UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOE,
Plaintiff,

v.

MICHIGAN STATE UNIVERSITY,
Defendant.

No. 1:19-cv-226

HONORABLE PAUL L. MALONEY

OPINION

Plaintiff John Doe filed this suit and a contemporaneous motion for a temporary restraining order and/or a preliminary injunction, claiming that Michigan State University deprived him of procedural due process and requesting that the Court immediately reinstate him as a student in good standing. The Court denied the TRO on procedural grounds—Plaintiff did not file an affidavit or verified complaint—and scheduled the matter for a hearing on the preliminary injunction portion of the motion. For the reasons to be explained, the motion for a preliminary injunction will be denied.

I. Background

Plaintiff John Doe is a third-year student in Michigan State University's College of Human Medicine. Back in 2016, Doe attended a university-sponsored event with a group including individuals identified in this litigation as Jane Roe 1 and Jane Roe 2. The group consumed significant quantities of alcohol leading up to and during the gathering. Towards the end of the event, John Doe allegedly engaged in sexual intercourse with Jane Roe 1 while

she was intoxicated and unable to consent. Then at a friend's apartment later in the night, John Doe allegedly engaged in sexual contact with Jane Roe 2 without her consent.

Jane Roes 1 & 2 reported the alleged misconduct in February 2018 to MSU's Office for Institutional Equity after they were placed in the same clinical rotation as John Doe. MSU hired Kroll Investigations to determine whether John Doe had violated the University's Relationship Violence and Sexual Misconduct Policy. Kroll investigated the allegations by conducting interviews with John Doe, Jane Roe 1 & 2, and several witnesses named by Jane Roe 1 & 2.

On February 7, 2019, Kroll finalized a Final Investigative Report, where Kroll explained how it concluded that a preponderance of the evidence supported its findings that John Doe had violated the university policy in each case. It was supplied to the parties the following day.

On February 12, 2019, the College of Human Medicine suspended John Doe on an interim basis because of the Final Investigative Report. And two days after the interim suspension issued, MSU held a hearing to weigh whether or not to continue the suspension for the duration of the disciplinary proceedings. Plaintiff attended the meeting with his counsel. Plaintiff was allowed the opportunity to address the panel. His counsel could not.

The accounts of this meeting are somewhat divergent. Plaintiff says that he was not allowed to challenge the factual conclusions of the Kroll Final Investigative Report. He says that the panel considered only whether continuation of the interim suspension was appropriate, assuming that the allegations in the Final Investigative Report were true. MSU describes the meeting as "a fact-finding panel" to determine "whether there was sufficient

evidence to justify continuation of the suspension." At the close of the hearing, the panel upheld the interim suspension, and Plaintiff has remained suspended.

John Doe appealed the findings and sanction issued by MSU on March 8, 2019. Plaintiff says that the appeal was then placed "on hold" as MSU investigated whether John Doe should have been offered a hearing, rather than proceeding solely on Kroll's findings. He also requested that MSU lift the interim suspension and offer him a disciplinary hearing, but MSU allegedly responded that even if a hearing was offered, the interim suspension would not be lifted.

On March 13, 2019, MSU informed John Doe that he could request a formal hearing, and he did so on March 20, 2019. Doe also requested again that the interim suspension be lifted, and Kroll's findings be withdrawn. MSU requested more time to evaluate Doe's request but ultimately declined to reinstate him.

In the briefing, MSU also averred that Plaintiff's *Baum*[1] hearing was scheduled for May, with a pre-hearing conference in April. That was news to Plaintiff's counsel. At the oral argument, Ms. Blanchard stated that she had not received any communication from MSU regarding the dates of the pre-hearing conference or the *Baum* hearing.

Finally, Plaintiff asserts that if the interim suspension is not immediately lifted, he will be unable to take certain exams this summer, and ultimately, the consequence of the interim suspension will be to delay his graduation from the College of Human Medicine by up to

[1] In September of 2018, the Sixth Circuit issued an opinion requiring schools to provide an in-person hearing with some form of cross-examination where serious disciplinary sanctions were on the table and credibility of the accused and accuser were significant considerations. *Doe v. Baum*, 903 F.3d 575, 581 (6th Cir. 2018). Those hearings—at least in this litigation—have been colloquially referred to as "*Baum* Hearings."

two years. Specifically, he must be a student in good standing by May 22, 2019 to take the first section of his "Step 2" examination, which must be completed before he may begin his fourth-year coursework.

