

**IN THE UNITED STATE DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ALIVIA BAKER, PAUL BAKER and)	
TANYA BAKER)	
)	
Plaintiff,)	NO:
)	
vs.)	
)	PLAINTIFFS DEMAND TRIAL BY JURY
LOYOLA UNIVERSITY CHICAGO)	
)	
Defendant.)	

PLAINTIFFS' COMPLAINT AT LAW

NOW COMES the Plaintiffs ALIVIA BAKER, PAUL BAKER, and TANYA BAKER, by their Attorneys, KREAMER LAW GROUP, LLC., and for their Complaint at Law against the Defendant, LOYOLA UNIVERSITY CHICAGO, states as follows:

NATURE OF CLAIM

1. This case is an action seeking redress for violations of the United States Constitution under 42 U.S.C. §1983; and other statutory and common law theories of recovery.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked under 28 U.S.C. §1343(a)(3) and (4), 28 U.S.C. §1331, 29 U.S.C. §1332, and 42 U.S.C. §1983.

3. The venue is proper in the Northern District of Illinois, under 28 U.S.C. §1391(b) and (d), as the Plaintiffs' causes of action arose herein, and the Defendant is located herein.

PARTIES

4. The Plaintiff, ALIVIA BAKER, is an individual and former student of Defendant residing at their Lake Shore Campus located at 1032 W. Sheridan Road, Chicago, Illinois 60660.

5. The Plaintiff, PAUL BAKER, is an individual and parent of Alivia Baker residing in Dublin, Ohio.

6. The Plaintiff, TANYA BAKER, is an individual and parent of Alivia Baker residing in Dublin, Ohio.

7. The Defendant, LOYOLA UNIVERSITY CHICAGO, (hereinafter "Loyola") is a private University, located at 1032 W Sheridan Road, Chicago, IL 60660.

GENERAL ALLEGATIONS

8. Alivia Baker applied and was accepted as full-time student at Loyola with a Presidential (\$25,000 annual) academic scholarship.

9. Alivia arrived on campus for orientation on or about August 28, 2021, with the start of the fall semester on August 30, 2021.

10. Alivia was 17 years old, a minor, at the time she arrived on campus as a new freshman student, and she was enrolled in the Honors Program as a Physics major taking 18 credit hours. At this time, Loyola, had a policy that all students must be vaccinated or have a medical or religious exemption.

11. Loyola had COVID-19 testing procedure for students who had medical or religious exemptions to the vaccine.

12. Alivia was granted a medical exemption to the COVID-19 vaccine due to two serious pre-existing medical conditions. In addition, Alivia suffers from clinical depression that

the school was made aware of prior to and again at the start of the school year as the same was registered with the Campus Health Center (Alivia filled out a form during an appointment at the LUC Wellness Center with Anne B. Luckose, PhD on September 24, 2021 at 8:45 AM).

13. Per Loyola's Covid policy, Alivia was required to test twice weekly for COVID-19 once the school year began.

14. Loyola's COVID-19 testing contractor was SHIELD Illinois. The Personnel at the on-campus Wellness Center where testing was being handled were employees or agents of Loyola. The Loyola guidelines required that COVID-19 testing results were only accepted when executed by SHIELD Illinois. SHIELD Illinois policy is that no testing occurs until the student had established a testing account with SHIELD Illinois.

15. On or about September 1, 2021, Alivia attempted to set up her testing account with SHIELD Illinois at the on-campus Wellness Center but was prevented from doing so because she was a minor. Loyola employees first instructed Alivia to lie about her age. SHIELD Illinois personnel then informed her that she would be fine waiting until September 30 when she turns 18.

16. LUC/SHIELD Illinois personnel then told her that was a form online for minors to get testing access. LUC/SHIELD Illinois did not help Alivia find the form. Alivia found this form through the Wellness Center website. On or about September 3, 2021, Alivia and Tanya filled out this form and Alivia submitted the form via Loyola email to Loyola. Loyola subsequently acknowledged receipt of Alivia's parental consent form. This information given to Alivia by LUC/SHIELD Illinois personnel is consistent with the information on the FAQ section of the Loyola Covid Testing requirements page during this timeframe.

17. On or about September 4, 2021, Alivia returned to the Wellness Center to test through the SHIELD Illinois testing process. Again, Alivia was denied and was prevented from establishing a testing account because she was a minor. SHIELD Illinois personnel then again informed her that she would be fine waiting until September 30 when she turns 18.

18. Again, Alivia attempted to try and find a solution to enable her to test, including working with Loyola employee and or agent, Jim Nettleton. Again, at this time, Loyola employees or agents told Alivia to lie about her age in order to set up the testing account. SHIELD Illinois personnel also informed her that she would be fine waiting until September 30 when she turns 18.

