

STATE OF NEW YORK
SUPREME COURT: TOMPKINS COUNTY

In the Matter of the Application of

JOHN DOE,

Petitioner,

FOR A JUDGMENT PURSUANT TO ARTICLE 78
AND SECTION 3001 OF THE CPLR

Index No. EF2026-0292

-AGAINST-

CORNELL UNIVERSITY,

Respondent.

RESPONDENT'S MEMORANDUM OF LAW
IN OPPOSITION TO VERIFIED PETITION

ADAM G. PENCE
THOMAS HOEHNER
RYAN T. NELSON
Attorneys for Respondent

Office and Post Office Address
Cornell University
118 Sage Place
Ithaca, NY 14850
[REDACTED]

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF FACTS 1

 I. THE FORMAL COMPLAINT INITIATES AN INVESTIGATION..... 2

 II. THE INVESTIGATION INVOLVING DOE..... 3

 III. THE CONSOLIDATED HEARING 5

 IV. THE HEARING PANEL DECISION..... 11

 V. DOE’S APPEAL 12

 VI. DOE COMMENCES THIS PROCEEDING 13

ARGUMENT 13

 I. CORNELL’S CONDUCT PROCEEDINGS AND DETERMINATIONS ARE ENTITLED TO
 DEFERENCE UNDER ARTICLE 78..... 13

 II. DOE’S COMPLAINTS ABOUT LACK OF NOTICE ARE MERITLESS 15

 A. Cornell Substantially Complied With Its Procedures 15

 B. The Elements of Sexual Exploitation and Attempting Sexual Exploitation
 Are the Same 16

 C. Doe Was Not Blindsided or Prejudiced 18

 D. Doe Cites No Applicable New York Authority 19

 III. THE HEARING CHAIR’S DECISION NOT TO DECLARE A MISHEARING WAS NOT
 ARBITRARY AND CAPRICIOUS..... 21

CONCLUSION..... 23

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>CDE Elec., Inc. v. Rivera</i> , 124 A.D.3d 1178 (3d Dep't 2015)	14
<i>Custom Topsoil, Inc. v. City of Buffalo</i> , 63 A.D.3d 1511 (4th Dep't 2009)	13
<i>Doe v. Brandeis Univ.</i> 177 F. Supp. 3d 561 (D. Mass. 2016)	19
<i>Doe v. Cornell Univ.</i> , 70 N.Y.S.3d 750 (Sup. Ct. Tompkins Cnty. 2017)	22
<i>Doe v. Cornell Univ.</i> , 163 A.D.3d 1243 (3d Dep't 2018)	13, 22
<i>Doe v. Tr. of Dartmouth Coll.</i> , 615 F. Supp. 3d 47 (D.N.H. 2022)	19
<i>Doe v. Skidmore Coll.</i> , 152 A.D.3d 932 (3d Dep't 2017)	14, 16, 20
<i>Doe v. W. New England Univ.</i> , 228 F. Supp. 3d. 154 (D. Mass. 2016)	19
<i>Doe 1 v. Syracuse Univ.</i> , 188 A.D.3d 1570 (4th Dep't 2020)	22
<i>Ebert v. Yeshiva Univ.</i> , 780 N.Y.S.2d 283 (Sup. Ct. N.Y. Cnty. 2004)	20
<i>Fellheimer v. Middlebury Coll.</i> , 869 F. Supp. 238 (D. Vt. 1994)	20
<i>Hyman v. Cornell Univ.</i> , 82 A.D.3d 1309 (3d Dep't 2011)	13, 22
<i>Kickertz v. New York Univ.</i> , 25 N.Y.3d 942 (2015)	13
<i>Nicholas v. Martuscello</i> , 245 A.D.3d 1055 (3d Dep't 2026)	13

Rensselaer Soc. of Eng’rs. v. Rensselaer Polytechnic Inst.,
260 A.D.2d 992 (3d Dep’t 1999)14

Sutherland v. Glennon,
221 A.D.2d 893 (3d Dep’t 1995)13

Tedeschi v. Wagner Coll.,
49 N.Y.2d 652 (1980)13

VanHouten v. Mount St. Mary Coll.,
137 A.D.3d 1293 (2d Dep’t 2016)13

Zartoshti v. Columbia Univ.,
79 A.D.3d 470 (2010)14, 19

Other Authorities

CPLR 103.....13

On October 19, 2024, Jane Roe attended a party at the Chi Phi Fraternity. Roe would later allege she was the victim of a ketamine and alcohol-fueled sexual assault involving multiple fraternity members. That night, at 1:42 AM, one of these members sent a group Snapchat indicating there was “free pussy” in a bedroom called the “Alumni” room. What followed was a series of exchanges (which included a picture of Roe) that were recorded and later provided anonymously to the university. This Snapchat, which is an addendum to this brief, became a key exhibit in the resulting student conduct matter.

Doe participated in this exchange with his fraternity brothers, responding to the “free pussy” message at 2:20 AM, implying that his friend, [REDACTED] went to the room earlier and was now unavailable (“[REDACTED] went 7 min ago and is not afk sooooo”). He responded again at 2:29 AM, ostensibly confirming the “free pussy” message was real (“the alumni shit is not a bit. first hand pov not a bit”). Doe also entered the Alumni room around the same time he sent these messages.

Doe was subsequently charged with Sexual Exploitation and Sexual Assault under Cornell’s policies. After a lengthy investigation and hearing, where he presented robust defenses, he was found responsible only for Attempting Sexual Exploitation. Rather than accepting the Hearing Panel’s fair and nuanced determination, Doe has filed this proceeding, claiming Cornell should have reminded him he could be found responsible for attempted conduct and complaining that a panelist may not have been paying careful attention for one hour during 12 days of hearings.

