NO. 24-CV-0957

DISTRICT 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)

APPELLEES' BRIEF

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Date: October 13, 2025

RULE 28(a)(2)(A) CERTIFICATION

The undersigned counsel of record for Appellees Howard University and Gbadebo Moses Owolabi, Ph.D., certifies that the following listed parties, intervenors, *amici curiae* (if any) appeared below:

1. Darryl Jennings, Jr., an individual, Plaintiff;
2. Howard University, Defendant; and
3. Gbadebo Moses Owolabi, Ph.D., an individual, Defendant.

There were no intervenors or *amici curiae*.

Appellant was represented in the Superior Court below by David A. Branch, Esq., Law Offices of David A. Branch & Associates, PLLC, 1120 Connecticut Avenue, NW, Suite 500, Washington, DC 20036.

Appellees Howard University and Gbadebo Moses Owolabi, Ph.D., were represented in the court below by Daniel I. Prywes, Esq., and Rebecca K. Connolly, Esq., Morris, Manning & Martin, LLP, 1333 New Hampshire Avenue, NW, Suite 800, Washington, DC 20036.

/s/ Daniel I. Prywes
Daniel I. Prywes
Counsel for Appellees

RULE 28(a)(2)(B) CORPORATE STATEMENT

Appellee Howard University is a private, federally chartered historically black research university in Washington, D.C. The University has no stock, and no publicly held company entity has a 10% or greater ownership interest in the University. In addition, there are no parent companies of the University.

These representations are made to enable the Judges of this Court to consider possible recusal.

DATED, this 13th day of October 2025.

*/s/ Daniel I. Prywes*_____
Daniel I. Prywes
Counsel for Appellees

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COUNTER-STATEMENT OF THE ISSUES

1. Did the lower court properly grant summary judgment to Howard University (the "University") on appellant Darryl Jennings, Jr.'s ("Jennings") claim in Count I that the University breached an alleged contract requiring that comprehensive examinations be given only by "instructors of record," when the undisputed evidence showed that (a) there was no such express contract and (b) no such requirement arose from the implied duty of good faith and fair dealing?

2. Should the Court affirm the lower court's award of summary judgment to the University on Jennings' other contract claims in Count I when Jennings (a) limited his discussion of each of those claims to a single sentence in his Brief, (b) the undisputed facts showed that there was no evidence of bad faith or arbitrary conduct, and (c) the University was entitled to broad academic deference in choosing how to conduct its educational program and comprehensive examinations for the Ph.D. degree?

3. Did the lower court properly grant summary judgment to the University on Jennings' promissory-estoppel claim in Count II when (a) the parties had an express contract that did not contain an obligation to have "instructors of record" give comprehensive examinations, (b) the undisputed evidence showed that no such definite "promise" was ever made and Jennings did not rely on any such "promise," and (c) Jennings waived any claim when he did not contemporaneously make a

timely objection to the list of examiners?

4. Did the lower court properly grant summary judgment on Jennings' claim in Count III that the University negligently supervised Professor Gbadebo M. Owolabi ("Dr. Owolabi") when (a) this tort claim was impermissibly based on an alleged violation of contractual rights, (b) the undisputed evidence showed that the University lacked knowledge that Dr. Owolabi allegedly berated another student who was cheating during an examination, (c) there was no expert or other evidence of the University's standard of care in supervising faculty, (d) there was no evidence supporting the claim that Dr. Owolabi was biased against Plaintiff, and (e) there was no evidence that the University failed to reasonably address any prior student complaints about Dr. Owolabi?

5. Did the lower court properly grant summary judgment to Dr. Owolabi on Jennings' claim in Count IV that he engaged in tortious interference of Jennings' business or contractual relationship with the University where (a) there was no "interference" with a contract requiring use of "instructors of record" because there was no such contract, and (b) there was no evidence of "malice" by Dr. Owolabi?

6. Is Jennings' appeal of the lower court's *in limine* ruling on damages for his contract claim related to Dr. Hubsch moot since Jennings voluntarily dismissed that claim and, in any event, did the lower court act within its broad discretion in its *in limine* ruling?

COUNTER-STATEMENT OF THE CASE

Jennings was a Ph.D. student in Mechanical Engineering at the University. He failed the multi-subject Ph.D. comprehensive examination in Fall 2019 and failed it again in Spring 2020. He was then dismissed pursuant to the University's written rules that students should be dismissed after two failures. (JA 388, 445.)

Following his dismissal, Jennings filed an appeal through the University's internal appeal process, which affirmed the dismissal. During the appeal process, the University arranged for a double-blind review by external faculty at peer institutions, who concluded that Jennings fell short of the minimum competency expected for a student to qualify for candidacy for the Ph.D. degree.

Jennings subsequently filed this suit against the University and Dr. Owolabi. Dr. Owolabi was the Graduate Program Director in the Department of Mechanical Engineering (the "Department") when Jennings took and failed the comprehensive examinations. (JA 15, 23, 28; Compl. ¶¶ 5, 32, 50; JA 189, SMUF ¶ 3; JA 551, RSMUF ¶ 3.)

Jennings' core claim was that, in breach of contract, some of the examining faculty for the different subjects on his comprehensive examinations were not his "instructors of record," namely those who taught him courses in the tested subjects. (JA 16-28, Compl. ¶¶ 12, 15, 25, 32, 39, 45, 50.) He made several other contract

claims in perfunctory, one-sentence assertions in his "Corrected Opening Brief" ("Jennings Br.") (at 18-19), which are discussed below.

The Complaint asserted three claims against the University. Count I alleged breaches of contract; Count II alleged promissory estoppel; and Count III alleged that the University negligently supervised Dr. Owolabi. (JA 22-27.) The only claim made against appellee Dr. Owolabi was Count IV, which alleged that he tortiously interfered with Jennings' business relations with the University. (JA 27-29, Compl. ¶ 49.) No claim was asserted by Jennings for discrimination or retaliation.

On August 8, 2023, Appellees filed a motion to compel discovery and for sanctions. (JA 7.) Among other matters, the motion challenged Jennings' failure to provide in his interrogatory answers any computation or estimate of economic-loss damages with an explanation of the factual basis. He only claimed that he had "lost four years of progress" toward the Ph.D. degree. (JA 725, 736-737.)

At a hearing on May 18, 2023, the lower court ordered that, due to Jennings' continued failure to provide a substantive response, Jennings could not present at trial evidence of economic-loss damages beyond that in his interrogatory answer on damages (JA 736-37) – which was none. (JA 761.) Jennings does not challenge this Order in his Brief. (*See* Jennings Br. at i.)

Although Jennings' Count III alleged that the University negligently supervised Dr. Owolabi, Jennings never submitted any expert report on the standard

of care of universities in supervising faculty, either generally or with respect to comprehensive examinations. (JA 670-671.)

On October 24, 2023, Appellees filed a motion for summary judgment on all counts (JA 122-158), with extensive supporting materials. (JA 159-528.) Appellees also filed a detailed, 153-paragraph Statement of Material Undisputed Facts ("SMUF"). (JA 85-120.)

Jennings filed an opposition brief (JA 529-550), and responses to the Appellees' SMUF ("RSMUF"). (JA 551-559.) Jennings did not dispute or challenge the vast majority of the factual assertions in the SMUF. (JA 622.)

In a thorough, 29-page Order (dated March 18, 2024), the trial judge (Judge Shana Frost Matini) granted summary judgment to Appellees on all but one of Jennings' claims. (JA 648-676.)

The only surviving claim was Jennings' contract claim that his examination in Mathematical Methods, given by Dr. Hubsch from the Physics Department, was not "administered" by faculty in the Department of Mechanical Engineering as allegedly required by written rules of the University's Graduate School and a Department Handbook. (JA 659-662.) Dr. Hubsch had been Jennings' "instructor of record" in Mathematical Methods. (JA 102, SMUF ¶ 66; JA 554, RSMUF ¶ 66.)

The parties then prepared pre-trial submissions on the surviving, Hubsch-related claim. On September 12, 2024, the court below granted the University's *in*

limine motion to exclude any evidence of economic-loss damages beyond what Jennings produced in discovery, and to limit the claim to "nominal damages" to "the extent that "no such evidence was proffered." (JA 769, *In Limine* Order.) This was based on Jennings' failure during discovery to provide any computation or evidence of economic-loss damages on the grounds that Dr. Hubsch – Jennings' "instructor of record" – prepared the examination. (JA 678.) The court also ruled that no contract claim could be made for emotional-distress damages (id.), and Jennings does not challenge that ruling on appeal.

At the pretrial conference held on September 16, 2024, Jennings (through counsel) voluntarily dismissed the Hubsch-related contract claim. (JA 12.) Jennings wrote in his initial Appellant's Brief (filed August 6, 2025) (at 28) ("Jennings Initial Br.") that he "elected not to proceed to trial," and explained that he did so because he "could only recover nominal damages."

Once the Hubsch claim was voluntarily dismissed, there were no remaining claims, and the lower court's rulings were final. *See* Waetzig v. Halliburton Energy Services, Inc., 605 U.S. 305, 318 (2025). Jennings filed a Notice of Appeal on October 14, 2024. (JA 770.)

