C. courts have repeatedly recognized that such claims are actionable when they concern breach of a specific contractual promise, not generalized dissatisfaction with pedagogy. *See Basch v. George Washington Univ.*, 370 A.2d 1364, 1366 (D.C. 1977) (permitting contract actions for violations of academic procedures); *Brown v. George Washington Univ.*, 802 A.2d 382, 385 (D.C. 2002) (court may review whether university "substantially complied" with its own rules).

Appellees' reliance on *Crockett v. District of Columbia*, Civ. No. 16-1357 (RDM), 2020 WL 1821121 (D.D.C. Apr. 10, 2020), and *Brantley v. District of Columbia*, 640 A.2d 181 (D.C. 1994), is misplaced. Those cases involved challenges to the content and sufficiency of academic instruction, not procedural fairness. Jennings' claims do not require the Court to evaluate teaching methods or academic merit; they concern whether the University abided by its contractual commitments regarding exam procedures, notice, and grading transparency. Labeling those claims "educational malpractice" is an effort to collapse legitimate contract enforcement into a prohibited tort theory—an approach D.C. law rejects.

Appellees' renewed invocation of academic deference under *Alden* again overreached. Deference does not extend to procedural violations or administrative inconsistency. The University's failure to provide an overview of examination materials, sudden alteration of exam format, and refusal to return graded answers are administrative actions—none of which involve academic judgment about Jennings' ability or performance. Whether those deviations were arbitrary or made in bad faith is a factual question that cannot be resolved on summary judgment. *See Wright v. Howard Univ.*, 60 A.3d 749, 755 (D.C. 2013).

VI. Summary Judgment on Count II Was Improper Under D.C. Law

Appellees asserted that summary judgment was proper on Count II for promissory estoppel because (1) the Graduate School Rules and Department Handbook constituted an express contract governing all relevant aspects of Jennings' relationship with the University (Ap. Br. 36); (2) any statements made by Dr. Smith concerning the use of "instructors of record" were too indefinite to form an enforceable promise (Ap. Br. at 37); and (3) Jennings neither relied on those statements to his detriment nor demonstrated any resulting injustice. (Ap Br. at 38–39.) They further claimed that Jennings "waived" the issue by failing to elaborate on it in his opening brief and that any reliance theory was undermined by his own testimony. (Id.)

These assertions mischaracterized the claim and overlooked both the factual record and settled D.C. law. The promissory estoppel claim is not duplicative of the express contract claim; it concerns specific representations that fell outside the written terms of the Graduate School Rules but were nonetheless made by University officials and reasonably relied upon by Jennings. Dr. Smith's statements that comprehensive examinations were to be conducted by instructors of record reflected a long-standing departmental practice and a concrete assurance about how the process would be administered. Those representations went beyond what was stated in the GS Rules, which merely delegated exam administration to the department without defining procedure.

Contrary to Appellees' contention, Dr. Smith's statements were not "too indefinite" to be enforceable. They described a clear and verifiable policy, not an aspirational remark. As the Director of Graduate Studies, Dr. Smith was an authoritative source on departmental procedures, and Jennings was justified in relying on her assurances in preparing for the examinations. The reasonableness of that reliance is a question for the factfinder, not one suitable for summary judgment.

Appellees' argument that Jennings "admitted" he would have enrolled at Howard even absent the promise distorted his testimony. His enrollment decision was based on multiple assurances about the fairness and structure of the doctoral program, of which the instructor-of-record practice was a key component. Detrimental reliance under D.C. law is not confined to initial enrollment; it extends to continued participation and investment made in reliance on the University's commitments. Jennings devoted years of academic work, tuition payments, and research effort to a program he believed would follow those stated procedures. When Howard abruptly deviated from that framework—by appointing non-instructors to administer and grade exams without notice—he suffered tangible harm, including dismissal and delayed degree progress.

Nor does the record support Appellees' claim that no injustice would result. The injustice arises from the University's ability to induce student reliance through procedural assurances and then disregard those assurances when convenient. The doctrine of promissory estoppel exists precisely to prevent this type of inequitable outcome, where injustice cannot otherwise be avoided. *Howard Univ. v. Good Food Servs., Inc.*, 608 A.2d 116, 121 (D.C. 1992). The fact that other students may have been subjected to the same abrupt procedural change does not negate the injustice of misleading all of them.

Appellees' assertion that Jennings "waived" his promissory estoppel arguments by insufficient briefing is unfounded. His opening brief directly addressed the University's failure to adhere to the procedures it promised and cited the specific evidence supporting his reliance. Appellees' suggestion that a more detailed discussion was required misstates the standard for preservation; the issue was clearly presented and supported by record citations.

VII. Material Facts Precluded Summary Judgment on Negligent Supervision

Appellees contended that the trial court properly granted summary judgment on Count III because Jennings failed to produce any evidence that Howard University knew or should have known of misconduct by Dr. Owolabi, failed to establish a standard of care or causal connection between supervision and harm, and failed to identify a duty independent of contract. (Ap. Br. at 40.) They further argued that Jennings presented no expert testimony, that any alleged misconduct related solely to contractual procedures, and that no admissible evidence demonstrated the University's awareness of Dr. Owolabi's alleged "berating" of another student or bias against students advised by Dr. Smith. (Ap. Br. at 43-45.) The University thus maintained that the claim was both legally deficient and factually unsupported.

Jennings maintains that the lower court's ruling was erroneous because the record presents genuine issues of material fact as to whether the University had prior notice of Dr. Owolabi's unprofessional conduct and failed to act reasonably to prevent foreseeable harm. The negligent supervision claim rests not on academic judgment or contractual interpretation, but on the University's independent duty of care to protect its students from faculty misconduct.

The record establishes that University administrators were aware of complaints concerning Dr. Owolabi's behavior toward students, including an incident in which he berated another student during a comprehensive examination in Fall 2019. Despite these concerns, the University took no remedial action and permitted him to continue administering and grading doctoral examinations. That evidence, viewed in the light most favorable to Jennings, supports a reasonable inference that Howard "knew or should have known" that Dr. Owolabi had engaged in unprofessional conduct, satisfying the standard articulated in *Brown v. Sessoms*, 774 F.3d 1016, 1025 (D.C. Cir. 2014), and *Godfrey v. Iverson*, 559 F.3d 569, 571 (D.C. Cir. 2009). The University's inaction directly enabled the same examiner to preside over the examinations leading to Jennings' dismissal, establishing a triable issue of causation under *Blair v. District of Columbia*, 190 A.3d 212, 229 (D.C. 2018).

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the grant of summary judgment, vacate the judgment below, and remand this case for trial on all remaining claims, together with such further relief as this Court deems just and proper.

Date: January 9, 2025

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January 2026, a copy of the foregoing was served on counsel for Appellee below through Pacer.

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