Simply put, there is no basis under the law to grant Doe’s Petition.

STATEMENT OF FACTS

On November 14, 2024, Roe met with the Office of Institutional Equity and Title IX (“OIETIX”), which is tasked with enforcing Cornell Policy 6.4, “Prohibited Bias,

Discrimination, Harassment, and Sexual and Related Misconduct” (“Policy 6.4”). Affirmation of Lauren Branchini (“Branchini Aff.”) ¶¶ 6-8; R50.¹

I. THE FORMAL COMPLAINT INITIATES AN INVESTIGATION

On November 22, 2024, Cornell’s Title IX Coordinator (consulting with Roe) commenced a Formal Complaint. Branchini Aff. ¶ 12; R1042-47. The Complaint named seven respondents, including Doe, all of whom were Chi Phi members. *Id.*; R61.

Under Section 18 of the Procedures, at the issuance of the Formal Complaint, the Title IX Coordinator notifies the complainant and respondent(s) the investigation is commencing and provides a copy of the Formal Complaint. Branchini Aff., Ex. 2 at 20. The “notice” is to provide the parties with “the alleged prohibited conduct and its date, time, and location, to the extent known” and “the factual allegations pertaining to the prohibited conduct.” *Id.*

All respondents received a copy of the Formal Complaint, which included Section 3, entitled Alleged Misconduct, and part (g) outlined the allegations related to Doe:

violating Cornell University’s Policy 6.4 prohibition against Sexual Exploitation. Specifically, it is alleged that at the above time and place, [Doe] intentionally viewed the Complainant in a state of undress without her permission.

violating Cornell University’s Policy 6.4 prohibition against Sexual Assault. Specifically, it is alleged that at the above time and place, [Doe] touched his nose to the Complainant’s naked torso and inhaled a powered substance off her body without affirmative consent, including lack of affirmative consent due to incapacitation.

R1046.²

Along with the above allegations, Doe was specifically warned that “[t]he University may hold the Respondents accountable for violations of Policy 6.4 and other policies that are not

¹ The record for this proceeding has already been filed. NYSCEF Doc. Nos. 16-27.

² The Formal Complaint asserted the same allegations against another respondent, [REDACTED] a fraternity member who came into the Alumni room with Doe. *See* R1046, R1058.

referenced in the Formal Complaint but are learned about from evidence, testimony, or admissions during the investigation and adjudication process.” R1044 (emphasis added).

As the investigation continued, the Formal Complaint was updated on January 14, 2025 and on March 12, 2025. Branchini Aff. ¶ 20; R1048-59. The allegations against Doe remained substantively the same. R1052, R1058. Both updated Complaints included the same warning to Doe that he could be found responsible for other prohibited conduct. R1044, R1050, R1056.

II. THE INVESTIGATION INVOLVING DOE

After receiving the Formal Complaint, Doe fully participated in the Investigation and had every opportunity to rebut the allegations asserted against him.

Doe’s First Interview

On December 16, 2024, before a video of the full Snapchat exchange was provided to the university, Doe was interviewed by a Title IX Investigator. R480-503. In this interview, he explained he did not see Roe naked because she pulled a blanket over herself and explained he did not do drugs off her. R481, R484. Relevant here, he also admitted to receiving a message about “free pussy in alumni” but claimed he did not know what it meant. R483. Doe asserted he and [REDACTED] decided to go to the room because they were unsure if the message was a joke or what was going on in the room (and because Doe was hoping to get a new vape there). *Id.*

The Investigator asked Doe questions about the Snapchat and what was going through his mind then and, most important, why after reading the message he went to the Alumni room. R490. Doe specifically addressed his intent: “by no means were we going there to get free pussy in alumni. That was not our intentions at all. We were just checking out to see if everything was okay, and it was. Everybody in there seemed fine.” R490-91.

Doe also submitted evidence, including a timeline from that evening; an Acknowledgement of Understanding of Doe's Involvement from ■ providing a similar account of events; and a screenshot of ■'s phone log documenting a call with Doe leading up to when the two met and discussed the Snapchat. R1264-69. In this timeline, Doe included a fulsome discussion documenting the 10-15 minutes before he entered the Alumni room: Doe claimed he "didn't know if it was a joke and didn't know if there was a girl in there or whether someone was in danger or not or [a] practical joke." R1264-65. He reiterated that he and ■ went to the Alumni room to check on his friend, ■ and to vape. *Id.* ■ who at the time was cooperating with Doe (R1268), also provided a timeline with similar information about what led them to the room. R1234-35.

About six weeks after Doe's and ■'s initial interviews, Cornell received from an anonymous source the video documenting the entire Snapchat. Branchini Aff. ¶ 28; R1515. ■ would later amend his timeline, attempting to explain why he responded to a question "Shop still open?" with "Yeah" and "LFG," if there really was no sexual activity taking place in the Alumni room when they were there. R1456-58. ■ claimed he was adding to the "crude jokes being shared in the chat." *Id.*

Meanwhile, Doe was going to need to explain his messages on the exchange.