COUNTER-STATEMENT OF THE FACTS

Enrollment. Jennings enrolled at the University in January 2017 as a Ph.D. student in the Department. (JA 89, SMUF ¶ 4; JA 551, RSMUF ¶ 4.)

The Governing Rules. Jennings' studies at the Department were subject to the written Rules and Regulations for the Pursuit of Academic Degrees in the Graduate School (the "GS Rules") (JA 366-461), and the Department's Handbook ("Handbook") (JA463-472). (JA 91, SMUF ¶¶ 11-12; JA 552, RSMUF ¶¶ 11-12.)

Under the GS Rules and the Handbook, to earn the Ph.D. degree, students had to first pass all required courses and then pass multi-subject comprehensive examinations. (JA 92, SMUF ¶ 14; JA 552, RSMUF ¶ 14.) Both the GS Rules (JA 366-461) and the Handbook (JA 466) stated that students who fail the comprehensive examinations twice will be dismissed from the Ph.D. program. (JA 112, SMUF ¶ 116; JA 557, RSMUF ¶ 116.)

The GS Rules state that the comprehensive exams were to be "administered by the Graduate Faculty of the department," and the Handbook similarly states that the comprehensive examinations were to be "administered and supervised by the department." (JA 92, SMUF ¶¶ 15-16; JA 552, RSMUF ¶¶ 15-16; JA 388, 466.) Neither the GS Rules nor the Handbook contain any requirement that only "instructors of record" may prepare, grade, or administer the comprehensive examinations. (Id.)

It was undisputed that there was no "common policy" to use only instructors of record, because the purpose of a comprehensive examination in a subject is not to "test a course" but rather to demonstrate "minimal competence over a disciplinary

area, which should be universal." (JA 96, SMUF ¶ 35; JA 553, RSMUF ¶ 35; JA 251-252, Williams Tr. 18-19.)

The 2013 Procedures. Jennings claims in his Brief (and in his post-discovery Declaration in the court below) that he "understood" before he enrolled that the University would abide by an internal Department guideline issued in September 2013 (the "2013 Procedures") (JA 208-209). (Jennings Br. 4; JA 563, Jennings Decl. ¶ 9.) This guideline provided that the upcoming comprehensive examinations in Spring 2014 should be given by "instructors of record."[1] (JA 208, ¶ 3.)

However, at his deposition, Jennings admitted that he never saw or was aware of the 2013 Procedures before or during his enrollment at the University (JA 169, Jennings Tr. 42-43), and this fact was undisputed below. (JA 97, SMUF ¶ 41; JA 553, RSMUF ¶ 41.) The 2013 Procedures were not distributed to graduate students generally or to Jennings in particular. (Id.)

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[1] It was undisputed that the 2013 Procedures were issued for the February 2014 comprehensive examination. (JA 93, SMUF ¶ 21; JA 552, RSMUF ¶ 21.) It is also undisputed that there was no "custom" to use only instructors of record. Specifically, in all comprehensive examinations given since September 2013, faculty other than "instructors of record" examined students in one or more subjects. (JA 93, SMUF ¶ 24; JA 552, RSMUF ¶ 24.) It was also undisputed that, after September 2013, the Department faculty adopted different internal procedures for subsequent comprehensive examinations, none of which required that only "instructors of record" could examine students. (JA 93-94, SMUF ¶¶ 24-34; JA 552-553, RSMUF ¶¶ 24-34.)

Jennings claimed in Count I of the Complaint that the failure to use only "instructors of record" constituted a breach of contract. (JA 16-28, Compl. ¶¶ 12, 15, 25, 32, 39, 45, 50.) The lower court granted summary judgment to the University on this claim, finding that the undisputed evidence showed that the 2013 Procedures were only "internal procedures" to be used in 2014 but not afterwards, and Jennings never knew or saw them. (JA 656-57; *see* n.1, *supra*.)

The lower court also found that there was no breach of the duty of good faith and fair dealing on the University's part "by failing to do something that it had no obligation to do." (JA 658-659.) Jennings never presented any evidence or argument that the use of examiners who were not "instructors of record" undermined any requirement in the GS Rules or the Handbook.

On appeal, Jennings no longer claims that the 2013 Procedures had contractual force on their own: "they were not literal contract terms." (Jennings Initial Br. 34.) He argues only that the failure to use "instructors of record" breached the implied contractual duty of good faith and fair dealing. (Jennings Br. 17.)

Dr. Smith's pre-enrollment discussion with Jennings. Jennings spoke with Dr. Sonya Smith (his prospective research advisor) before enrolling in 2017, who told him that in the past, comprehensive examinations had been given by "instructors of record." (JA 98, SMUF ¶ 47.) However, Jennings admitted at his deposition that Dr. Smith never promised him "in words or substance" that he would be examined

in the comprehensive examinations only by "instructors of record." (JA 98, SMUF ¶ 47; JA 553, RSMUF ¶ 47; JA 173, Jennings Tr. 58.) (*See* JA 97-99, SMUF ¶¶ 43, 46-53; JA 553-554, RSMUF ¶¶ 43, 46-53.) The contrary assertions in Jennings' Brief ignore these admissions.

Jennings also admitted that he did not rely on Dr. Smith's statement when deciding to enroll at the University, and that he would have enrolled had Dr. Smith not made her statement. (JA 99, SMUF ¶ 54; JA 554, RSMUF ¶ 54.) Dr. Smith was not the Graduate Program Director or Department Chair then or while Jennings was a Ph.D. student, and Jennings knew that she had no authority over how the Ph.D. program was run. (JA 89, 97, SMUF ¶¶ 3, 38, 43; JA 551, 553, RSMUF ¶¶ 38, 43.)

The lower court granted summary judgment to the University on Jennings' promissory-estoppel claim in Count II of the Complaint, which was based on his conversation with Dr. Smith. The court did so for two reasons. First, as a matter of law, it ruled that there can be no claim for promissory estoppel since there was an undisputed express contract (the GS Rules and Handbook). (JA 669.) Second, it found that Dr. Smith's statements were too "indefinite" to be an enforceable promise. (Id.)

Selection of Examiners. While serving as the Graduate Program Director for the Department from Fall 2016 until Fall 2020, Dr. Owolabi was responsible for

organizing the comprehensive examinations for Ph.D. students in the Department. (JA 89, SMUF ¶ 3; JA 551, RSMUF ¶ 3.)

It was undisputed that, in Fall 2019, Dr. Owolabi sent a list of examiners to Jennings in advance of the comprehensive examinations, and Jennings made a deliberate decision to not object even though some were not his "instructors of record." (JA 101-102, JA 110, SMUF ¶¶ 61, 63, 104, 106; JA 554, JA0556, RSMUF ¶¶ 61, 63, 104, 106.) The same occurred in Spring 2020. (JA 110, SMUF ¶¶ 104, 107; JA 556, RSMUF ¶¶ 104, 107.) The University argued below that Jennings thus waived any objection to the selection of examiners (JA 143-144), but the lower court disagreed. (JA 661.)

There were multiple, undisputed reasons why it was impractical or impossible for the examiners to consist only of "instructors of record" in Jennings' case and generally. (JA 104-110, SMUF ¶¶ 75, 79, 105; JA 555-556, RSMUF ¶¶ 75, 79, 105; *see* JA 361, Owolabi Decl. ¶¶ 18, 19, 22.) For example, the different students taking the comprehensive examinations along with Jennings had different instructors for Advanced Dynamics; Jennings' "instructor of record" in this subject was disqualified due to a conflict with another student taking the examination, and Dr. Warner was selected as the examiner because he was the only faculty member with a Ph.D. in Advanced Dynamics and he had previously given the comprehensive

examination in that subject the prior year.[2] (JA 104-105, SMUF ¶¶ 75-77; JA 555, RSMUF ¶¶ 75-77.)

Dr. Hubsch. One of the examiners in both Fall 2019 and Spring 2020 who failed Jennings was Dr. Hubsch, from the Physics Department, who had been Jennings' instructor of record for the course on Mathematical Methods. (JA 103-104, SMUF ¶¶ 67-72; JA 554, RSMUF ¶¶ 67-72.) The Department's "longstanding practice" was to have Dr. Hubsch teach this course to Mechanical Engineering Ph.D. students and give the comprehensive examination. (JA 103, SMUF ¶ 67; JA 554, RSMUF ¶ 554.) In his interrogatory answers (but not the Complaint), Jennings alleged that this was improper because the GS Rules and Handbook required faculty in the Department to "administer" comprehensive examinations (JA 92, SMUF ¶ 16), and Dr. Hubsch was from a different Department. (JA 502.)

The court below denied summary judgment to the University on Jennings' Hubsch claim because it found the term "administer" to be "ambiguous." (JA 660-661.) The court reasoned that the term could be interpreted to mean either to create

[2] More generally, a repeated problem was that there were often multiple students taking the same comprehensive examinations who had different "instructors of record." (*See* JA 93-94, JA0104-105, SMUF ¶¶ 23-24, 75, 79; JA 552, 555, RSMUF ¶¶ 23-24, 75, 79.) In other cases, the "instructors of record" had left the University before the student took the comprehensive examinations. (Id.)

and grade an examination, or to "proctor" it.[3] (Id.)

Jennings voluntarily dismissed the Hubsch-related contract claim at the pre-trial conference. (*See* p. 6, *supra*.) Unaccountably, Jennings includes argument on this voluntarily dismissed and abandoned claim in his Brief (at 3, 7, 19).