II. Legal Framework

A trial court may issue a preliminary injunction under Federal Rule of Civil Procedure 65. A district court has discretion to grant or deny preliminary injunctions. *Warshak v. United States*, 490 F.3d 455, 465 (6th Cir. 2007). A court must consider each of four factors: (1) whether the moving party demonstrates a strong likelihood of success on the merits; (2) whether the moving party would suffer irreparable injury without the order; (3) whether the order would cause substantial harm to others; and (4) whether the public interest would be served by the order. *Ohio Republican Party v. Brunner*, 543 F.3d 357, 361 (6th Cir. 2008) (quoting *Northeast Ohio Coal. for Homeless & Service Employees Int'l Union v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006)).

The four factors are not prerequisites that must be established at the outset, but are interconnected considerations that must be balanced together. *Northeast Ohio Coal.*, 467 F.3d at 1009; *Coal. to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 244 (6th Cir. 2006). "A preliminary injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it." *Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 573 (6th Cir. 2002) (internal citation omitted); *see Patio Enclosures, Inc. v. Herbst*, 39 Fed. App'x 964, 967 (6th Cir. 2002) (citing *Leary v. Daeschner*, 228 F.3d 729, 736 (6th Cir. 2000)).

The purpose of a preliminary injunction is to preserve the status quo. *Smith Wholesale Co., Inc. v. R.J.R. Tobacco*, 477 F.3d 854, 873 n. 13 (6th Cir. 2007) (quoting *U.S. v. Edward Rose & Sons*, 384 F.3d 258, 261 (6th Cir. 2004)). The Sixth Circuit has noted that "[a]lthough the four factors must be balanced, the demonstration of some irreparable injury is a *sine qua non* for issuance of an injunction." *Patio Enclosures*, 39 Fed. App'x at 967 (citing *Friendship Materials, Inc. v. Mich. Brick, Inc.*, 679 F.2d 100, 105 (6th Cir. 1982)).

III. Analysis

A. Success on the Merits

The Constitution requires certain minimum procedures before an individual is deprived of a "liberty" or "property" interest within the meaning of the Due Process Clause of the Fourteenth Amendment. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). Students at public universities have due process rights when a university seeks to take disciplinary action against them. *See Flaim v. Med. Coll. of Ohio*, 418 F.3d 629, 633 (6th Cir. 2005). Thus, there is no question that John Doe's property interests in his education have been affected by the interim suspension.

Since due process applies, "the question remains what process is due." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The general framework for evaluating the amount of process required under the Due Process Clause was defined by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The framework set forth in *Mathews* calls for the consideration of three factors: (1) the private interest affected; (2) the danger of error and the likely benefit of additional or alternate procedural safeguards; and (3) the public or

governmental interest, including the burden that additional procedure would entail. *Id.* at 335 (citing *Goldberg v. Kelly*, 397 U.S. 254, 263–71 (1970)).

The process required therefore varies according to the facts and circumstances of each case. *Id.* at 334–35. "'[D]ue process is flexible and calls for such procedural protections as the particular situation demands.'" *Mathews*, 424 U.S. at 334 (quoting *Morrisey*, 408 U.S. at 481). The amount of process that is required depends upon the weight of the governmental and private interests affected. *Id.* Thus, the process afforded to a student depends upon the nature and weight of the action taken.

The starting point for procedural due process and school discipline is the Supreme Court's decision in *Goss v. Lopez*, 419 U.S. 565 (1975). There, the Supreme Court set out the minimal procedural due process requirements for suspensions of ten days or less. The student "must be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." *Id.* at 581. The notice need not be formal, and there "need be no delay between the time notice is given and the time of the hearing." *Id.* In short, procedural due process is met when there is a "give-and-take" between student and administrator to tell the student of what he is accused of doing and the basis of the accusation, and then the student is given an opportunity to respond. *Id.* However, *Goss* is expressly limited to suspensions of ten days or less, and the Supreme Court noted that for longer suspensions or expulsions, more formal procedures could be necessary to meet procedural due process. *Id.* at 584.