Doe's Second Interview

On February 24, 2025, Doe was interviewed again. R504-520. The Investigator walked through his proffered timeline of events, comparing the timeline with the time stamps from the Snapchat, focusing on the events leading up to Doe entering the room. R505-19. Doe claimed he got a call from ■ at 2:23 AM and did not go down to the Alumni room until 2:35 (after his pov text). R509. He claimed that "I went down there to see if everything was okay and if I

could hit a vape.” *Id.* The Interviewer walked Doe through the Snapchat, giving him every opportunity to explain his two responses to the “free pussy” message. R513-17. Doe admitted his first message, claiming that [REDACTED] “went 7 min ago and is not afk soooo,” was meant to convey that [REDACTED] went to the Alumni room and was “not on his phone” (the “not” was a mistake, and “afk” meant “away from keyboard”). R513-14. Doe was also given an opportunity to explain his second message “the alumni shit is not a bit. Firsthand pov not a bit.” R515-16. Doe said he did not remember but admitted he had talked to someone about what was happening in the room before entering and understood the person to say sexual activity was ongoing:

I wasn’t in the room yet. I don’t really remember, I just know that I talked to someone about it before entering [the] room. They said from their point of view, that’s what they saw. I was not in the room at that point. That’s part of the reason why I wanted to go down and check, cause they said from their point of view it wasn’t a joke. So, I wanted to see.

R515-16 (emphasis added).

III. THE CONSOLIDATED HEARING

On April 14, 2025, the Investigator issued a Hearing Notice and Investigative Report.

R41-113. The Hearing Notice included charges and a brief summary of alleged prohibited conduct for each respondent. R42-44. For Doe, the following was included:

1. Respondent [Doe] is accused of violating Cornell University’s Policy 6.4 prohibition against Sexual Exploitation. Specifically, it is alleged that on the above-described date, time, and location, Respondent [Doe] intentionally viewed the Complainant in a state of undress without her permission.
2. Respondent [Doe] is accused of violating Cornell University’s Policy 6.4 prohibition against Sexual Assault (Sexual Contact). Specifically, it is alleged that Respondent [Doe] touched his nose to the Complainant’s naked torso and inhaled a powdered substance off her body without her affirmative consent, including lack of affirmative consent due to incapacitation.

R44 (emphasis added).

On April 23, 2025, Doe submitted an Opening Statement in which he claimed he entered the Alumni room to find [REDACTED] and vape. R1628. He specifically argued that he lacked the requisite intent to commit Sexual Exploitation: “That said, entering a room, even if [Roe] was not fully dressed, in and of itself does not satisfy the elements of the charges against me unless it is alleged that I somehow knew prior to entering she was undressed and I intentionally viewed her, two elements that are neither alleged [n]or supported on the record.” R1630.

Cornell held a consolidated hearing in May 2025 over 12 days. R1638.

Roe’s Testimony and Cross-Examination by Doe’s Attorney

During the hearing, Roe testified that Doe and [REDACTED] were like “voyeurs” because “[t]hey were just looming.” R1691. Doe’s attorney then asked Roe numerous questions that spanned two days and over 40 pages of hearing transcript. R1870-1912. Among other subjects, his attorney asked Roe for her specific memories of Doe while he was in the room. *Id.* Roe admitted she was under a sheet at times and that she had no specific recollection of whether Doe saw her naked when she stood up, or if he snorted ketamine off her. *Id.* Referring to Doe and [REDACTED] she said “I know they were there. And they were there for a while from my recollection of it. And I think anything is possible. And if they didn’t do ketamine, they could have done something worse to me, but they were there for the amount of time that I believe they were there.” R1904-05.

Notably, in response to probing questions about whether Roe thought differently about Doe, if he did not partake in the ketamine, Roe replied “[Doe] read in a group chat about free pussy upstairs and decided that he wanted to participate in whatever was going on. I don’t view him as any better of a man, no.” R1892.

Doe's Testimony

Doe testified about receiving the Snapchats and going to the Alumni room. R2804-2828. He testified what he was thinking when he received "free pussy" and the follow-up "crazy work" message, explaining he thought it meant the sender wasn't sure it was true (and that it would be crazy if it were). *Id.*; R2857. Doe claimed both that he was somewhat concerned about [REDACTED] being in the Alumni room and, simultaneously, that he thought "free pussy" was fake. R2816-2823.

Doe compared his prior timeline to the timestamps of the Snapchats to establish where he was when he received the "free pussy" message and where he was when he responded with each message. R2814-17. Doe testified he sent the first message at 2:20 AM after [REDACTED] had gone to the Alumni room; he explained he went into the Alumni room at 2:30 AM, directly after sending the second POV message at 2:29 AM. R2816-23, R2858. Doe admitted he spoke to someone who claimed to come from the room who confirmed there was a "girl in there with three other dudes," but now claimed he was given no indication there was sexual activity going on inside. R2823-4, R2827-31. He later answered questions as to why he did not include in his proffered timeline the above conversation, claiming he did not remember and the "Snapchat kind of opened my eyes to what happened." R2861. Doe recounted his journey to the Alumni room and what he was thinking during that time. R2823-27. He claimed he knocked out of "common courtesy ... there was a female in the room with a couple other dudes" but, somehow, not because of potential sexual activity. R2831.

Doe recounted his memories of entering the room, seeing Roe and others on the bed, and claimed he did not see any evidence of sexual activity (despite all of them being on the bed together in some level of undress) and claimed to have seen no drug use. R2838-39. He asserted the person answering the door was clothed and already had a vape in his hand (the person

testified otherwise) and that Roe was under a blanket. R2832-33. Panelist Bao asked Doe for further details about his entering the room. R2887-88.

Finally, Doe testified as to why his attorney asked [REDACTED] to sign a statement of cooperation, which several people felt was to ensure the two kept the same story about their trip to the Alumni room. R2876-77.

Other Relevant Hearing Testimony

Numerous witnesses testified regarding facts related to Doe's intent going into the Alumni room, and Doe's attorney was allowed to cross-examine all of them.