The Fall 2019 Comprehensive Examination in Continuum Mechanics. Jennings argues in a single sentence that Dr. Owolabi breached the duty of good faith and fair dealing during the Fall 2019 comprehensive examination in Continuum Mechanics when he allegedly "berated an examinee," and subsequently changed the examination from open-book to closed-book in the Spring 2020 examination. (Jennings Br. 18.) This is based on Jennings' claim that Dr. Owolabi loudly accused *another* student (not Jennings) of cheating during the Fall 2019 examination. (JA 106, SMUF ¶ 86; JA 555, RSMUF ¶ 86.) It was undisputed that, to prevent a recurrence of cheating, Dr. Owolabi exercised his examiner's discretion to change the format of the examination in Spring 2020 to a closed-book examination. (JA 111, SMUF ¶ 110; JA 556, RSMUF ¶ 110.)

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[3] The University argued that this claimed ambiguity was irrelevant because *Jennings* understood the term "administer" to mean "proctor." (JA 660-661; *see* JA 171, Jennings Tr. 52:17-22.) It was undisputed that the Mathematical Methods examination in Fall 2019 was proctored by a member of the Department faculty (Dr. Owolabi) (JA 102, SMUF ¶ 65; JA 554, RSMUF ¶ 65), and the examination in Spring 2020 was proctored at Jennings' request by the Office of Disability Services. (JA 109, SMUF ¶ 103; JA 556, RSMUF ¶ 103.)

The lower court found that, "given that it is undisputed that Dr. Owolabi discovered that a student was cheating, the Court cannot find that 'there was no rational basis' for Dr. Owolabi's interruption of the exam or the subsequent decision to change the format of the examination from open-book, open-note to closed-book, open-note." (JA 664.)

As the lower court found, there was no evidence that Jennings or anyone else reported Dr. Owolabi's alleged conduct during this examination session to University officials. (JA 654; *see* JA 106, SMUF ¶ 86; JA 555, RSMUF ¶ 86.)

That was one basis for the lower court's grant of summary judgment to the University on Jennings' claim in Count III that the University negligently supervised Dr. Owolabi. (JA 673.) The court's other grounds were that (a) this claim was legally flawed because it was premised on an alleged breach of a non-existent contract to use only "instructors of record," and (b) Jennings presented no expert testimony, as required, on the standard of care for the University's supervision of a faculty member's conduct. (JA 671-672.)

Other contract claims about the comprehensive examinations. Jennings includes in his Brief a laundry list of other alleged breaches of the duty of good faith and fair dealing. (Jennings Br. 18-19.) He does so only in single-sentence assertions that do not even try to explain why the lower court's rulings on these points were wrong. (Id.)

For example, Jennings' Brief asserts in a single sentence that University failed to allow him to retain copies of his answers to the Fall 2019 examinations so that he could use them to study, allegedly in breach of the duty of good faith and fair dealing. (Jennings Br. 18.) The lower court rejected this claim because the undisputed evidence showed that no express contract required the return of copies; in practice it was "up to the professor" whether to share a copy; and the University encouraged Jennings to meet with examiners to go over his answers and Jennings admitted at his deposition that, when he did so, he was shown his answers. (JA 665.) All this was undisputed. (JA 107, SMUF ¶¶ 90-92; JA 555, RSMUF ¶¶ 90-92.)

Jennings also argues, in a single sentence, that Dr. Smith "provided inadequate advising for to Plaintiff" because, he claims, many if not all of Dr. Smith's students were "failed and dismissed" by the University. (Jennings Br. 18-19.) The University explained below that this claim of educational malpractice is legally baseless, and that the claim was never asserted in the Complaint below. (JA 625.) The lower court found that the claim was not supported by the record. (JA 667.) No evidence was presented relating to Dr. Smith's advising practices. (*See* JA 113, SMUF ¶¶ 118-121; JA 557, RSMUF ¶¶ 118-121.)

Jennings also alleges in his Brief (at 7, 18) that two examiners (Drs. Warner and Yilmaz) did not provide him in advance with notice of "the material that would be covered" on their respective comprehensive examinations. Jennings based this

on his post-discovery Declaration. (JA 565, Jennings Decl. ¶¶ 12-13.) The lower court rejected this argument because Jennings admitted at his deposition that Drs. Warner and Yilmaz did provide that information to Jennings before their respective examinations. (JA 663; JA 104, 110-111, SMUF ¶¶ 73, 108, 109; JA 554, RSMUF ¶¶ 73, 108; *see* JA 187, 192, Jennings Tr. 120-121, 131-134, 147-148.)

Dismissal. Jennings failed four of the five core subject examinations in each of his two attempts at the comprehensive examination. (JA 107, SMUF ¶ 90; JA 555, RSMUF ¶ 90; JA 111, SMUF ¶ 111; JA 556, RSMUF ¶ 111.) The examination committee determined that Jennings failed the Fall 2019 and Spring 2020 comprehensive examinations overall. (JA 107, 112, SMUF ¶¶ 90, 115-116; JA 555-557, RSMUF ¶¶ 90, 115-116.)

Because Jennings failed the comprehensive examinations twice, the Dean of the Graduate School (Dr. Williams) dismissed Jennings from the doctoral program in May 2020, pursuant to Article VI, Section 7 of the GS Rules. (JA 112, SMUF ¶ 116; JA 556-557, RSMUF ¶ 116; JA 388.)

Mediation. The GS Rules provide that students can challenge their dismissal through a grievance process. (JA 115, SMUF ¶ 136; JA 558, RSMUF ¶ 136.) That process begins with an informal mediation. (JA 391-392, MSJ Ex. 7A, art. VIII, §§ 1, 2, at 25-26; JA 450-451, MSJ Ex. 7B, art. VIII, §§ 1, 2, at 33-34.)

Jennings filed a grievance on or about June 1, 2020 to appeal his dismissal,

and the Graduate School's Associate Dean Ellison the next day explained the appeal process to him. (JA 115, SMUF ¶ 137; JA 558, RSMUF ¶ 137). A mediation between Jennings and the Department occurred on September 3, 2020, but no resolution was reached. (Id.)

In a single sentence in his Brief, Jennings complains that, in bad faith, he was not provided "written guidelines" for the informal mediation process, and was not allowed to bring an advisor to the mediation session. (Jennings Br. 8.) There was no evidence that any mediation "guidelines" existed beyond the GS Rules. (*See* JA 627.)

The lower court rejected these claims because Jennings "failed to present evidence that creates an obligation for Howard to provide any additional mediation guidelines or permit Plaintiff to bring an advisor to the mediation." (JA 666.) Jennings identifies no such evidence in his Brief.

Jennings' Brief also argues, in a single sentence, that the University acted in bad faith because it conducted the mediation session in a "condescending, insulting, and disrespectful manner." (Jennings Br. 8-9.) The lower court rejected this claim because "statements … made by a party during the cour[se] of settlement negotiations are not admissible at trial." (JA 666, *quoting* Lively v. Flexible Packaging Ass'n, 930 A.2d 984, 994 (D.C. 2007)). Jennings does not address this ruling in his Brief or even attempt to show it was error.

Next steps in the grievance. After the unsuccessful mediation, Jennings' grievance proceeded to the Student Grievance Committee ("SGC"). (JA 116, SMUF ¶ 137; JA 558, RSMUF ¶ 137.) The SGC heard Jennings' appeal at a hearing, met with various faculty members in the Department, and made a recommendation to Dean Williams. (JA 115-117, SMUF ¶¶ 137, 141, 143; JA 558, RSMUF ¶¶ 137, 141, 143.) Dean Williams denied Jennings' appeal on or about December 11, 2020. (JA 118, SMUF ¶ 151; JA 558, RSMUF ¶ 151.)

Before dismissing the appeal, Dean Williams went above and beyond the requirements of the GS Rules when she asked independent reviewers at peer institutions to review Jennings' written examination answers on a "double-blind" basis. (JA 117, SMUF ¶ 147; JA 558, RSMUF ¶ 147.) It was undisputed that the reviewers' overall assessment was that Jennings fell short of the minimal competency expected for a student to qualify for candidacy for the Ph.D. degree. (Id.) It was undisputed that the University had authority to use a double-blind review as a tool in deciding appeals. (JA 118, SMUF ¶ 149; JA 558, RSMUF ¶ 149.)

In a single sentence in his Brief, Jennings argues that the University did not conform to the GS Rules because it failed to provide him with a copy of the SGC's recommendation, and in another sentence he claims that in a settlement communication the University improperly conditioned disclosure of the SGC recommendation on the release of all claims. (Jennings Br. 10.) The lower court

granted summary judgment to the University on these claims on grounds that (a) "its rules do not require disclosure of the [SGC's] recommendation" (JA 667), and (b) settlement communications from the mediation are "not admissible." (JA 666-667.) It was undisputed that the GS Rules did not require the University to "share" the SGC recommendation with Jennings because the "expectation is that the recommendation is privileged." (JA 117, SMUF ¶ 145; JA 558, RSMUF ¶ 145.) Jennings does not respond in his Brief to the court's ruling that mediation positions are inadmissible. (JA 666.)