19. Meanwhile, SHIELD Illinois was informing Loyola that Alivia was not testing. Sometime during the week of September 13, Alivia's ID card was locked and prevented her from entering the dorm on her own. However, students would regularly let her in. Alivia found out this was due to missing COVID testing. At this point Alivia then again tried to gain access to the SHIELD Illinois testing system.

20. Alivia continued to raise concerns to Loyola that the SHIELD testing system was not allowing her to test. No action was taken by Loyola to correct the testing system. Rather, Loyola issued a violation notice against Alivia for failing to comply with campus COVID-19 testing protocols, which was sent solely by campus email. Despite being a minor, no written notice was sent to Alivia's parents.

21. After registering her concerns to Loyola, on or about September 10, 2021, Alivia was cited by Loyola for an alcohol violation even though she was not the only person drinking that

was under the age of 21. Once again, despite being a minor, no immediate written notice was sent to Alivia's parents.

22. When Alivia turned 18 years of age on September 30, 2021, the SHIELD Illinois system finally allowed Alivia to set up an account.

23. On or about October 12, 2021, Alivia received an email letter from Dean Alandis Phillips concerning University case number 201220330. This letter informed Alivia for the first time that she had been found guilty of violating University Policy 201(8)(B) - Failure to Comply: Other University policy in that she failed to follow COVID-Testing policy.

24. In relevant part, the letter stated: "The following rationale has been provided by the Conduct Administrator on decision-making body: During the scheduled Administrative Hearing on October 4, 2021, at 1:00 pm, Conduct Administrator Phillips and Loyola Student Alivia Baker were supposed to discuss University documentation that alleged that Baker has not complied with Loyola's COVID-19 19 Testing protocol on three separate occasions. According to Loyola, students must test twice per week if they are on-campus two or more times with the "Testing Time Window," which is Sunday-Saturday. Furthermore, Loyola Community Standard 201(8) states that students must comply with all University policies. According to Loyola's Non-Compliance Baker did not comply with COVID-19 testing requirements during the weeks of 8/22/01, 9/5/2021, 9/12/2021, and 9/19/2021. According to documentation, they have been non-compliant four times..."

25. A simple review of their own University records, if even properly kept by the University, would show that Alivia had attempted to follow the University's COVID testing policies and procedure but that their own system prevented Alivia from even being able to

register under their SHIELD system let alone test. This was also despite the fact that Alivia had brought this to the University's attention on several occasions in September 2021.

26. A simple review of their own University testing policies and procedures or proper communication with their own third-party testing contractor located on their own campus, would show that anyone younger than 18 would be prevented from adhering to the same University testing policies that they falsely accused Alivia of breaching. This was also despite the fact that Alivia had brought this to the University's attention on several occasions in September 2021.

27. As a result of this hearing and findings made at the October 4, 2021, hearing, the University placed Alivia on a Residence Hall Probation, notice that further alleged violations would result in a possible suspension and expulsion, prevented her from studying abroad, exposure to a fine, and completion of a probationary learning assessment.

28. These false and pretextual accusations and spurious findings were made in retaliation for Alivia being unvaccinated and not agreeing to lie about her age in order to enroll in SHIELD COVID testing.

29. No one from the University attempted to call, text, or personally inform Alivia of the hearing when she failed to appear for the October 4, 2021, hearing. Instead, the University proceeded with the hearing, denying Alivia her due process rights, and rendered a decision that Alivia was placed on residence hall probation.

30. Once again, no prior written notice of the hearing was sent to Alivia's parents. In fact, no notice of the findings of the October 4th hearing was sent to the Alivia's parents until October 13, 2021, and the same was mailed to their Dublin Ohio address and not received until

October 18, 2021. This letter again falsely accused their daughter of violating school policy for failing to adhere to School Policy 201(8)(b).

31. Despite having a practice of personally informing students of alleged school policies and discipline hearings, at no time did the University have the Residence Hall Director, School Counselor, or other Campus Administrator personally inform Alivia that she had violated school testing policies and must appear for a hearing.

32. From the date of the falsely claimed first infraction – the week of August 22, 2021, - the University waited forty (43) days to hold a hearing, waited fifty-one days to inform Alivia of the false pretextual charges and spurious findings, and waited fifty-two (52) days to inform Alivia's parents, Paul, and Tanya Baker, of the false and pretextual charges made against their unvaccinated daughter.

33. On or about October 12, 2021, Alivia and her parents informed University Administration that she was not aware of the hearing and no one from the University had called or texted her or provide her with any written communication at her dorm room regarding the hearing. They also reminded the University that Alivia was prevented from registering and testing under their SHIELD program. No one from the University responded to any of the Bakers' concerns.