[REDACTED] one of the occupants of the Alumni room, testified that Doe and [REDACTED] came to the door and "peeked" in the room and then just "walked in." R2002-03. [REDACTED] thought he was undressed at the time and had no memory of Doe asking for a vape. R2004-05, R2077. Notably, [REDACTED] recalled either Doe or [REDACTED] asking to take ketamine off Roe's chest and at least one of them doing so. R2007-11. Doe's attorney cross-examined [REDACTED] asking him questions related to Doe's intent entering the room, including asking whether anyone in the room had any notification other than the Snapchats that Roe was naked, and asked about her state of dress before and after being covered with the sheets. R2080-81. Doe's attorney further asked [REDACTED] what someone standing at the door, prior to entering the room, would have seen – i.e., would Doe have seen Roe naked or in the bed. R2082.

Another witness, [REDACTED] testified that he understood Doe's message "the alumni shit is not a bit. firsthand pov, not a bit" to mean Doe thought the "free pussy" message was real. R2321-23. Doe's attorney then cross-examined [REDACTED] to ascertain the basis for this belief. R2324-25.

[REDACTED] testified that, in response to the "free pussy" message, another fraternity member mentioned rumors of an "orgy occurring within the house at that point," and [REDACTED] specifically

remembered the use of the word “orgy” and Doe being present for (and possibly overhearing) the exchange. R2370-75. ■ testified that he went with Doe to the Alumni room, in response to the Snapchat message, but did not think Doe entered (he just remembered Doe in the room later when others were discussing taking ketamine off Roe). R2370-75, R2387-88. ■ testified that, in response to later rumors about what occurred in the Alumni room, Doe asked to be included in an apology message to Roe, which ■ sent, explaining to Roe that Doe was “sorry and should have never been in that room.” R2571-73, R1149. Doe admitted to feeling the need to apologize but not the specific remark. R2985-86. Doe’s attorney cross-examined ■ asking about the circumstances leading up to Doe entering the room and the extent of his memories about Doe’s apology. R2772-2781.

■ testified that he went with Doe to the Alumni room to check on ■ and for Doe to vape (and that they thought the Snapchat was a joke). R2450-51, R2472-73. ■ admitted he spoke about the “free pussy” message with Doe, and they speculated that “maybe it’s not a joke.” R2472. ■ further speculated that Doe sent the “firsthand pov” message as they entered the Alumni room but claimed it was still sent in jest. R2475. ■ admitted that when someone asked via Snapchat if the “Shop still open,” and he replied “Yeah” and “LFG,” he was still in the Alumni room with Doe. R2478-80, R2519. Doe’s attorney then cross-examined ■ on these same topics and asked ■ why he had decided to cooperate initially with Doe. R2529-2537.

Doe’s Attorney Raises Complaints About Panelist Bao

On May 15, 2025, when ■ was testifying, Doe’s attorney complained that he believed Panelist Bao (“Bao”) was not paying attention. R3439. During the next break, the Hearing Chair spoke to the panelists, who each conveyed that they were actively engaged, which the Chair shared with all hearing participants. Branchini Aff. ¶ 47; R3459.

Around 1:50 PM that same day (after lunch), Doe's attorney sent e-mails complaining that Bao appeared to be driving in a car and demanded an adjournment until she stopped driving. R3443-3454. A break was taken at 2:12 PM (R2526), and Bao explained to the Chair that she had tried to complete a short drive over the lunch break but had been unable to find a place to stop because of heavy traffic (but was still logged on to participate). Branchini Aff. ¶¶ 48-49. Over the break, Bao found a suitable place to stop and continued actively participating in the hearing. *Id.* The next day, on May 16, 2025, Doe's counsel demanded "a new Hearing Panel and for the hearing to restart." R3455-56.

On Monday, May 19, 2025, the Title IX Coordinator forwarded the Hearing Chair's response to Doe's attorney. R3459-60. The Chair explained that all concerns raised on May 15 were addressed in real time. *Id.* The Chair further explained Section 26.10 of the Procedures provides that she may declare a mishearing "if the process has become irreparably tainted," which may include "circumstances during a hearing rendering a panelist unsuitable for the panel." *Id.* The Chair found that there was nothing to indicate the hearing process had been tainted, let alone irreparably, especially since all concerns had been "immediately and directly addressed" during the session. R3459-60.

Doe's Closing Statement

In a final, written closing statement, Doe carefully analyzed the testimony against him in terms of why he went into the room and what he did when he was in there – i.e., where was he in the room in relation to Roe and did he see her naked or engaged in sexual activity. R3495-97. Doe specifically discussed the evidence regarding his intent when he decided to go into the Alumni room. *Id.*; *see also* R3497 ("I simply responded to sophomoric Snapchat messages, went to go look for [his friend], find a new vape, and to see what "Free Pussy" ... was all about.").

IV. THE HEARING PANEL DECISION

On August 18, 2025, the Hearing Panel issued a unanimous decision. Branchini Aff. ¶ 53; R3503-3601. The Panel found Doe consistently testified he did not observe Roe naked and did not partake in drug use, and then analyzed, in detail, his prior explanations (and his proffered timeline) for why he entered the Alumni room and what he did when he got there, along with various related testimony. R3536-38. The Panel found the evidentiary record insufficient to establish Doe ingested ketamine off Roe's body (R3541), and, therefore, he was not responsible for Sexual Assault, and found that the preponderance of evidence showed Roe was aware, by her own account, that she was nude when Doe was in the room, so he was not responsible for Sexual Exploitation. R3540.