Tortious Interference. Jennings alleged in Count IV that Dr. Owolabi tortiously interfered with his business relations with the University by not using only "instructors of record" as examiners. (JA 27-28, Compl. ¶¶ 48-51.) Jennings did not include in the Complaint any claim that Dr. Owolabi also engaged in tortious interference when he allegedly "disrupt[ed] one of Jennings' examination proceedings by berating a fellow student mid-exam." (JA 549; *see* Jennings Br. 42-43.) That claim was first made by Jennings long after the close of discovery, in his opposition to the Appellees' motion for summary judgment. (JA 489.)

The claim of tortious interference, based on using some examiners who were not "instructors of record," attacks the same conduct as Jennings' contract claim. (JA 23, Compl. ¶ 32.) The lower court ruled that, although "it is undisputed that [Jennings] had a contract with Howard, and that Dr. Owolabi knew about that

contract, it is also undisputed that the 2013 Procedures were not part of the parties' contractual agreement." (JA 674.) Therefore, the court ruled that "Dr. Owolabi could not interfere with a non-existent contract." (Id.)

The lower court further found no evidence that Dr. Owolabi acted with malice. (JA 674.) The undisputed evidence showed that Dr. Owolabi did not believe there was a requirement to use only "instructors of record" for the comprehensive examinations in Fall 2019 or Spring 2020. Specifically, it was undisputed that the 2013 Procedures had not been followed in Spring or Fall 2014, or for any subsequent exams. (*See* n.1, *supra*.) The Department's graduate faculty did not discuss the 2013 Procedures when it adopted different comprehensive-examination procedures in December 2014 and February 2017. (JA 94, SMUF ¶¶ 26-30; JA 552-553, RSMUF ¶¶ 26-30.) In January 2017, Dr. Owolabi wrote of his understanding that "at present, there is no document detailing the candidacy exam format for our Department." (JA 95, SMUF ¶ 29; JA 552, RSMUF ¶ 29.)

The undisputed evidence also established that Dr. Owolabi did not have any control over the other examiners' preparation and evaluation of the examinations. (JA 100-101, JA0103, JA 111, SMUF ¶¶ 59-60, 69, 109; JA 554, JA 556, RSMUF ¶¶ 59, 69, 109.) The lower court thus ruled that there was no evidence that Dr. Owolabi could have known with any certainty the "impact" of his selection of examiners on Jennings' ability to pass the comprehensive examinations. (JA 675.)

SUMMARY OF ARGUMENT

The University properly exercised its academic judgment and contract rights to dismiss Jennings for his two-time failure to pass the comprehensive examinations. The courts give such university actions broad judicial deference, absent bad faith or arbitrary conduct.

The lower court properly granted summary judgment to the Appellees on all but one of the claims. The sole surviving claim relating to Dr. Hubsch's examination was voluntarily dismissed by Jennings in the lower court, and that abandoned claim (or any associated damages thereunder) should not be considered on appeal.

Jennings argues that disputed issues of fact exist on numerous matters, but that is wrong. Jennings admitted the vast majority of facts listed by Appellees in their SMUF; Jennings admitted many more at his deposition; and what little else he offers is inaccurate on its face or immaterial. There are no material, genuinely disputed facts. While Jennings' Brief maligns the University, and Dr. Owolabi in particular, the undisputed evidence refutes those arguments.

The lower court correctly determined that there was no express contract requiring the University to use only "instructors of record" for Jennings' comprehensive examinations. Jennings does not dispute that ruling on appeal.

Instead, Jennings argues that such a new duty, to use only "instructors of record," should be imposed on the University under the implied duty of good faith

and fair dealing. That is baseless for two reasons. First, the courts do not impose under the rubric of "good faith" entirely new obligations that are not needed to preserve the parties' rights under their express contract. Second, Jennings points to no express contractual requirement that would be undermined or compromised by using other instructors, and Jennings suggested none below.

Jennings' other contract claims were each presented in one-sentence assertions. Such perfunctory treatment is insufficient on appeal, and those claims should be deemed to have been waived. In any event, the lower court's rulings on these other contract claims were sound.

Jennings' claim that the University was bound under the doctrine of "promissory estoppel" to use only instructors of record was properly rejected by the lower court. As a matter of law, there can be no claim for "promissory estoppel" where, as here, the parties have an express contract (the GS Rules and Handbook). Also, as a matter of undisputed fact, there was no definite "promise" made, as the lower court ruled. Instead, only a vague statement was made by one professor (who was not the Department Chair or Graduate Program Director) about what had happened sometime in the past, with no promise made "in words or substance" that the same would be done in Jennings' case. The lower court correctly rejected the promissory-estoppel claim for both reasons.

The lower court also correctly granted summary judgment to the University

on Jennings' claim for negligent supervision of Dr. Owolabi. As a matter of law, no such claim can be brought for Dr. Owolabi's failure to use only "instructors of record" as examiners, because there was no such contractual requirement. Jennings also failed to advance any expert evidence on the University's standard of care, which was required given the professional judgment required in the unique academic field where great deference is given to faculty's academic decisions and where faculty have grievance rights and academic freedom. Finally, there was also no negligent supervision, as shown by the undisputed evidence.

Likewise, the lower court correctly granted summary judgment on the claim against Dr. Owolabi for tortious interference. He did not "interfere" with a contractual right to use only "instructors of record" because there was no such contract right. The undisputed evidence refutes Jennings' other allegations of tortious interference. This Court should affirm the judgment below.

ARGUMENT

I. THE STANDARD OF REVIEW

Appellees agree with Jennings that that this Court reviews *de novo* the grant of a motion for summary judgment. (Jennings Br. 15.)

The standards for summary judgment are well established. The Superior Court should grant summary judgment when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a

matter of law." D.C. Super. Ct. R. Civ. P. 56(a). While all inferences should be drawn in favor of the non-moving party, that non-moving party cannot avoid summary judgment by tortured contentions, but only with proof that "reasonable jurors could find by a preponderance of the evidence" entitles the plaintiff to a verdict. Johnson v. Washington Gas Light Co., 109 A.3d 1118, 1119 (D.C. 2015) (*quoting* Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)).

Self-serving and conclusory statements do not create a genuine issue of material fact. McFarland v. George Washington University, 935 A.2d 337, 349 (D.C. 2007).

The lower court's ruling can be affirmed on the basis of any evidence in the record, even if different than the rationale described by the lower court. Brown v. Hornstein, 669 A.2d 139, 144 n.5 (D.C. 1996).

This Court reviews a "trial court's discovery and evidentiary rulings for abuse of discretion." Murray v. Motorola, Inc., 339 A.3d 152, 168 (D.C. 2025); Oh v. National Capital Revitalization Corp., 7 A.3d 997, 1009 n.21 (D.C. 2010) ("We review a trial court's rulings on motions *in limine* to exclude evidence for abuse of discretion").

Points that Jennings did not raise in his appeal brief are waived. Rose v. United States, 629 A.2d 526, 535 (D.C. 1993).

"Where a party generally raises an issue on appeal without supporting argument, [the Court] deem[s] [the issue] abandoned." D.C. Appleseed Ctr. for Law and Just., Inc. v. D.C. Dep't of Ins., 214 A.3d 978, 990 (D.C. 2019) (*quoting* Graham v. United States, 12 A.3d 1159, 1167 n.10 (D.C. 2011)).

II. JENNINGS CANNOT DISPUTE FACTS THAT HE ADMITTED AT HIS DEPOSITION OR FAILED TO DISPUTE WITH EVIDENCE IN HIS RESPONSE TO APPELLEES' SMUF

As noted above, in the lower court Jennings admitted or did not dispute the vast majority of the 153 paragraphs in Appellees' SMUF.[4] (JA 551-558.) Jennings also did not "cit[e] to particular parts or materials in the record" supporting his denial of a handful of them, as required by Superior Court Rule of Civil Procedure 56(c)(1)(A). Therefore, all purported "denials" should be treated as "undisputed" under Superior Court Rule of Civil Procedure 56(e)(2). (*See* JA 651.)

In addition, most of Jennings' "Statement of Facts" in his Brief (at 12-25) are drawn from a Declaration he submitted after the close of discovery (JA 561-570), which in turn is drawn nearly *verbatim* from the Complaint. (JA 15-22.) However, as set forth above, many of the assertions in the Jennings Declaration are contrary to

[4] The few denials are based mainly on objections that deposition testimony "speaks for itself," but with no explanation or citation to anything in the deposition transcripts that is inconsistent with the description in the SMUF. (JA 551-558, SMUF ¶¶ 18, 42, 74, 100, 101, 109, 117, 140, 153.) Jennings responded that he "lacks personal knowledge" of other SMUF paragraphs, but he did not dispute those SMUF paragraphs with evidence as required under Super. Ct. R. Civ. P. 56(c)(1) & (e)(2).

admissions made by Jennings in his deposition testimony. Those assertions are barred by the sham-affidavit rule. Sibley v. St. Albans Sch., 134 A. 3d 789, 813 (D.C. 2016).