34. All of these false and pretextual accusations and spurious findings and actions taken by the University were made in retaliation for Alivia being unvaccinated and not agreeing to lie about her age in order to be able to successfully enroll in SHIELD COVID testing.

35. On or about October 14, 2021, Alivia received a letter under her dorm room informing her of an administrative hearing on October 18, 2021, for a second case, case

number 2021239201, for allegedly being on campus and failing to COVID-19 testing the week of 10/3/21 to 10/9/21. This was the first written communication that Alivia was delivered. Once again, these allegations were false and pretextual where Alivia did test on campus and then traveled home to Dublin, Ohio.

36. Alivia was not able to attend this hearing on October 18th due to her medical conditions, severe anxiety, and clinical depression exacerbated by the University's actions in targeting Alivia and falsely making accusations and assessing penalties for alleged misconduct that Alivia did not commit.

37. Again, similar to the University's pattern of gamesmanship, it again failed to inform Paul and Tanya Baker of the second set of false allegations made against their daughter and second hearing date. Rather, waiting until after the hearing, the University mailed correspondence dated October 19, 2021, to Paul and Tanya Baker which they did not receive until on or about October 25, 2021.

38. On or about October 26, 2021, Stacy Jaksa, the Director, Office of Student Conduct and Conflict Resolution for the University, sent correspondence in reference to case number 2021239201, informing Alivia that she had been found to have violated University Policy 201(8)(b) - Failure to Comply with University Policy for alleged COVID testing violations and that she was being suspended from the University effective that day - October 26, 2021, until May 8, 2022, and that was expelled from her dorm residence on October 29, 2021.

39. Ms. Jaksa's expulsion letter stated in relevant part:

'The following rationale has been provided by the Conduct Administrator or decision-making body: On October 14, 2021, Alivia Baker was sent a letter to their University email address from OSCCR directing them to attend an administrative hearing scheduled to occur via Zoom on Monday, October 18, 2021, at 10:30 am CST. A physical copy of

this letter in a sealed envelope was also delivered to Alivia's residence hall room by Residence Life staff on October 15, 2021. Alivia did not respond to the instructions in the letter and was sent additional follow up by OSCCR on the morning of the hearing. Alivia did not respond to the follow up email either and failed to show up for the administrative hearing. As a result, and pursuant to the procedures in Loyola's Community Standards, this case is being heard in Alivia's absence with the information available to the Conduct Administrator.

Documentation in this case indicates that Alivia was not compliant with the University's COVID-19 testing requirements for the week of October 3, 2021 (10/3/2021 to 10/9/2021). Specifically, Alivia was seen on campus via badge swipe records on October 6, 7, and 8 (three days), however, only tested once. Per University COVID-19 protocols, any student who is on any Loyola campus for two or more days in any given week (a week is considered Sunday morning through Saturday evening) must test twice with that same week. Alivia failed to comply with the University's COVID-19 protocols as it relates to COVID-19 testing requirements and as a result, Alivia is found RESPONSIBLE under 201(8)(b).

When assigning outcomes in this case, the Conduct Administrator considered the seriousness of not complying with the University policy related to COVID-19. There was a significant health risk posed to the Loyola community for potential exposure and transmission of COVID-19 due to Alivia's failure to test within the required frequency while still attending classes, living in the residence halls, and being physically present on Loyola's campuses. The Conduct Administrator also considered that Alivia was given an exception related to testing non-compliance for the first two weeks of the Fall semester due to needing a parent/guardian to sign off on SHIELD first because Alivia is under 18 years of age. Despite the exception and receiving several documented reminders and directives from University officials, Alivia went on to be non-compliant for five consecutive weeks. Alivia was also non-compliant again the week of the scheduled hearing in this case (week of 10/17/2021 to 10/23/2021). Furthermore, Alivia's previous conduct record and active Residence Hall Probation and University Probation statuses were considered.

As a result, Alivia is suspended from Loyola University Chicago effective immediately through May 8, 2022. Additionally, Alivia is expelled from the residence halls effective October 29, 2021. In order to be eligible to return to Loyola following the University suspension period, Alivia is required to complete all outcomes assigned in previous conduct cases from the Fall 2021 semester and to meet with the Dean of Students for a re-enrollment clearance interview. Additionally, a partner/guardian notification will be sent.

If applicable, it is extremely important that you comply fully and promptly with all the above assigned outcomes. If any outcome other than a fine is not completed by the assigned deadline, you will be assessed a \$100 late fee and a hold will be placed on your

LOCUS account preventing you from registering for classes until the outcome is complete. Fines that are not paid in the OSCCR by the assigned deadline will be billed to your student account. Failure to comply with some outcomes may also result in additional disciplinary action under 201(8)(d) of the Community Standards.'