After *Goss*, the Sixth Circuit and lower courts within the Circuit have found due process to be implicated in a variety of disciplinary decisions in higher education. *See Flaim*

v. Med. College of Ohio, 418 F.3d 629, 633 (6th Cir. 2005) (medical student's due process right implicated by school suspension after he was arrested for drug crimes); *see also Jaksa v. Regents of Univ. of Mich.*, 597 F. Supp. 1245 (E.D. Mich. 1984) (finding due process clause implicated in suspension from university for cheating).

Most recently, the Sixth Circuit has explained that "(1) if a student is accused of misconduct, the university must hold some sort of hearing before imposing a sanction as serious as expulsion or suspension, and (2) when the university's determination turns on credibility of the accuser, the accused, or witnesses, that hearing must include an opportunity for cross-examination." *Doe v. Baum*, 903 F.3d 575, 581 (6th Cir. 2018); *see also Doe v. University of Cincinnati*, 872 F.3d 393, 401 (6th Cir. 2017) (affirming preliminary injunction enjoining discipline of university students for sexual misconduct where two students, in separate cases, were disciplined for sexual misconduct but were not allowed to cross-examine or confront their accuser).

This case is not like *Goss,* because John Doe's suspension was not for ten days or less. Nor is it like *Baum* or *Cincinnati*, because the final disciplinary action has not yet been decided, and MSU will schedule a *Baum* hearing in conformance with this order for May, which will lead to John Doe receiving a full and fair opportunity to confront his accusers and the allegations against him before final disciplinary action is taken against him. Instead, the narrow issue for resolution presently is whether there is a substantial likelihood that MSU violated John Doe's procedural due process rights by relying on Kroll's Final Investigative Report to suspend him on an interim basis without giving him a formal hearing and an opportunity to cross-examine his accusers.

The Court does not find that Doe has demonstrated a substantial likelihood of success on this theory. Courts have generally recognized that interim disciplinary measures do not require the same level of due process as an expulsion. *See, e.g.*, *Nguyen v. Univ. of Louisville*, No. 3:04CV-457-H, 2006 WL 1005152, at *4 (W.D. Ky. Apr. 14, 2006) (noting that three-month interim suspension—pending a formal disciplinary hearing—required fewer procedural protections than a final disciplinary decision); *see also Hill v. Michigan State Bd. of Trustees*, 182 F. Supp. 2d 621, 627 (W.D. Mich. 2001) (holding that a public university could immediately suspend an undergraduate student based on its perception that the student posed a continuing threat to the school and to the student body provided that the university provided a hearing before an unbiased panel immediately after the suspension took effect); *Cf. Gruenburg v. Kavanagh*, 413 F. Supp. 1132, 1136 (E.D. Mich. 1976) (temporary suspension of state judge did not violate due process because no permanent action would occur before a full and complete hearing).

Here, MSU met the minimal requirements of procedural due process for the discipline imposed upon John Doe to date by giving notice of the investigation and an opportunity to be heard during the course of the investigation by a neutral third party. Then, Doe had an opportunity to comment on a preliminary version of the Investigative Report. Once the Final Investigative Report was finalized, and CHM issued the temporary suspension, he received an in-person hearing two days later to address whether the suspension was warranted or not. While Doe argues that an interim suspension was not warranted because he did not pose any immediate harm to other students, this is precisely the type of argument he could have made at the hearing—even assuming he could not

relitigate the facts as he claims. In this respect, he received notice and an opportunity to be heard.