III. THE LOWER COURT PROPERLY GRANTED SUMMARY JUDGMENT ON JENNINGS' CLAIMS IN COUNT I FOR BREACH OF CONTRACT

A. GENERAL PRINCIPLES

Contract claims. For a breach of contract claim, a plaintiff must prove "(1) a valid contract between the parties; (2) an obligation or duty arising out of contract; (3) a breach of that duty; and (4) damages caused by the breach." Tsintalos Realty Co. v. Mendez, 984 A.2d 181, 187 (D.C. 2009). (JA 656.)

While courts have ruled that the relationship between a university and its students is "contractual in nature," Manago v. District of Columbia, 934 A.2d 925, 927 (D.C. 2007), whether a specific university policy gives rise to contractual rights "depend[s] upon general principles of contract construction." Basch v. George Washington University, 370 A.2d 1364, 1366 (D.C. 1977).

For there to be a contract, the parties must "'(1) express an intent to be bound, (2) agree to all material terms, and (3) assume material obligations.'" Dyer v. Bilaal, 983 A.2d 349, 356 (D.C. 2009). This is consistent with the general rule that, "[i]n order to form a binding agreement, both parties must have the distinct intention to

be bound." Edmund J. Flynn Co. v. LaVay, 431 A.2d 543, 547 (D.C. 1991). The lower court applied these principles. (JA 656.)

Jennings had the burden of proof to show that a defendant intended to be bound. Jack Baker, Inc. v. Off. Space Dev. Corp., 664 A.2d 1236, 1238 (D.C. 1995).

Substantial compliance. "Where a university has adopted rules or Procedures in [academic] areas, the courts will only intervene where there has not been substantial compliance with those procedures." Brown v. George Washington University, 802 A.2d 382, 385 (D.C. 2002). "For a breach to be material, it must be so serious to destroy the essential object of the agreement." 3511 13th Street Tenants' Ass'n v. 3511 13th Street. M.W. Residences, LLC, 922 A.2d 439, 445 (D.C. 2007) (*quoting* Ranes v. American Family Mut. Ins. Co., 219 Wis. 2d 49, 580 N.W.2d 197, 200 (1998)). *See* Hajjar-Nejad v. George Washington Univ., 37 F. Supp. 3d 90, 120-21 (D.D.C. 2014).

Duty of good faith and fair dealing. The University's contracts create an implied duty of good faith and fair dealing. This means that "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." Paul v. Howard University, 754 A.2d 297, 310 (D.C. 2000) (*quoting* Hais v. Smith, 547 A.2d 986, 987 (D.C. 1988)).

As the court below explained, to "state a claim for breach of the implied duty of good faith and fair dealing, a plaintiff must allege either bad faith or conduct that

is arbitrary and capricious." (JA 657, *quoting* Wright v. Howard University, 60 A.3d 749, 754 (D.C. 2013).) To create a triable issue of fact, "a party must present evidence not simply of negligence or lack of diligence, but of arbitrary and capricious action." (JA, 657-58, *quoting* Allworth v. Howard University, 890 A.2d 194, 202 (D.C. 2006).)

Judicial deference. The court below correctly explained that broad deference is due to universities' decisions about academic dismissals of students: "in cases involving academic dismissal, educational institutions will be entitled to summary judgment unless the plaintiff can provide some evidence from which a fact finder 'could conclude that there was no rational basis for the decision or that it was motivated by bad faith or ill will unrelated to academic performance.'" (JA 658, *quoting* Alden v. Georgetown Univ., 734 A.2d 1103, 1109 (D.C. 1999) (citation omitted)). This is consistent with this Court's other rulings about judicial deference in university cases.[5] (JA 658.) In particular, "a judgment by school officials that a student has not performed adequately to meet the school's academic standards is a determination that usually calls for judicial deference."

[5] *See* Wright, 60 A.3d at 755 ("the implied covenant of good faith and fair dealing should not be interpreted so broadly that courts end up 'substitut[ing] their judgment improperly for the academic judgment of the school'"); Allworth, 890 A.2d at 202 ("in the university context where concepts of academic freedom and academic judgment are so important[,] . . . courts generally give deference to the discretion exercised by university officials").

Alden, 734 A.2d 1103 at 1108 (*citing* Kraft v. William Alanson White Psychiatric Found., 498 A.2d 1145, 1149 (D.C. 1985)). *See* Jung v. George Washington Univ., 875 A.2d 95, 108 (D.C.) (same), *amended op*., 883 A.2d 104 (D.C. 2005).

B. THE 2013 PROCEDURES WERE NOT CONTRACTUALLY BINDING ON THE UNIVERSITY

The lower court found that the 2013 Procedures "were not part of the parties' contractual arrangement." (JA 656.) It was undisputed that Jennings never knew of the 2013 Procedures while at the University and they were never circulated to students. (Id.; *see* JA 97, 99-100, SMUF ¶ 41, 55-56.) Therefore, Jennings could not have intended to be bound by them.[6] Dyer, 983 A.2d 356. (JA 657.) They were non-binding internal guidelines, to be used only in 2013.[7] (*See* p. 8 & n.1, *supra*.)

On appeal, Jennings does not claim that the 2013 Procedures were themselves a contract. (Jennings Initial Br. 34; Jennings Br. 15.) He has therefore abandoned that claim. Rose, 629 A.2d at 535.

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[6] In a similar case, this Court ruled that, "to get to the jury on a claim that the University was contractually bound by policies in [a staff manual, plaintiff] was required to set forth 'specific, probative evidence' . . . that the Manual was given to her or that it was published or distributed to all employees." Clampitt v. American University, 957 A.2d 23, 37 (D.C. 2012) (*quoting* Warren v. Medlantic Health Group, Inc., 936 A.2d 733, 737 (D.C. 2007)).

[7] *See* Moini v. Wrighton, 602 F. Supp. 3d 162, 182 (D.D.C. 2022) (internal university "guidelines" were not "contractually binding on the parties"), *aff'd,* No. 22-7101, 2024 WL 2106214 (D.C. Cir. May 1, 2024)); Richter v. Catholic University, Civ. No. 18-00583 (RJL), 2019 WL 48164, at *3 (D.D.C. Feb. 7, 2019) (academic rules stating a university's "expectations" of students was not a contract).

C. THERE WAS NO DUTY OF GOOD FAITH TO USE ONLY INSTRUCTORS OF RECORD

Instead, Jennings argues that the University's use of some examiners who were not instructors of record breached the contractual duty of good faith. (Jennings Br. 17; *see* Jennings Initial Br. 34.) But Jennings never identifies any contract rights that would be undermined, "destroy[ed] or injur[ed]" by not using only instructors of record. Paul, 754 A.2d at 310.

The "damaged" contract rights could not be the 2013 Procedures because they were not an express contract, as Jennings acknowledged. (Jennings Initial Br. 34; Jennings Br. 15.) As the lower court found, this precluded Jennings' good-faith claim because Jennings "had no contractual right to have his exams administered by only instructors of record," and therefore "Howard did not breach its covenant of good faith and fair dealing by failing to do something it had no obligation to do." (JA 659.) The court explained: "Parties do not breach the implied covenant 'by failing to do something they had no obligation to do' under their written agreement." (JA 659, *quoting* Chambers v. NASA Federal Credit Union, 222 F. Supp. 3d 1, 13 (D.D.C. 2016) (*quoting* Brown v. Sessoms, 774 F.3d 1016, 1025 (D.C. Cir. 2014)). *See* Paul, 754 A.2d at 311 (rejecting bad-faith claim because plaintiff had "no contractual right to receive tenure" and the university "acted within the standards set forth in the handbooks when considering her tenure applications").

Furthermore, the "undisputed" express contracts – namely, the GS Rules and the Department Handbook – did not require only use of "instructors of record." (JA 669; *see* JA 192, SMUF ¶ 15; JA 552, RSMUF ¶ 15.) Those contractual documents required only that examinations be "administered by the Graduate Faculty of the department in which the student is enrolled." (JA 388, GS Rules § 7; JA 466, Dept. Handbook.) There was no evidence or argument presented by Jennings that this express contract (or any other contract) was damaged or undermined in any way when some of Jennings' examiners were not his instructors of record. Paul, 754 A.2d at 310.

Finally, the ruling could be affirmed based on Jennings' undisputed, "deliberate" failure to object contemporaneously to the list of examiners when Dr. Owolabi presented the list. (JA 101-102, 110, SMUF ¶¶ 61, 63, 104-106; JA 554, 556, RSMUF ¶¶ 61, 63, 104-106.) Although the lower court disagreed (JA 661-662), as a matter of law Jennings thereby waived any claim that he was denied proper examiners due to his failure to timely object. Caesar v. Westchester Corp., 280 A.3d 176, 185 (D.C. 2022); Nortel Networks, Inc. v. Gold & Appel Transfer, S.A., 298 F. Supp. 2d 81, 88 (D.D.C. 2004). (*See* JA 143-144.)

D. JENNINGS CANNOT PURSUE ON APPEAL HIS CONTRACT AND DAMAGES CLAIM ABOUT THE EXAMINATION GIVEN BY DR. HUBSCH BECAUSE JENNINGS VOLUNTARILY DISMISSED THAT CLAIM IN THE COURT BELOW

Jennings' Brief appears to assert that, in breach of contract, Dr. Hubsch improperly "administered" Jennings' comprehensive examination in Mathematical Methods.[8] (Jennings Br. 19.) This argument should not be considered because Jennings voluntarily dismissed that claim. (JA 12.) The Hubsch-related claim then became a "nullity," as if the claim "had never been brought." Thoubboron v. Ford Motor Co., 809 A.2d 1204, 1210 (D.C. 2002) (*quoting* Bonneville Assocs. Ltd v. Barram, 165 F.3d 1360, 1364 (Fed. Cir. 1999)). There was no ruling by the court below on the Hubsch claim, and thus there is nothing to appeal.

Similarly, the Court should not consider Jennings' challenge to the lower court's *in limine* ruling that limited his economic-loss damage claim on the Hubsch-related claim. (Jennings Br. 24-29) Since the contract claim was voluntarily dismissed, there is no associated damage claim before this Court.

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[8] The University explained below that, for multiple reasons, there was no breach of contract due to Dr. Hubsch's preparation and grading of the examination and, at the very least, there was substantial compliance and waiver of that claim. (JA 145-146, 623-624.) Most significantly, Jennings understood the term "administered" to mean "proctored" (JA 92-93, SMUF ¶ 18), meaning that he could not have intended to be bound by a different meaning. Dyer, 983 A.2d 356. It was undisputed that the Mathematical Methods examinations were proctored by a Department member or others at Jennings' request. (*See* p. 13 n. 3, *supra*.) Thus, there was no breach of contract.

Even if this Court were to consider the lower court's *in limine* ruling, that ruling was correct and should be affirmed.

As the court explained, "Plaintiff has been asked to explain under oath, the basis for his claim of economic damages" but did not do so. (JA 768, *In Limine* Order, at 3.) Jennings made only the conclusory statement in his interrogatory answers that he had "lost four years of progress" toward his Ph.D. degree and was seeking "compensatory and punitive damages." (JA 725, 736.) But Jennings failed to provide any factual basis for quantifying or estimating the amount or range of his loss. (JA 685-687, 762-763.) He admitted that he has had full-time employment while continuing his Ph.D. studies at the University of Virginia (JA 711-712, Jennings Tr. 197-198) and received 24 credits there for prior graduate work. (JA 200, Jennings Tr. 178.)

There "must be some reasonable basis on which to estimate damages" even if damages need not be "proven with mathematical certainty." Estate of Underwood v. National Credit Union, 665 A.2d 621, 642 (D.C. 1995). Otherwise, if the "proof of damages is vague or speculative, [plaintiff] is entitled only to nominal damages." Garcia v. Llerena, 599 A.2d 1138, 1142 (D.C. 1991). "A jury should never be permitted to guess as to a material element of the case such as damages." Hawthorne v. Canavan, 756 A.2d 397, 401 (D.C. 2000) (*quoting* Jimenez v. Hawk, 683 A.2d 457, 461-62 (D.C. 1996)).

Jennings provided no "reasonable basis" to estimate damages, but at most an unquantified and vague "theory" of delayed academic progress. (Jennings Br. 27-28.) At his earlier deposition, Jennings testified that he would need to rely on an expert to determine his economic-loss damages, but he presented no expert testimony and never indicated that he planned to do so. (JA 688, 710.) For future economic loss, expert testimony is generally required but was lacking here. Croley v. Republican National Committee, 759 A.2d 682, 690 (D.C. 2000) ("where the existence of substantial future economic loss becomes an issue, the use of expert testimony likely would be necessary") (*quoting* D.C. v. Barreteau, 399 A.2d 563, 568 (D.C. 1979)).[9]

Furthermore, any claim for economic-loss damages due to Dr. Hubsch's alleged "administration" of an examination would be too speculative to support a claim. It is undisputed that Dr. Hubsch was the "instructor or record," and had no bias against Jennings. (JA 103-104, SMUF ¶¶ 68-72; JA 554, RSMUF ¶¶ 68-72.) Jennings could only speculate that he would have done better with a different examiner, which would be inconsistent with his claims that he preferred an

[9] Jennings wrongly cites Garcia in support of his contention that lay testimony can be sufficient. (Jennings Br. 25.) The ruling in Garcia did not address the need for expert testimony. The Court in Garcia also affirmed a directed verdict dismissing damage claims where the plaintiff "failed to present evidence of damages upon which the jury could have based an award without resorting to guesswork." 599 A.2d at 1145.

examination to be given by "instructors of record" such as Dr. Hubsch. (*See* JA 691-693.) It was undisputed that Jennings could not name any other professor more suited than Dr. Hubsch to give the examination in Mathematical Methods. (JA 103, SMUF ¶ 68; JA 554, RSMUF ¶ 69.)

E. JENNINGS' LAUNDRY LIST OF OTHER CONTRACT CLAIMS WERE INSUFFICIENTLY ADDRESSED IN HIS APPEAL BRIEF AND ARE MERITLESS

Jennings argues in his Brief that the University breached the implied duty of good faith and fair dealing through a laundry list of actions, each of which is addressed only in a single sentence. (Jennings Br. 7, 8, 10, 18-19.) Jennings made no attempt to address the reasons why the lower court rejected these claims, or to show that its reasoning was flawed.

This Court should therefore dismiss the perfunctory appeal of these rulings. "[I]t is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones." Gabramadhin v. United States, 137 A.3d 178, 187 (D.C. 2016). *See* D.C. Appleseed Ctr., 214 A.3d at 990.[10]

[10] "Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." McFarland, 935 A.2d at 351 (*quoting* Wagner v. Georgetown Univ. Medical Center, 768 A.2d 546, 554 n. 9 (D.C. 2001)); Cunningham v. District of Columbia, 235 A.3d 749, 758 (D.C. 2020) (appellant forfeited an argument contained within a single sentence).

We described above (pp. 14-19) why the lower court properly found that all of the laundry-list claims were baseless, and the court's reasoning was sound. In addition, these claims suffer two additional legal defects which further support the grant of summary judgment.

First, several of the claims allege that Jennings was provided an inadequate education, through (1) "inadequate advising" by Dr. Smith, (2) failure to provide an "adequate overview" of the materials to be covered in the examinations, (3) changing the Continuum Mechanics examination in Spring 2020 to closed book, and (4) failure to allow him to "retain" copies of his examination answers so that he could "meaningfully study and learn from his mistakes." (Jennings Br. 18-19.)

As a matter of law, such claims of an inadequate education (termed "educational malpractice") are not permitted under a contract or tort theory. Crockett v. District of Columbia, Civ. No. 16-1357 (RDM), 2020 WL 1821121, at *13 (D.D.C. Apr. 10, 2020) (*citing* Brantley v. District of Columbia, 640 A.2d 181, 184 (D.C. 1994)). All of these claims could have been dismissed on this ground in addition to the grounds listed by the lower court.[11]

[11] Also, the claim of "inadequate advising" by Dr. Smith was not made in the Complaint and should not be considered. Mosleh v. Howard University, Civ. No. 1:19-cv-0339 (CJN), 2022 WL 898860, at *7 (D.D.C. March 28, 2022) (a plaintiff "cannot substitute new allegations at the summary-judgment stage for those made in the complaint"). *See* Bhatnagar v. New School, Case No. 22-363-cv, 2023 WL 4072930, at *3 (2d Cir. June 20, 2023) ("artful pleading" as a contract claim "cannot be used as an end-run around New York's bar on claims for educational

Second, the lower court correctly found that, under Alden, 734 A.2d at 1109, it was bound to give deference to the University on such academic matters since the University had a rational basis for its actions. (JA 664, 665.) Jennings does not dispute this bedrock principle in his Brief, which applies to these contract claims.

IV. THE COURT BELOW PROPERLY GRANTED SUMMARY JUDGMENT ON JENNINGS' CLAIM OF PROMISSORY ESTOPPEL

Jennings' Count II, for promissory estoppel, alleged that Jennings relied on a promise to use the 2013 Procedures, and the procedures in the GS Rules relating to appeals of dismissal decisions,[12] but the University did not comply with those promises. (JA 25-26, Compl. ¶¶ 39-40.)

To establish a claim of promissory estoppel, a plaintiff must prove "[1] a "promise [2] which reasonably leads the promisee to rely on it to his [or her] detriment, [3] with injustice otherwise not being avoidable." Howard University v. Good Food Services, Inc., 608 A.2d 116, 121 (D.C. 1992) (*quoting* Bender v. Design Store Corp., 404 A.2d 194, 196 (D.C. 1979)). (*See* JA 668.)

The lower court recognized that courts "generally prohibit litigants from

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malpractice"); Soueidan v. St. Louis Univ., 926 F.3d 1029, 1034-1036 (8th Cir. 2019).

[12] Jennings does not elaborate in his Brief (at 21) on his claim of promissory estoppel relating to his appeal procedures. Therefore, he waived that aspect of his appeal. (*See* n.10, *supra*.) In any event, it was undisputed that the University had the authority to use a double-blind review as a tool in deciding appeals. (JA 118, SMUF ¶ 149; JA 558, RSMUF ¶ 149.)

asserting [promissory estoppel] claims when there is an express contract that governs the parties' conduct.'" (JA 669, *quoting* Plesha v. Ferguson, 725 F. Supp. 2d 106, 112 (D.D.C. 2010)). *See* Building Services Co. v. National R.R. Passenger Corp., 305 F. Supp. 2d 85, 95 (D.D.C. 2004 ("District of Columbia law presupposes that an express, enforceable contract is absent when the doctrine of promissory estoppel is applied"); 8 A. Corbin, Corbin on Contracts § 8.11 (1962).