At the same time, the Panel considered Section 3.2 of the Procedures, which prohibits attempting to commit prohibited conduct, and found Doe had attempted to commit Sexual Exploitation when he entered the Alumni room. R3540. The Panel found the "free pussy" message "communicated an invitation for others to go to the alumni room, along with a reference to female sexual anatomy." R3539. And "by [Doe's] own account, he went to the room, at least in part, because of a Snapchat message indicating there was 'free pussy in alumni.'" R3540. The Panel found "it more likely than not that [Doe] understood that the 1:42 a.m. message indicated some kind of sexual situation involving a female" and found his assertions that he thought the message was a joke "incompatible with his account that he was sufficiently 'worried' about what was happening in the room that he went to check on the situation." R3540-41. The Panel also took into consideration Doe's "not a bit" message and the fact he received confirmation there was a girl present in the room before entering. R3541.

The Panel “therefore determined by a preponderance of the evidence that [Doe] understood that a female was likely nude and/or engaged in sexual activity in the [room] ..., and entered the room on that basis, intending to observe the same.” R3541. Finally, noting that Roe did not invite Doe or have any idea he would be coming in response to the Snapchats, which she was not aware of at the time, the Panel found that Doe engaged in conduct directly tending towards completion of sexual exploitation by entering the room with the intent to observe Roe nude or engaged in sexual activity without her knowledge or consent, even if he ultimately found her covered by a sheet and not in that moment engaged in sexual activity. R3541.

V. DOE’S APPEAL

Doe appealed the Panel’s decision, raising among other issues Bao’s attention during ■■■’s testimony and the fact Doe was found responsible for Attempting Sexual Exploitation, even though he was charged with Sexual Exploitation. Doe further argued that the record was insufficient for the Panel to find that he had the requisite intent to commit Attempted Sexual Exploitation. R3602-19.

On January 14, 2026, the Appeal Panel unanimously affirmed the Hearing Panel’s decision. R3629-30. The Panel reasoned that the time Bao was in the car was a “substantially de minimis amount of time in a hearing that spanned many hours and multiple days,” and that the issue was promptly addressed, concluding the Chair appropriately exercised her discretion. R3629. The Panel noted the language in the Notice of Formal Complaint that “clearly notified you that additional violations might be identified throughout the process,” and noted that the Formal Complaint clearly “detailed the factual allegations underlying the misconduct for which you were found responsible.” *Id.*

VI. DOE COMMENCES THIS PROCEEDING

On March 30, 2026, Doe commenced this proceeding, asking the Court to annul the misconduct finding and to issue a declaratory judgment, pursuant to CPLR § 3001, that Cornell misapplied its policies and acted in an arbitrary and capricious manner.³ Specifically, Doe argues Cornell failed to follow its procedures by finding him responsible for Attempting Sexual Exploitation, but only giving him notice of the Sexual Exploitation charge, and that Bao's actions somehow "irreparably compromised" and "tainted" the proceeding because she supposedly missed critical testimony in support of his defenses. Notably, Doe does not challenge the Hearing Panel's findings of fact or responsibility. Petition ¶ 21.

ARGUMENT**I. CORNELL'S CONDUCT PROCEEDINGS AND DETERMINATIONS ARE ENTITLED TO DEFERENCE UNDER ARTICLE 78**

Cornell's disciplinary decisions are subject to review under Article 78 only to determine whether the university substantially complied with its own policies and procedures and had a rational basis for its decisions. *Doe v. Cornell Univ.*, 163 A.D.3d 1243, 1245 (3d Dep't 2018); *Hyman v. Cornell Univ.*, 82 A.D.3d 1309, 1310 (3d Dep't 2011); *see also Kickertz v. New York Univ.*, 25 N.Y.3d 942, 944 (2015) ("private educational institution" imposing disciplinary action on student "need only ensure that its published rules are 'substantially observed'") (citing *Tedeschi v. Wagner Coll.*, 49 N.Y.2d 652, 660 (1980)); *VanHouten v. Mount St. Mary Coll.*, 137 A.D.3d 1293, 1295 (2d Dep't 2016) ("Private schools are afforded broad discretion in

³ Doe's declaratory judgment claim can only be asserted through a plenary action. *See Nicholas v. Martuscello*, 245 A.D.3d 1055, 1056-57 (3d Dep't 2026). Further, because Doe seeks Article 78 relief in the form of declaratory judgment, Cornell maintains there is no basis for this Court to convert this special proceeding into a hybrid action under CPLR 103(c). *See Sutherland v. Glennon*, 221 A.D.2d 893, 894 (3d Dep't 1995) (declaratory judgment portion of hybrid case should have been converted to an Article 78 proceeding because it merely requested annulment of the respondent's determination); *Custom Topsoil, Inc. v. City of Buffalo*, 63 A.D.3d 1511, 1511 (4th Dep't 2009) (hybrid action properly treated as only an Article 78 proceeding because declaratory judgment action not appropriate procedural vehicle for challenging underlying determination).

conducting their programs, including decisions involving the discipline, suspension and expulsion of . . . students.”).

Substantial compliance does not require perfection or strict adherence. *See Doe v. Skidmore Coll.*, 152 A.D.3d 932, 935 (3d Dep’t 2017) (“Perfect adherence to every procedural requirement is not necessary to demonstrate substantial compliance[.]”). And, when a determination “is supported by a rational basis, it must be sustained even if the reviewing court would have reached a different result.” *CDE Elec., Inc. v. Rivera*, 124 A.D.3d 1178, 1180 (3d Dep’t 2015). Moreover, to challenge successfully a conduct decision, a petitioner also needs to establish a resulting prejudice. *Zartoshti v. Columbia Univ.*, 79 A.D.3d 470, 471 (1st Dep’t 2010) (upholding disciplinary decision against student where university deviated from policy but student could demonstrate no prejudice).