40. Immediately upon receiving the October 26th , 2021, letter from Ms. Jaksa at her dorm room, Alivia notified her parents. This was the first notification Paul and Tanya received of any disciplinary action as none was yet received by them from the University.

41. Upon being notified, the Bakers called Ms. Jaksa on October 27th, 28th and the 29th, but their calls went unreturned despite Ms. Jaksa's 10-26-21 correspondence ending with "Please contact me if you have any questions." It was also requested that ANY person in the OSCCR office contact the Bakers, however no phone contact was made.

42. On or about October 29, 2021, Alivia submitted an appeal to the Office of the Dean of Students and spoke with an OSCCR Administrator who informed her that Alivia's appeal would likely be sufficient to reverse the suspension. The Bakers were told that the Committee would make their decision on November 1, 2021.

43. On October 31, 2021, Tanya traveled to the University from Ohio as Paul was unable to attend due to due to a medical procedure scheduled for November 1 and his commitment to serve as an election official for the November 2 general election in Hilliard, Ohio which required him to be on-site both November 1 and 2. Tanya and Alivia went to the office of the Dean at 8:00 am on Monday, November 1, 2021, and waited outside his office for him to arrive. Upon his arrival, the University's Dean asked the Bakers, "How did you get in here?"

44. On or about November 1st and 2nd, 2021, the University Dean informed Alivia and Tanya that it was customary to call a student when missing a discipline hearing to check on

whether they were okay. The Dean stated, however, that the University did not have Alivia's phone number on the University's portal to call her and showed his screen to Alivia and Tanya. Alivia immediately pointed out that this was inaccurate and showed the Dean her phone number on the University portal using her cell phone. The Dean responded, "I'll have to tell IT about this."

45. On or about November 2, 2021, the Dean of Students, issued a decision on Alivia's appeal. The Dean's written decision stated in relevant part:

"After careful review of your request for appeal concerning your recent conduct case, number 20212399201, I have decided to uphold the original decision of responsibility and modify the outcome(s) assigned. My rationale for this final decision is as follows:

Information provided in the written appeal statement and during our in-person conversation did not support approval of the appeal request under the ground of new substantial information as the information provided was available at the time of the hearing and therefore not new. However, I did find that the added step to register for SHIELD for COVID-19 testing caused confusion for the student and their family. As such, I have made some modifications to the original decision, which include reducing the time frame of the University Suspension and modifying the Residence Hall Expulsion outcome to Residence Hall Suspension.

As a reminder, the specific Community Standards that you were found responsible for are: 201(8)(b) Failure to Comply: Other University policy (category depends on severity of offense)

Additionally, the outcome(s) assigned in this case have been modified as follows:

1. University Suspension: You are suspended from Loyola University Chicago, effective October 26, 2021 to January 1, 2022. Please refer to University guidelines to determine the earliest date when you may be reinstated. Suspension from the University involves the action of suspension being noted on the student's disciplinary record, the student being withdrawn from all enrolled courses according to the policy of their college or school, the student forfeiting fees, and the student refraining from visiting the University premises except when engaged in official business approved in writing by the Office of the Dean of Students. Students on University Suspension may not study abroad, and not be approved to study abroad until 90 days after their suspension period has ended. Please refer to the Community Standards for additional information regarding suspension, including the procedure for requesting re-instatement.

2. Residence Hall Suspension: You are hereby suspended from all residence halls at Loyola University Chicago, effective November 4, 2021 to May 8, 2022. Being suspended from the halls includes the forfeiture of fees and means that you are required to vacate your residence hall room according to the instructions of Residence Life. You must contact your Resident Director immediately for instruction or contactless checkout of your hall including turning in your key. If you do not check out by the "start date" listed in this letter, you will be fined for improper checkout and any other related costs. Additionally, your student ID card access will be disabled during the suspension period, rendering your personal items inaccessible to you without prior arrangement with Residence Life staff.'

46. After receiving this decision, the Baker's retained Attorney, John C. Coyne, who sent correspondence to the University Dean dated November 5, 2021, requesting that Alivia be immediately reinstated into the University and residence hall in order to finish her first semester coursework.

47. In response to Attorney Coyne's letter, Dean Rodriguez mailed correspondence to Alivia informing her that he was upholding his decision stating in relevant part: "Ultimately, the record here is clear that the University's policies and procedures were appropriately following in this matter. Please be advised that the appeal outcome letter sent to you on November 2, 2021 describing the case decision and set of sanctions will not change and is final."