Following this principle, the lower court correctly granted summary judgment to the University on Count II, since "it is undisputed that an express contract – the GS Rules and Department Handbook – govern the rules for the comprehensive examinations and for the grievance procedures." (JA 669.) Thus, the promissory estoppel claim was not legally viable. In his appeal brief, Jennings does not address this basis of the lower court's decision or the case law upon which the court relied (Jennings Br. 16-21), and therefore waived his appeal rights. Rose, 629 A.2d at 535.

The lower court also agreed with the University that any statements by Dr. Smith about use of "instructors of record" were "too indefinite to be enforceable." (JA 669-670.) As the court recognized, "reliance on an indefinite promise is unreasonable." Parnigoni v. St. Columbia's Nursery Sch., 681 F. Supp. 2d 1, 26 (D.D.C. 2010)). *See* Ascom Hasler Mailing Sys. v. U.S. Postal Service, 885 F. Supp. 2d 156, 190 (D.D.C. 2012).

Jennings nonetheless argues that Dr. Smith represented to him that he would be examined by instructors of record. (Jennings Br. 19.) However, the undisputed evidence showed that Dr. Smith did not "promise" Jennings "in words or substance" that he would be examined by "instructors or record" (JA 98, SMUF ¶ 47; JA 553, RSMUF ¶ 47), but only told him "what the policy was at the time." (JA 669-670; JA 98, SMUF ¶¶ 46; JA 553, RSMUF ¶ 46.)[13] However, as the court correctly ruled, the "mere expectancy of a continued course of conduct" is not enough to establish an enforceable promise. Tauber v. Jacobson, 293 A.2d 861, 867 (D.C. 1972). (JA 669-670.)

The undisputed evidence also shows that Plaintiff did not "rely" on the supposed promise about comprehensive examinations "to his detriment." Good Food Services, 608 A.2d at 121. Jennings admitted that he would have enrolled at the University even if Dr. Smith had not made her comment. (JA 99, SMUF ¶ 54; JA 554, RSMUF ¶ 54.) That is inconsistent with detrimental reliance. *See* Ray v. CLH New York Ave, LLC, No. 19-cv-2841-RCL, 2021 WL 3709932, at *16 (D.D.C. Aug. 20, 2021), *appeal dismissed*, No. 21-7092, 2021 WL 9374922 (D.C.

[13] It was also undisputed that Dr. Smith never told Jennings that the policy could not be changed or was binding on the University (JA 98, SMUF ¶¶ 48-49; JA 553, RSMUF ¶¶ 48-49), and she never stated that she was making a "promise." (JA 98, SMUF ¶ 47; JA 553, RSMUF ¶ 47.)

Cir. Dec. 2, 2021) (finding no detrimental reliance where plaintiff testified in his deposition that he would have done the work regardless of the alleged promise).

Jennings also waived any alleged "promise" when he deliberately chose not to object to the list of examiners circulated by Dr. Owolabi. *See* p. 31, *supra*.

The circumstances also show no "injustice." In addition to Jennings' failure to timely object to the list of examiners, it was undisputed that Jennings was examined like all other graduate students who took the comprehensive examinations in Fall 2019 and Spring 2000. (JA 101-102, 110, SMUF ¶¶ 60, 64, 104; JA 554, 556, RSMUF ¶¶ 60, 64, 104.)

V. THE COURT BELOW PROPERLY GRANTED SUMMARY JUDGMENT ON JENNINGS' CLAIM OF NEGLIGENT SUPERVISION IN COUNT III

Jennings alleged in the Complaint that the University negligently supervised Dr. Owolabi when he allegedly breached the 2013 Procedures by designating some examiners who were not "instructors of record." (JA 26, Compl. ¶¶ 45-46.) Jennings also argued that the University negligently supervised Dr. Owolabi by allowing him to continue administering comprehensive examinations after he allegedly "berated another student in the midst of [a comprehensive] exam" in Fall 2019. (JA 546.) As described next, the lower court correctly granted summary judgment to the University on Count III.

A. GENERAL PRINCIPLES

"An employer engages in negligent supervision under D.C. law if it 'knew or should have known its employee behaved in a dangerous or otherwise incompetent manner, and that the employer, armed with that actual or constructive knowledge, failed to adequately supervise the employee.'" Brown v. Sessoms, 774 F.3d at 1025 (*quoting* Godfrey v. Iverson, 559 F.3d 569, 571 (D.C. Cir. 2009). *See* Blair v. District of Columbia, 190 A.3d 212, 229-230 (D.C. 2018); Brown v. Argenbright Sec., Inc., 782 A.2d 752, 760 (D.C. 2001). The plaintiff must also show that the failure to use reasonable care "proximately caused harm to plaintiff." Blair, 190 A.3d at 229.

A plaintiff alleging negligent supervision "bears the burden of presenting evidence 'which establishes the applicable standard of care, demonstrates that this standard has been violated, and develops a causal relationship between the violation and the harm complained of.'" Tarpeh-Doe v. United States, 28 F.3d 120, 123 (D.C. Cir. 1994) (*quoting* Morrison v. MacNamara, 407 A.2d 555, 560 (D.C. 1979)).

A claim for a tort, such as negligent supervision, must rest on a "duty independent of that arising out of" a contract. Choharis v. State Farm & Co., 961 A.2d 1080, 1089 (D.C. 2008). *See* Doe v. American University, Case No. 19-cv-03097, 2020 WL 5593909, at *18 (D.D.C. Sept. 18, 2020) ("A negligence claim that is 'based solely on a breach of duty to fulfill one's obligations under a contract . . .

is duplicative and unsustainable'") (*quoting* Friends Christian High Sch. v. Geneva Fin. Consultants, 39 F. Supp. 3d 58, 63 (D.D.C. 2014)).

B. THE FACTS AND LAW DID NOT SUPPORT THIS CLAIM

The court below correctly granted summary judgment on Count III.

First, Jennings claims in his brief that the University negligently supervised Dr. Owolabi because it knew of a series of complaints about him but took no action. (Jennings Br. 8, 22-23.) This allegation is based on SMUF ¶¶ 130, 133, and 134 (id.), but those paragraphs and others do not (as Jennings alleges) show any inadequate supervision of Dr. Owolabi. It is undisputed that:

- Jennings had "no evidence that the University's response to [a prior student] complaint, or any other complaint about Dr. Owolabi, was inadequate or unreasonable."[14] (JA 114, SMUF ¶ 130; JA 557, RSUMF ¶ 130) (emphasis added.)
- No evidence was presented below that any student prior to Jennings had complained about Dr. Owolabi's administration of comprehensive

[14] Jennings cites to SMUF ¶ 130, part of which was sealed, respecting prior student complaints that did not involve comprehensive examinations. (JA 114, SMUF ¶ 129; JA 557, RSMUF ¶ 129.) Jennings' counsel failed to submit an Appendix with sealed passages, as he had agreed to do. In any event, as noted in the text above, there is no evidence that the University's response to such student complaints was "inadequate or unreasonable." Therefore, nothing about the University's response supports the claim of negligent supervision.

examinations. (JA 114, SMUF ¶ 129; JA 557, RSMUF ¶ 129; JA 363, Owolabi Decl. ¶ 25.)

- No evidence was presented that any student complaints about Dr. Owolabi were meritorious. (JA 115, SMUF ¶ 135; JA 557, RSMUF ¶ 135.)

As the lower court found, there was also no evidence that Dr. Owolabi had a bias against students advised by Dr. Smith, as alleged. (JA 672, 674; *see* JA 363, Owolabi Decl. ¶ 24; JA 113-14, SMUF ¶¶ 118-121, 122-125; JA 557, RSMUF ¶¶ 118-121, 123-125.)

Second, as a matter of law, Dr. Owolabi's claimed failure to follow the 2013 Procedures could not support a negligent-supervision claim because it is dependent on the existence of a contractual breach of those Procedures. (JA 672.) The court cited rulings that explain that a tort claim (including one for negligent supervision) does not exist when based on an alleged contractual violation. Choharis, 961 A.2d at 1089; Doe, 2020 WL 5593909, at *18. (JA 672.) On appeal, Jennings does not challenge this aspect of the court's ruling. (Jennings Br. 21-23.) Therefore, it is conceded. Rose, 629 A.2d at 535.

Third, the lower court correctly ruled that summary judgment was appropriate because expert testimony was required on the University's standard of care in supervising Dr. Owolabi, and none was presented by Jennings. (JA 670-671.) Jennings did not address this part of the court's ruling, and therefore waived it.

Expert testimony is required to establish the standard of care for supervising an activity unless that standard is "within the common, everyday experience of laypersons," Blair, 190 A.3d at 229-230, which is not the case when "the subject is so distinctly related to some science, profession, or occupation." Godfrey, 559 F.3d at 572. The lower court explained that is not the case here because the supervision of professors requires "professional judgment." (JA 671.)