Finally, universities in New York, particularly private universities, are afforded a high level of deference regarding internal disciplinary proceedings, and complaints about general fairness or legal due process alone are not enough to disturb student conduct decisions. *See Skidmore Coll.*, 152 A.D.3d at 934-35 (“Petitioner’s claims as to fundamental fairness are without merit as respondent is not a public university. Thus, its relationship with its students is essentially a private one such that . . . its disciplinary proceedings do not implicate the full panoply of due process guarantees.”) (internal citations and quotations omitted); *Rensselaer Soc. of Eng’rs v. Rensselaer Polytechnic Inst.*, 260 A.D.2d 992, 993 (3d Dep’t 1999) (defining standard of review for Article 78 petition and noting contentions of unfairness are “misplaced within the appropriate context of our review”).

II. DOE'S COMPLAINTS ABOUT LACK OF NOTICE ARE MERITLESS

A. Cornell Substantially Complied With Its Procedures

Doe argues Cornell violated its Policy 6.4 by finding him responsible for Attempting Sexual Exploitation even though the university never included “Attempting to Commit Prohibited Conduct” as a specific charge. Such an argument is meritless and flies in the face of the record before this Court.

Doe was served with three Notices of Formal Complaint that outlined the specific alleged prohibited conduct at issue (Sexual Assault and Sexual Exploitation) and the underlying factual allegations related to that misconduct. *See supra* 2-3. Particularly relevant, Doe was informed that he was being accused of seeing the “free pussy” message and deciding to go to the Alumni room for the purpose of observing Roe naked and/or engaging in sexual activity (and without her knowledge or permission). *See supra id.* Doe was also notified again of these factual allegations and the alleged prohibited conduct in the Notice of Hearing. *See supra* 5.

Significantly, the three Notices of Formal Complaint all warned Doe that “[t]he University may hold the Respondents accountable for violations of Policy 6.4 and other policies that are not referenced in the Formal Complaint but are learned about from evidence, testimony, or admissions during the investigation and adjudication process.” *See supra* 2-3. From the very beginning of the process, Doe was informed he could be found responsible for any additional Policy 6.4 violation, let alone the attempt of prohibited conduct specifically identified.

The purpose of the notice requirements – whether under the Formal Complaint or Notice of Hearing – is to allow respondents sufficient notice of what will be the focus of the matter: this includes alleged prohibited conduct, but equally important are the underlying facts. *See, e.g.,* Branchini Aff., Ex. 2 (Procedures), Section 18 (explaining Notice should include, if possible, date, time, and location, along with factual allegations pertaining to prohibited conduct). A

requirement that the university must include a pro forma notice that for any asserted charge the respondent could be found responsible for attempt rather than the completion of such conduct serves no purpose and provides no substantive notice, particularly where the underlying facts and elements of the offense are the same for both charges.

Moreover, perfection is not the standard upon which this Court reviews Cornell's actions. The fact that Attempting Sexual Exploitation was not included as a specific charge does not mean Cornell failed to substantially comply with its policies and procedures, in form or substance. Doe was on notice of what he was alleged to have done, the specific related facts, and what prohibited conduct was at issue. *See Skidmore Coll.*, 152 A.D.3d at 935 ("Perfect adherence to every procedural requirement is not necessary to demonstrate substantial compliance [with procedures]").

Finally, it bears noting that, by Doe's logic, it would not have been arbitrary and capricious if the Hearing Panel found him responsible for actual Sexual Exploitation because the university would have ostensibly complied with its notice policies, but it was arbitrary and capricious for the Panel to determine (correctly) that the evidence established he was only responsible for the lesser charge.

B. The Elements of Sexual Exploitation and Attempting Sexual Exploitation Are the Same

Doe repeatedly argues the elements of attempting prohibited conduct and the actual prohibited conduct are different. They are not. Any analysis of "attempt" is necessarily contingent on the elements of the actual conduct.

Under Section 3.2 of the Procedures, a person "attempts to commit prohibited conduct if, with the intent to commit such conduct, that person engages in conduct directly tending toward completion of the prohibited conduct" (emphasis added). Branchini Aff., Ex. 2 at 4. This definition requires the elements of 1) "intent" and 2) engaging in conduct "directly tending

toward completion” of the act. *Id.* Put another way, the recipient needs the same intent as the prohibited conduct and engages in the same acts and activities necessary to complete the prohibited conduct.

Under Section 3.6 of the Procedures, “Sexual Exploitation” is defined as, among other acts, “intentionally ... [o]bserving another person when that person is nude or engaged in sexual activity without the knowledge and consent of the person observed or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved.” Branchini Aff., Ex. 2 at 7 (emphasis added).

The key inquiry here remains the same: it revolves around Doe’s intentions, from the time he received the “free pussy” message until the time he entered the Alumni room. Put another way, the relevant question asks why he went into the room that night. And Doe and his attorney were on notice of this central issue from the very first Notice of Formal Complaint.

Interestingly enough, Doe’s own counsel has a webpage devoted to Cornell and Policy 6.4.⁴ There is even a section on attempted conduct, in which counsel explains the following:

Cornell’s Policy 6.4 contemplates an attempt, or uncompleted commission of some prohibited conduct. Attempting to commit prohibited conduct includes situations in which a person intends to engage in prohibited conduct, and that person does something, takes some action, that leads toward the completion of the prohibited conduct without actually completing the offense. This might include an offensive or otherwise prohibited message through social media or text which is sent, but for whatever reason never actually received by the intended recipient.

Id. (emphasis added). The hypothetical proffered above, with a text message sent but not received, seems quite analogous to Doe’s situation, where he appears to have entered a room for

⁴ <https://www.new-york-lawyers.org/practice-areas/ny-college-arrests-title-ix-disciplinary-hearings/cornell-arrests-disciplinary-hearing-title-ix-misconduct-investi/prohibited-conduct-and-definitions-under-cornell-s-title-ix-poli/>, last visited July 17, 2026.

a specific purpose but through accident or happenstance did not succeed.