48. On or about November 12, 2021, Derek Smith of SHIELD Illinois confirmed to the Plaintiffs that their SHIELD Illinois System will not allow a minor to set up an account using the methodology instructed to Alivia by Loyola/SHIELD Illinois personnel, which was also the method on the Loyola website during this time period.

49. LUC (William Rodriguez) was sent an email from Paul on November 12 detailing the timeline of Loyola's testing instruction failure including the revelation from the SHIELD

Illinois testing concerning the impossibility of the system functioning as mandated by LUC to Alivia. Prompt action by Loyola on this information including Loyola's admittance of culpability could have enabled Alivia to return to campus to resume her college studies. However, no response was ever received by Paul to this email.

50. At no time relevant hereto, did the University ever inform minor students or their families, including the Bakers, of the proper procedure to obtain COVID-19 testing. In fact, a December 8, 2021 inquiry to Loyola's COVID-19 Support email (VOD-19support@luc.edu) was still directing to the (erroneous) on campus testing subpage of the Loyola website. The University continued through the spring semester of 2022 to provide incorrect information on their website as to how minors are to register for SHIELD testing until the page was removed from the Loyola website.

51. At all times relevant hereto, the University held Alivia, a minor, responsible for their own inept COVID testing procedures that their own contractor was unable to provide to her. And instead of lying about her age as requested by the University's staff, was expelled for non-compliance.

52. As a result of the University's acts and omissions, Alivia suffered from severe depression, and was required to seek medical treatment. In addition, the Bakers suffered loss of tuition and room and board payments, incurred travel and lodging expenses, loss of scholarship monies, missed internship opportunities and delayed future employment opportunities.

COUNT I - NEGLIGENCE

53. Plaintiff adopts and incorporates the allegations contained in paragraphs 1-52 above as if set forth in this paragraph 53 herein.

54. The University owed the Plaintiffs a duty to provide accurate information to its students concerning its own COVID-19 testing procedures they required students to follow while on campus.

55. The University owed the Plaintiffs a duty to follow their own policies and procedures when sending legal notices to students who were minors and/or disabled.

56. The University owed the Plaintiffs a duty to follow their own policies and procedures when holding judicial hearings for students who were minors and/or disabled.

57. The University owed the Plaintiffs a duty to enforce its own medical policies and procedures safely and accurately to ensure that students who were minors and/or disabled were able to comply with those medical policies.

58. The University owed the Plaintiffs a duty of care to enforce its own policies and procedures to provide a safe environment free from harassment and retaliation from staff and Administrators.

59. The University owed the Plaintiffs a duty of care to implement a COVID-19 testing system that allowed students who were minors to register and comply with the University's testing policies.

60. The University owed the Plaintiffs a duty of care to educate, train, and instruct its employees, agents, and contractors on how to properly register and test students safely who were minors.

61. The University owed the Plaintiffs a duty of care to educate, train, and instruct its employees, agents, and contractors on how to properly register and test students safely who were disabled.

62. The University owed the Plaintiffs a duty to keep complete and accurate medical COVID-19 testing data on students.

63. The University owed the Plaintiffs a duty to provide reasonable COVID-19 testing alternatives where their system did not allow minors to register and test on campus.

64. The University owed the Plaintiffs a duty to follow the same judicial notification procedures they provided for other non-disabled students.

65. The Defendant by and through its employees and/or agents, knowingly, intentionally, and/or with a reckless and conscious disregard for the safety and welfare of its students, including Plaintiff, ALIVIA, a minor, in one or more of the following respects:

- a. Knowingly, intentionally, and/or with reckless and conscious disregard failed to provide accurate information to its students concerning its own COVID-19 testing procedures they required students to follow while on campus; or
- b. Knowingly, intentionally, and/or with reckless and conscious disregard failed to follow their own policies and procedures when sending legal notices to students who were minors, including the Plaintiff; or
- c. The University owed the Plaintiffs a duty of care to educate, train, and instruct its employees, agents, and contractors on how to properly register and test students safely who were disabled, including the Plaintiff; or
- d. Knowingly, intentionally, and/or with reckless and conscious disregard failed to enforce its own medical policies and procedures safely and accurately to ensure that students who were minors and/or disabled, including the Plaintiff, were able to comply with those medical policies; or
- e. Knowingly, intentionally, and/or with reckless and conscious disregard failed to implement a COVID testing system that allowed students who were minors, including the Plaintiff, to register and comply with the University's testing policies; or

- f. Knowingly, intentionally, and/or with reckless and conscious disregard failed to educate, train, and instruct its employees, agents, and contractors on how to properly register and test students safely who were minors and/or disabled; or
- g. Knowingly, intentionally, and/or with reckless and conscious disregard failed to keep complete and accurate medical COVID testing data on students including the Plaintiff who were refused access to testing by Loyola/SHIELD Illinois.
- h. Knowingly, intentionally, and/or with reckless and conscious disregard failed to provide reasonable COVID testing alternatives for students including the Plaintiff where their system did not allow minors to register and test on campus; or
- i. Knowingly, intentionally, and/or with reckless and conscious disregard failed to follow the same judicial notification procedures they provided for other non-disabled students; or
- j. Knowingly, intentionally, and/or with reckless and conscious disregard failed to provide accurate and complete information when proceeding with discipline proceedings against students who were minors and/or disabled; or
- k. Was willful and wanton and showed an utter indifference or conscious disregard for the safety and welfare of the Plaintiff; or
- l. Was otherwise negligent.

66. As a direct and proximate result of one or more of the aforementioned willful and wanton acts and/or omissions of the Defendant, by and through its employees and/or agents, the Plaintiff, Alivia Baker, suffered severe physical and mental suffering and was required to seek medical attention and will in the future incur sums for counseling services. In addition, Alivia suffered loss of tuition, room and board, scholarship monies, missed internship opportunities and delayed future employment opportunities.

WHEREFORE, the Plaintiffs respectfully request that judgment be entered in their favor for compensatory damages in an amount in excess of one hundred (\$100,000.00) thousand

dollars against the Defendant and for costs, and for whatever additional relief that the Court deems fair and just.

COUNT II – DEFAMATION – AGAINST DEFENDANT

67. Plaintiff adopts and incorporates the allegations contained in paragraphs 1-52 above as if set forth in this paragraph 66 herein.

68. The statements made by the Defendant's employees and agents set forth above were objectively false and defamatory. Specifically, in the October 26 expulsion letter from Ms. Jaska,:

The Conduct Administrator also considered that Alivia was given an exception related to testing non-compliance for the first two weeks of the Fall semester due to needing a parent/guardian to sign off on SHIELD first because Alivia is under 18 years of age. Despite the exception and receiving several documented reminders and directives from University officials, Alivia went on to be non-compliant for five consecutive weeks.

69. This was a false allegation or should have known to be a false allegation as the instructions provided to Alivia by both the Loyola/SHIELD employees and the Loyola website would never have resulted in a successful test for a minor. Thus, Alivia was rendered unable to test by Loyola's own instructions to her and therefore Loyola was responsible Alivia's lack of COVID-19 testing.

70. Specifically, in the November 2, 2021 letter upholding the decision, William Rodriguez wrote "However, I did find that the added step to register for SHIELD for COVID-19 testing caused confusion for the student and their family." This is demonstrably false, as Loyola had previously acknowledged receipt of the prescribed signed permission form from the Baker family indicating that the Baker family was not confused, but rather it was Loyola that was confused and/or ignorant about their own contractor's procedures.

71. Specifically, in the October 14, 2021 letter from Ms. Jaska, received on or about October 25, 2022, “The student was not compliant with COVID-19 testing requirements from 10/3/2021 to 10/9/2021, which is their fifth week of non-compliance.” This is demonstrably false, as the instructions provided to Alivia by both the Loyola/SHIELD employees and the Loyola website would never have resulted in a successful test for a minor. Thus, Alivia was rendered unable to test by Loyola’s own instructions to her and therefore Loyola was responsible Alivia’s lack of COVID-19 testing.

72. Specifically, in the October 12, 2021 letter from Ms. Phillips received on or about October 21, 2021, “According to Loyola’s non-compliance Baker did not comply with COVID-19 testing requirements during the weeks of 8/22/2021, 9/5/2021, 9/12/2021, and 9/19/2021. According to documentation, they have been non-compliant four times.” This is demonstrably false, as the instructions provided to Alivia by both the Loyola/SHIELD employees and the Loyola website would never have resulted in a successful test for a minor. Thus, Alivia was rendered unable to test by Loyola’s own instructions to her and therefore Loyola was responsible Alivia’s lack of COVID-19 testing.

73. At all relevant times, Defendant knew or should have known that their statements were false or acted in reckless disregard as to whether they were true or false. At all relevant times, Defendant acted with actual malice.

74. As a proximate result of the defamatory statements made by the Defendant, Plaintiff suffered injuries including damages to her reputation and loss of academic, academic scholarship and career opportunities.

75. The foregoing defamatory statements were made by the Defendant by and through its employees and agents with the knowledge of their falsity and with actual malice, so as to justify an award of punitive damages.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages in an amount in excess of one hundred (\$100,000.00) thousand dollars and for exemplary damages in an amount that will serve to punish the Defendants and deter the Defendants from similar conduct and for their costs and expenses and for all such and further relief as the Court deems to be fair and just.

COUNT III – FALSE LIGHT

76. Plaintiff adopts and incorporates the allegations contained in paragraphs 1-52 above as if set forth in this paragraph 72 herein.

77. The statements published and made by the Defendant by and through their employees and agents as set forth above placed the Plaintiff in a false light before the public. The false light in which Defendant placed the Plaintiff would be highly offensive to a reasonable person.

78. At all relevant times, the Defendant knew or should have known that their statements were false or acted in reckless disregard of whether they were true or false. At all relevant times, the Defendants acted with actual malice a proximate result of the Defendant's foregoing defamatory statements, Plaintiff suffered injuries including damages to her reputation and loss of academic and career opportunities.

79. The foregoing defamatory statements were made by the Defendants with the knowledge of their falsity and with actual malice, so as to justify an award of punitive damages.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages in an amount in excess of one hundred (\$100,000.00) thousand dollars and for exemplary damages in an amount that will serve to punish the Defendants and deter the Defendants from similar conduct and for their costs and expenses and for all such and further relief as the Court deems to be fair and just.

COUNT IV - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

80. Plaintiff repeats and reasserts the allegations of paragraphs 1 through 52 as though set forth in this paragraph 76 herein.

81. Defendant's conduct by and through its agents and employees, as described above, was both extreme and outrageous to the point that it went beyond the bounds of decency, and it is to be regarded as intolerable in our society especially in light of Loyola's mission statement and claims to social justice.

82. By the foregoing acts, Defendant, by and through its agents and employees, caused Plaintiff severe emotional distress, including among other things, extreme anger, resentment, depression, worry, anxiety and stress, sleep disturbances, nightmares, cognitive dysfunction, damaged self-efficacy, anhedonia, serious suicidal ideation, loss of friends and family, and marital disruptions and harms.

83. As a direct and proximate result of the acts engaged in by Defendant, Plaintiff suffered severe financial damages, including but not limited to loss of pay and benefits, past and future, loss of academic and career opportunities, loss of scholarship funds at other universities, loss of future earnings and other incidentals and benefits of employment; severe emotional distress, humiliation, embarrassment; exacerbation of his medical condition; damage

to reputation; punitive, liquidated and other exemplary damages, legal costs and other damages allowable.

84. Defendant's actions were intentional, willful, and wanton, and done with reckless disregard for Plaintiff's federally protected rights and to Plaintiff's physical well-being, so as to justify awarding punitive damages and exemplary damages in this case.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages in an amount in excess of one hundred (\$100,000.00) thousand dollars and for exemplary damages in an amount that will serve to punish the Defendants and deter the Defendants from similar conduct and for their costs and expenses and for all such and further relief as the Court deems to be fair and just.

COUNT V - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

85. Plaintiff repeats and reasserts the allegations of paragraphs 1 through 52 as though set forth fully herein in this paragraph 85.

86. In the alternative, if Defendant's actions and behavior by and through its agents and employees is not found to be intentional, Defendant would still be liable under the doctrine of negligent infliction of emotional distress.

87. As a direct result of Defendant's behavior, Plaintiff did in fact suffer severe emotional and cognitive distress and outrage.

88. As a direct and proximate result of the acts engaged in by Defendant, Plaintiff suffered severe financial damages, including but not limited to loss of pay and benefits, past and future, loss of academic and career opportunities, loss of scholarships, loss of future earnings and other incidentals and benefits of employment; severe emotional distress,

humiliation, embarrassment; exacerbation of his medical condition; damage to reputation; punitive, liquidated and other exemplary damages, legal costs and other damages allowable.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages in an amount in excess of one hundred (\$100,000.00) and for costs and all such and further relief as the Court deems to be fair and just.

COUNT VI - VIOLATIONS OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

89. The Plaintiff adopts and incorporates the allegations set forth in paragraphs 1-52 of this Complaint above, as though fully set forth herein.

90. Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. *See Duncan v. Louisiana*, 391 U.S. 145, 147–149 (1968). Also, these liberties extend to confident personal choices central to individual dignity and autonomy, including intimate options that define personal identity and beliefs. *See, e.g., Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 484–486 (1965).

91. Plaintiffs' rights to freedom of speech, assembly, and travel are fundamental rights protected by the U.S. Constitution. *See, e.g., Aptheker v. Secretary of State*, 378 U.S. 500, 520 (1964); *Kent v. Dulles*, 357 U.S. 116, 127 (1958).

92. When a government practice restricts fundamental rights such as the right to practice religion freely, assemble peacefully, speak, and travel, it is subject to "strict scrutiny." It can be justified only if it furthers a compelling government purpose and, even then, only if no

less restrictive alternative is available. *See, e.g., Memorial Hospital v. Maricopa County*, 415 U.S. 250, 257-258 (1974); *Dunn v. Blumstein*, 405 U.S. 330, 339-341 (1972); *Shapiro v. Thompson*, 394 U.S. 618, 89 (1969), *Maher v. Roe*, 432 U.S. 464, 488 (1977). The Due Process Clause of the Fourteenth Amendment includes the right to be free from any purported normative, legal guidelines bestowing unfettered discretion on government officials about interpretation or enforcement.

93. The Plaintiff enjoys the right to due process before being deprived of any of her liberty or property interests by the state. U.S. Const. Amend. XIV, §1.

94. Defendant is an Illinois learning institution that owes the Plaintiff both substantive and due process rights. *Charleston v. Board of Trustees of the University of Illinois at Chicago* 741 F.3d 769, 772 (7th Cir. 2013).

95. To comply with the substantive due process rights owed to Plaintiff, Defendant's suspension and termination procedures must provide Plaintiff with a meaningful opportunity to be heard. *Remer v. Burlington Area School District*, 286 F.3d 1007, 1010 (7th Cir. 2002).

96. Illinois courts have determined that student handbooks like the Defendant's Handbook and Policies and Procedures and Student Code of Conduct are contracts.

97. The Plaintiff relied upon the school's handbook and student code and thus the Defendant is bound to follow specific standards, including a formal process of disciplinary proceedings. *See Waller v. Southern University of Illinois*, 125 F.3d 541 (7th Cir. 1997).

98. LUC's Community Standard handbook in force at the time of the dispute incorporates hyperlinks on page vii to the Loyola Return to Campus website

<https://www.luc.edu/returntocampus/>. Therefore, by extension, the information on this

website is considered part of LUC's Community Standards student code and handbook. Loyola did not follow their standards in that the instructions for under 18-year-old students would automatically result in a "Failure To Comply" violation.

99. In 2018, an Illinois court considering these very issues determined that the University's handbook was sufficient to establish that students like Plaintiff have an express or implied right to continuing education barring good cause to the contrary. *John Doe v. The Board of Trustees of the University of Illinois* Ill. Dist. 2:17-cv—02180-CSB-EIL.

100. As a direct and proximate result of the unconstitutional acts engaged in by Defendant, the Plaintiff's constitutional rights were violated and caused her to suffer severe damages, including but not limited to loss of pay, past, and future, loss of benefits, past and future, loss of academic and career opportunities, loss of future earnings and other incidentals and benefits of employment; severe employment distress, humiliation, embarrassment; damage to reputation, attorney fees, punitive damages, costs, and other damages allowed under 42 U.S.C. §1983.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages in an amount in excess of one hundred (\$100,000.00) thousand dollars, legal fees, and costs, and for all such and further relief as the Court deems to be fair and just.

COUNT VII - VIOLATIONS OF THE REHABILITATION ACT

101. The Plaintiff adopts and incorporates the allegations set forth in paragraphs 1-52 of this Complaint above, as though fully set forth herein.

102. Section 504(A) of the Rehabilitation Act provides in relevant part that "no otherwise qualified individual with a disability shall, solely by reason of her or his disability,

shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. §794(a).

103. The Rehabilitation Act “prohibits discrimination in the same manner as the Americans with Disabilities Act and uses the same standards but applies to employees of federally funded programs.” Kraus v. Shinseki, 846 F.Supp.2d 936, 947 (N.D. Ill. 2012).

104. A plaintiff may prove a violation of the Rehabilitation Act by showing: “(1) disparate treatment, (2) disparate impact, or (3) refusal to make a reasonable accommodation.” Daveri Dev. Grp., LLC v. Vill. Of Wheeling, 934 F.Supp.2d 987, 996 (N.D. Ill. 2013)

105. Sections 501 and 505 of the Rehabilitation Act prohibit discrimination based on mental and physical disability and require agencies to reasonably accommodate the known physical or mental limitations of qualified employees. Requirements common to these regulations include reasonable accommodation for employees with disabilities, program accessibility; effective communication with people who have hearing or vision disabilities; and accessible new construction and alterations.

106. The Defendant’s actions as described above violated the Plaintiff’s rights under the Rehabilitation Act where the Plaintiff suffered disparate treatment which had substantial disparate impact against him where the Defendant failed to provide the Plaintiff with reasonable accommodations.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages in an amount in excess of one hundred (\$100,000.00) thousand dollars, legal fees, and costs, and for all such and further relief as the Court deems to be fair and just.

Respectfully submitted,
Plaintiffs
/s/ John C. Kreamer /s/
One of Their Attorneys

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