In support, the lower court noted that courts "generally give deference to the discretion exercised by university officials" on academic matters.[15] (JA 671, *quoting* Allworth, 890 A.2d at 202.) In addition, tenured faculty like Dr. Owolabi have both academic freedom as well as hearing and grievance rights before adverse action is taken against them. (JA 115, SMUF ¶ 133; JA 557, RSMUF ¶ 133; JA 364, Owolabi Decl. ¶ 27.) Jennings provided no legal support for his position that expert testimony was not required, and thus conceded the issue. Rose, 629 A.2d at 535.

The lower court's ruling about the need for expert testimony is reviewable only for abuse of its "broad" discretion. Varner, 891 A.2d at 266. (JA 671.)

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[15] *See* Varner v. District of Columbia, 891 A.2d 260, 267 (D.C. 2006) ("questions as to the appropriateness and sufficiency of academic discipline [to students] should not be left to a lay jury to decide without expert testimony"); Prasad v. George Washington University, 390 F. Supp. 3d 1, 38 (D.D.C. 2019) (rejecting student claim for negligent supervision when no expert testimony was presented regarding responses to harassment).

Jennings does not even claim in his Brief that there was abuse of discretion, and there was none.

Fourth, the lower court correctly ruled that there was no evidence that the University "knew or should have known" that Dr. Owolabi allegedly "berated" another student during an examination because that had not been reported. (JA 672-673*, quoting* Brown v. Argenbright, 782 A.2d at 760.) Without actual or constructive University knowledge of this allegedly improper conduct, there can be no claim for negligent supervision based on this or subsequent alleged events. Brown, 782 A.2d at 760. Jennings does not address this ruling in his Brief, and therefore concedes it. Rose, 629 A.2d at 535.

VI. THE LOWER COURT PROPERLY GRANTED SUMMARY JUDGMENT TO DR. OWOLABI ON JENNINGS' CLAIM FOR TORTIOUS INTERFERENCE

Jennings argues in a single paragraph that Dr. Owolabi tortiously interfered with his contractual relations with the University by allegedly sabotaging Jennings' "academic progress," and "interfer[ing] with the contractual relationship" between Jennings and the University that allegedly required compliance with the 2013 Procedures. (Jennings Br. 23.)

A. GENERAL PRINCIPLES

"To establish a claim for tortious interference with business practices, a plaintiff must show the '(1) existence of a valid contractual or business relationship;

(2) [Defendant's] knowledge of the relationship; (3) intentional interference with that relationship [by Defendant]; and (4) resulting damages." (JA 673) (*quoting* Newmyer v. Sidwell Friends Sch., 128 A.3d 1023, 1038-39 (D.C. 2015).) (*See* Jennings Br. 23.)

Dr. Owolabi, as an agent of the University, could only be found liable for tortious interference if he acted with "actual malice or for his own benefit." (JA 673, *quoting* Nickens v. Labor Agency of Metro. Wash., 600 A.2d 813, 820 (D.C. 1991)). Jennings does not disagree.

As the lower court explained, the intent required for a tortious-interference claim can be proven when the defendant "knows that the interference is certain or substantially certain to occur as a result of his action." (JA 674, *quoting* Whitt v. Am. Prop. Constr. P.C., 157 A.3d 196, 202 (D.C. 2017).)

B. THE UNDISPUTED EVIDENCE WARRANTED THE GRANT OF SUMMARY JUDGMENT ON COUNT IV

For four principal reasons, the lower court correctly granted summary judgment to Dr. Owolabi on Count IV.

First, the lower court ruled that Dr. Owolabi could not have tortiously interfered with a contract to use only "instructors of record" because there was no such contract. (JA 674.) As the lower court put it: "Dr. Owolabi could not interfere with a non-existent contract." (Id.) *See* Part III(B) & (C), *supra*.

That ruling is correct, since the existence of a contract is a prerequisite for this

cause of action. Newmyer, 128 A.3d at 1038-39. Jennings now concedes that there was no express contract requiring use of "instructors of record," and as set forth above, nothing created a duty of good faith to use only instructors of record. (*See* Part III(C), *supra*.) There can be no tortious interference when a defendant acted within its rights, as here. Thompson v. HICPAS Inc., 628 F. Supp. 3d 292, 306 (D.D.C. 2022).

Second, the lower court ruled that "even when viewed in the light most favorable to Plaintiff, there is no evidence that Dr. Owolabi acted with malice," although that is a required element of this cause of action against him. (JA 674.)

The court cited the undisputed evidence showing that Dr. Owolabi believed at least two years before Jennings' first comprehensive examination in Fall 2019 that the 2013 Procedures approved for use in 2014 no longer applied, and he sent Jennings the list of examiners ahead of the comprehensive examination with time to "discuss the contents of the exam for the specific course" with the examiners. (JA 674-67.) (*See* JA 93-95, 100-101, 110, SMUF ¶¶ 22-32, 59, 61, 104; JA 552-556, RSUMF ¶¶ 22-32, 59, 61, 104; JA 211-13.) Jennings does not even address these points in his Brief, and therefore he concedes them. *See* Rose, 629 A.2d at 535; n. 10, *supra*.)

Jennings urged below that Dr. Owolabi was biased against him because he had a "misogynistic animus" toward his advisor, Dr. Sonya Smith. (Jennings Br. 5,

14-15.) This canard was put to rest by undisputed evidence in the court below and should be rejected here too. It was undisputed that there was no evidence that Dr. Owolabi ever made "disparaging" or "misogynistic" comments about Dr. Smith. (JA 114, SMUF ¶ 125; JA 557, RSMUF ¶ 125); Dr. Owolabi never failed any of Dr. Smith's students in a course (JA 113, SMUF ¶ 118; JA 557, RSMUF ¶ 118); two of her students did well in courses that Dr. Owolabi taught (JA 113, SMUF ¶ 119; JA 557, RSMUF ¶ 119); and there was no evidence that Dr. Owolabi had ever unfairly graded *any* student's comprehensive examination. (JA 113, SMUF ¶ 120; JA 557, RSMUF ¶ 120.)

Jennings also claims that he refused to sit next to Dr. Owolabi to go over his Fall 2019 examination in Continuum Mechanics because Jennings was "uncomfortable" as a "heterosexual male," and this caused Dr. Owolabi to retaliate. (Jennings Br. 15-16.) This too is baseless. Jennings admitted at his deposition that he did sit next to Dr. Owolabi, who did not touch him or make any sexual advance. (JA 181-182, Jennings Tr. 93, 99; *see* JA 109, SMUF ¶¶ 93, 99; JA 555-556, RSMUF ¶¶ 93, 99.) It was undisputed that Dr. Owolabi regularly sits next to students to review examinations due to limited space in his small office. (JA 108, SMUF ¶ 94; JA 556, RSMUF ¶ 94.) It was also undisputed that Dr. Owolabi is a heterosexual male (JA 341, Owolabi Tr. 30-32; JA 108, SMUF ¶ 94; JA 556, RSMUF ¶ 94), and he was not aware that Jennings felt any discomfort about the

seating arrangement until after the Spring 2020 examinations. (JA 109, SMUF ¶ 98; JA 556, RSMUF ¶ 98.)

Indeed, there was no evidence that Dr. Owolabi or any of the other examiners unfairly graded or "sabotaged" Jennings' comprehensive examinations. (JA 103-117, SMUF ¶¶ 70, 76, 79, 81, 147; JA 554-558, RSMUF ¶¶ 70, 76, 79, 81, 109, 147.) Dr. Owolabi also denied any bias against Jennings. (JA 363-364, Owolabi Decl. ¶ 24.) *See* Kreuzer v. George Washington University, 896 A.2d 238, 247-248 (D.C. 2006) (affirming grant of summary judgment on tortious-interference claim where there was no evidence that the defendant intended to harm plaintiff).

Third, the court below found that Dr. Owolabi did not, as required, "know[] that the interference is certain or substantially certain to occur as a result of his action." Whitt, 157 A.3d at 202. (JA 674-675.)

In the first instance, Jennings did not address this ruling in his Brief, and therefore concedes the point. Rose, 629 A.2d at 535.

Furthermore, Jennings submitted no facts to support his claim that Dr. Owolabi acted with "malice" toward him, with a "substantially certain" negative impact, Whitt, 157 A.3d at 202, when Dr. Owolabi allegedly "berated" *another* student during a comprehensive examination in Continuum Mechanics in Fall 2019 that four students (including Jennings) were taking. Dr. Owolabi accused one of the other students of cheating, and, as the court below found, that provided a "rational

basis" for Dr. Owolabi's "interruption" of the examination. (JA 664.) (*See* JA 101, 106, SMUF ¶¶ 60, 86; JA 554-555, RSMUF ¶¶ 60, 86.)

This claim about interference through berating another student should also be rejected because no such claim was made in the Complaint. (Compl. ¶ 50.) (*See* p. 36, n.11, *supra*.) Even if it had been, there was no indication of malice toward Jennings in this incident, as Jennings was not the target of Dr. Owolabi's concerns about cheating. Nickens, 600 A.2d at 820. Nor was it "substantially certain" to Dr. Owolabi that his interruption to address another student's cheating would cause Jennings to fail the comprehensive examination in that one subject, let alone overall. Whitt, 157 A.3d at 202. No reasonable jury could find for Jennings on this record, especially given the broad deference owed to universities and their faculty in administering examinations.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

Date: October 13, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on October 13, 2025, I caused a copy of the foregoing Appellees' Brief to be served electronically through the Court's electronic filing system upon:

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