C. Doe Was Not Blindsided or Prejudiced

Despite the fact Doe had the requisite notice, he maintains he was the victim of a “bait-and-switch,” claiming he was somehow deprived of the opportunity to defend himself fully. Nothing could be further from the truth because the record is clear that he and his attorney repeatedly and consistently attacked the assertion that he entered the Alumni room with the intent of observing Roe in some state of undress or engaging in sexual activity.

Doe challenged the element of intent by claiming 1) he was unaware whether sexual activity was happening in the room, 2) was concerned about ■ who he thought was in the room, and 3) wanted a vape. *See supra* 3-5. To support this multi-faceted defense, Doe submitted a detailed timeline from the time he received the first Snapchat message through entering the room. *See supra* 4. He secured the initial cooperation of ■ who was with him during this key period of time. *See supra id.* He spent hours testifying about every aspect of what happened after he received the Snapchat message – what he was thinking, why he replied with the responses he did, where he was when he sent such responses; he even explained why he knocked on the door and what he saw when he entered the room. *See supra* 7-8. His counsel also cross-examined numerous witnesses, attempting to buttress this defense, and rebut testimony tending to establish Doe’s intent. *See supra* 6, 8-9.

In truth, Doe was found responsible for Attempting Sexual Exploitation, not because he was somehow denied an opportunity to raise a relevant defense regarding his intent, but because the Hearing Panel found it more likely than not that he entered the Alumni room, after receiving the Snapchat message(s), with the expectation Roe would be naked or engaged in sexual activity (which he admitted was largely confirmed by an individual directly before he entered the room). *See supra* 11-12. The Panel found his assertions that he thought the message was a joke

“incompatible” with his account that he felt the need to check on what was happening in the room. *See id.* Doe was provided every opportunity to challenge his alleged intent, and he took every opportunity to do so.

While Doe claims he would have presented additional defenses (Petition ¶ 33), he fails to identify a single one in his Petition. He simply was not prejudiced by supposedly failing to be reminded that he could be found responsible for Attempting Sexual Exploitation. *See Zartoshti*, 79 A.D.3d at 471 (upholding student disciplinary decision where university arguably deviated from “literal compliance” with policy because student could demonstrate no prejudice).

D. Doe Cites No Applicable New York Authority

Instead of citing any analogous or binding authority, Doe cites cases from outside of New York. Setting aside their limited precedential value, they are entirely inapposite and distinguishable because none of them concern the instant question of whether a student should have received notice of the related charge of attempting prohibited conduct. *See, e.g., Doe v. W. New England Univ.*, 228 F. Supp. 3d 154, 175 (D. Mass. 2016) (review board improperly found student responsible based on different definition of misconduct from separate policy, and neither definitions nor separate policy were included in applicable rules handbook or notices provided to student); *Doe v. Brandeis Univ.* 177 F. Supp. 3d 561, 603-04 (D. Mass. 2016) (student improperly “expected to defend himself against the vague and open-ended charge that he had ‘numerous inappropriate, nonconsensual sexual interactions’” related to a “lengthy and apparently tangled relationship that went on for nearly two years”); *Doe v. Tr. of Dartmouth Coll.*, 615 F. Supp. 3d 47, 61-62 (D.N.H. 2022) (plaintiff prevailed only at motion to dismiss stage,⁵ with Court ruling it was possible he was prejudiced by not receiving notice of sexual

⁵ The Court later dismissed plaintiff’s notice claim at summary judgment because he failed to meet his burden beyond the pleading stage. 731 F. Supp. 3d 222, 243-44 (D.N.H. 2024).

touching charge because the charge of “sexual intercourse” was defined differently from “sexual touching”); *Fellheimer v. Middlebury Coll.*, 869 F. Supp. 238, 246-47 (D. Vt. 1994) (plaintiff given notice of one charge, described either as “rape” or “sexual assault,” but not provided notice of “separate and distinct charge of ... disrespect of persons,” nor was he provided notice of what specific alleged conduct in terms of underlying factual allegations supposedly constituted “disrespect of persons”).

The fact Doe does not cite a single New York authority in support of his notice argument is not surprising because no such case law exists. Courts in New York have only annulled disciplinary findings for lack of notice in egregious and prejudicial circumstances, ones that are simply not present here. *See, e.g., Skidmore Coll.*, 152 A.D.3d at 935-37 (formal complaint provided “no factual allegations identifying the specific actions that were alleged to be policy violations” and instead provided only recitations of charges, which court noted provided little notice value); *Ebert v. Yeshiva Univ.*, 780 N.Y.S.2d 283, 286 (Sup. Ct. N.Y. Cnty. 2004) (despite rules requiring reasonable advance notice of interview to formulate an “oral and written defense,” petitioner only informed of charges and provided copy of disciplinary rules at outset of meeting and informed meeting would be sole opportunity to respond).

Skidmore College is instructive here: the Third Department actually discounted the value of simply reciting specific misconduct charges because such charges may “include a broad range of actions that would be impossible for an accused student to discern what conduct they were alleged to have committed.” Instead, the Court explained the factual allegations provide the more important and useful notice. *See Skidmore Coll.*, 152 A.D.3d at 935-37.

Notably, Doe does not challenge the sufficiency of the Hearing Panel’s factual findings or the fact the Panel’s responsibility finding was rational, based on the hearing record. And it is

undisputed that the findings at the center of the Hearing Panel's responsibility determination for Doe are directly related to the factual allegations noticed repeatedly by Cornell over the course of the underlying proceeding. It simply defies common sense to argue that a rote recitation of the attempt language would have provided any real notice value to Doe or that the lack of reference to this related but lesser charge was arbitrary and capricious.

III. THE HEARING CHAIR'S DECISION NOT TO DECLARE A MISHEARING WAS NOT ARBITRARY AND CAPRICIOUS

Doe claims in his Petition that Bao's supposed inattention on May 15, 2025, including the short time she spent in a car, somehow "irreparably compromised" and "tainted" the hearing because she missed key testimony from [REDACTED] Petition ¶¶ 40-41.

The record of the underlying proceeding not only does not support these arguments but directly refutes them. First and foremost, the Hearing Panel decision was unanimous among the three panelists. *See supra* 11. No matter what Bao decided, Doe still would have been found responsible based on the other two Panelists.

Further, the Hearing Chair diligently addressed all concerns raised in real time, and the Chair correctly exercised her discretion by refusing to start over an entire eight-party misconduct proceeding that would span 12 days when there was no legitimate basis to do so. The Panelists confirmed they were actively paying attention during the morning session on May 15, 2025. *See supra* 9. The time Bao spent in the car, where she was still observing the proceeding, amounted to only 15 pages of a 1,732 page hearing transcript. R2511-26. If that were not enough, directly after that brief period, Doe's attorney began cross-examining [REDACTED] rehashing the earlier testimony and raising numerous issues related to Doe's defenses, including the "pov" text Doe sent, their journey to the Alumni room, and what [REDACTED] saw when they entered the room, for all of which Bao was present and attentive. R2529-40.

Under Cornell's Procedures, the Hearing Chair has full discretion under Section 26.10 regarding adjournments and whether to declare a "mishearing." *See* Branchini Aff., Ex. 2, § 26.10.1 ("The Hearing Chair may adjourn the hearing [based on the potential unavailability of a participant and] may also declare a 'mishearing' if the process has become irreparably tainted (e.g., prejudicial conduct by an advisor, circumstances during a hearing rendering a panelist unsuitable for a panel, etc.).").

New York courts consistently defer to a Hearing Chair's decisions when such decisions are within the discretion vested under the applicable policies, including in prior cases involving Cornell and Policy 6.4. *See, e.g., Doe v. Cornell Univ.*, 70 N.Y.S.3d 750, 760-62 (Sup. Ct. Tompkins Cnty. 2017), *aff'd*, 163 A.D.3d 1243 (2018) (refusing to disturb Hearing Chair's discretionary decisions regarding whether to ask certain questions and regarding whether to have witness testify); *Hyman v. Cornell Univ.*, 82 A.D.3d 1309, 1310 (3d Dep't 2011) (rejecting argument Hearing Chair abused discretion in overruling petitioner's objections during hearing); *see also Doe 1 v. Syracuse Univ.*, 188 A.D.3d 1570, 1572-73 (4th Dep't 2020) (university conduct board chairperson's denial of request to pose certain questions to witnesses and to call certain witnesses at hearing were discretionary determinations reserved for chairperson).

Clearly, the Hearing Chair had full discretion in terms of responding to complaints from Doe's attorney regarding Bao and had full discretion in terms of declaring a mishearing. Those decisions – as a matter of law and, given the particular circumstances here – are entitled to deference.

CONCLUSION

For all the reasons set forth above, Cornell respectfully submits that this Court should dismiss the Petition, together with such other and further relief as the Court deems appropriate.

Dated: July 17, 2026

/s/ Adam G. Pence
ADAM G. PENCE
THOMAS HOEHNER
RYAN T. NELSON
Cornell University
Office of General Counsel
118 Sage Place
Ithaca, NY 14850
(607) 255-5124

Attorneys for Respondent Cornell University

202.8-b CERTIFICATION

I hereby certify that the foregoing document is 6,983 words and in compliance with
22 NYCRR 202.8-b(c).

Dated: July 17, 2026

/s/ Adam G. Pence
ADAM G. PENCE, ESQ.

ADDENDUM

Screenshot of Initial Snapchat Conversation (R1515)



Transcript of Entire Snapchat Conversation (R1487)

[REDACTED] (1:42 AM): "Free pussy in alum pu"
[REDACTED] (Replying to [REDACTED] at 2:19 AM): "This is crazy work"
[REDACTED] (2:19 AM): "Free..."
[REDACTED] (2:20 AM): "[REDACTED] went 7 min ago and is not afk sooooo"
[REDACTED] (2:28 AM): "I fucking love chi phi"
[REDACTED] (2:28 AM): "CHI PHIII"
[REDACTED] (2:29 AM): "the alumni shit is not a bit. first hand pov not a bit."
[REDACTED] (2:31 AM): "Like you can walk in and whit it out rn"
[REDACTED] (2:33 AM): "Type"
[REDACTED] (2:35 AM): *Sent Image of Roe that can be seen in video*
[REDACTED] (2:35 AM): "Shop still open? "
[REDACTED] (2:35 AM): "Yeah "
[REDACTED] (2:35 AM): "Yeah"
Unknown User (2:35 AM): "No way!"
[REDACTED] (2:35 AM): "LFG"
[REDACTED] (2:35 AM): "[REDACTED] laying rn"
[REDACTED] (2:36 AM): "Nice. Nice guys. Is my room open?"
[REDACTED] (2:36 AM): "Lowkey he's cucking all of us"
[REDACTED] (2:36 AM): "Nvm"
[REDACTED] (Replying to [REDACTED]'s 1st 2:36 AM Message; 2:36 AM): "Fuck off mid"
[REDACTED] (2:36 AM): "Kid"
[REDACTED] (2:36 AM): "I want my license"
Unknown User (Time Unknown): "Are you guys at least naked?"
[REDACTED] (Time Unknown): "Boys come whip it out"