Plaintiff has not offered any persuasive argument for how MSU violated his procedural due process rights in this course of action. While he argues that MSU made "findings" that he had violated university policy based solely on the Kroll report, he offers no caselaw to suggest that a university cannot hire an outside firm to conduct a *preliminary* investigation and rely on the findings of that third party to make *temporary* disciplinary decisions. Given the limited due process rights implicated by an interim suspension, a university may rely on such practices. *See Nguyen*, 2006 WL 1005152, at *5 (no procedural due process violation where university officials immediately removed student, scheduled a hearing two weeks later on an interim suspension, and held a formal hearing three months after the initial action).

If Plaintiff's position were accepted, there could be no interim suspensions at universities. Instead, a university would be compelled to throw together a formal disciplinary hearing at a moment's notice, because it would have no other option other than to allow a student to cross-examine their accusers before taking even temporary action against him or her. Nothing in the law supports such an unbalanced view of procedural due process in the university setting. *Cf. Doe v. Baum*, 903 F.3d 575, 582 (6th Cir. 2018) (noting that student accused of sexual assault did not have an opportunity cross-examine adverse witnesses before the initial investigator *or* before the University's Appeals Board).

B. Irreparable Harm

Plaintiff claims that the interim suspension will cause him irreparable harm because it may delay his graduation from medical school by up to two years because of upcoming changes to the university curriculum. He also asserts that he is registered to take two required "Step 2" examinations in the coming months and that he will be unable to sit for the exams if the suspension continues. The Court is sympathetic to John Doe's concerns. While the harm appears somewhat speculative—there is little detail about the supposed change in curriculum and whether Doe would really be required to "retake" his third-year courses—the Court does consider this factor to weigh modestly in Plaintiff's favor.

C. Substantial Harm to Others

The next factor is whether granting the relief sought would cause significant harm to others. The Court views this as a significant consideration, as the initial complaints to the university arose after Jane Roes 1 & 2 were put into close contact with John Doe in late 2017 or early 2018. These future doctors clearly have an interest in continuing or finishing their studies in a harassment-free educational environment. *See, e.g.*, *Marshall v. Ohio Univ.*, 2015 WL 1179955, at *10 (S.D. Ohio Mar. 13, 2015) (concluding that harm to others weighed against temporary restraining order reinstating student because it would place the plaintiff into close proximity with his alleged victim and could potentially interfere with that person's right to pursue her education free from harassment). However, representations were also made that Jane Roe 2 is, or will be shortly, matriculating from the College of Human Medicine. No similar information was provided as to Jane Roe 1. On the whole, this factor weighs against granting Plaintiff the relief he seeks.

D. The Public Interest

MSU has an obligation to investigate and discipline students for sexual misconduct under Title IX. Absent some clear violation of law, the Court is hesitant to insert itself into the university's discharge of that obligation. *Id.* ("Absent facts or evidence evincing a substantial likelihood of success on the merits, the Court is reluctant to interfere with [the university's] disciplinary processes, which are specifically designed to 'provide an environment that facilitates learning.'"); *see also Hazelwood School Dist. v. Kuhlmeier,* 484 U.S. 260, 273 (1988) ("[T]he education of the Nation's Youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges."). Therefore, the public interest weighs against granting a preliminary injunction.

IV. Conclusion

After consideration of the factors as a whole, the Court does not find that a preliminary injunction is warranted, primarily because Plaintiff has not established a substantial likelihood that the university's course of conduct to date has violated his right to procedural due process.

However, the Court also noted the unique circumstances of the case at oral argument. It is important that if John Doe should receive a favorable disposition following the *Baum* hearing, he remain eligible to sit for his Step Two Examination on May 22, 2019. Therefore, the Court orderes MSU to establish a pre-hearing conference date not later than April 25, 2019, and a hearing date not later than May 7, 2019. The Court also ordered that a final decision shall issue in John Doe's case not later than May 14, 2019.

ORDER

For the reasons stated in the Court's Opinion, Plaintiff's motion for a preliminary injunction is **DENIED.**

IT IS FURTHER ORDERED THAT Defendants shall arrange for a prehearing conference not later than April 25, 2019, a formal hearing not later than May 7, 2019, and that a final decision shall issue in John Doe's case not later than May 14, 2019.

IT IS SO ORDERED.

Date: April 15, 2019

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge