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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

JOHN DOE, an individual,

Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, and DOES 1 to 20 inclusive,

Respondents.

Case No.: 17CV03053

[Hon. Donna D. Geck]

NOTICE OF OPINION AND JUDGMENT GRANTING PETITION FOR WRIT OF ADMINISTRATIVE MANDATE

Date: December 22, 2017
Time: 9:30 a.m.
Place: Department 4

TO ALL PARTIES AND THEIR ATTORNEYS:

PLEASE TAKE NOTICE that on December 22, 2017, the matter of Petitioner's Writ of Administrative Mandate came regularly before the above entitled Court, Hon. Donna D. Geck, judge presiding. Mark Hathaway, Werksman Jackson Hathaway & Quinn LLP, appeared for Petitioner; Sara N. Taylor, Munger Tolles & Olson LLP, appeared for Respondents Regents of the University of California.

The record of the administrative proceedings having been lodged with the Court and examined, and arguments having been presented and considered, the Court granted Petitioner's Petition for Writ of Administrative Mandate. A true and correct copy of the Court's ruling, setting

forth the final opinion and judgment of the Court, is attached hereto.

WERKSMAN JACKSON
HATHAWAY & QUINN LLP

Dated: December 22, 2017 By: _____
MARK M. HATHAWAY
Attorneys for Petitioner

ATTACHMENT

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

TENTATIVE RULING

Judge Donna Geck
Department 4 SB-Anacapa
1100 Anacapa Street P.O. Box 21107 Santa Barbara, CA 93121-1107

CIVIL LAW & MOTION

John Doe vs Regents of the University of California	
Case No:	17CV03053
Hearing Date:	Fri Dec 22, 2017 9:30

Nature of Proceedings: Writ of Mandate

Tentative Ruling: The court grants petitioner John Doe's petition for writ of mandate. The court sets aside the Appeal Decision of the Interpersonal Violence Appeal Review Committee, University of California, Santa Barbara, in Title IX Case #2016-0121. To be clear, this means that John Doe is again a student at the University of California, Santa Barbara. The Interpersonal Violence Appeal Review Committee shall reconsider the case in light of the court's opinion and judgment. The same panel of the Interpersonal Violence Appeal Review Committee may, though it need not, conduct a new hearing. It can consider the evidence before it, including the transcript of the hearing, and render a new decision in accordance with the University of California Sexual Violence and Sexual Harassment Policy. Because credibility determinations must be made, if the same panel cannot be reconstituted, a new hearing will be necessary.

Background: In this proceeding, petitioner John Doe, a student at the University of California Santa Barbara ("UCSB"), seeks a writ of mandamus challenging his dismissal from UCSB, after he was accused of stalking a fellow student (the court will refer to her as "Roe") "through repeated physical and verbal conduct." [Pet. ¶77] Respondent is Regents of the University of California.

Doe alleges: The University advised John Doe that he was being charged with "stalking" in violation of University's Interim Policy on Sexual Harassment and Sexual Violence (version dated 06/17/15) and the University's Sexual Harassment and Sexual Violence Policy (version dated 01/01/16) based on the allegations that: i) Doe followed Roe daily to and from her classes for nearly an entire academic year on a daily basis, remaining at least 100 feet behind her; ii) on April 28, 2016, Doe followed Roe to Ellison Hall, stood outside the building, and watched and laughed at her as she exited the

building; iii) in April and May 2016, Doe directed some unidentified person(s) to send a series of disturbing and threatening anonymous telephone calls and text messages to Roe; iv) on May 20, 2016, Doe went to a fraternity house and argued briefly with Roe's boyfriend; and v) on May 26, 2016, Doe had arranged to attend a sorority's formal event at Roe's sorority and deliberately maintained close proximity to Jane Roe and her boyfriend and engaged in conduct directed at them. [Pet. ¶78] Doe denied each of the allegations, with the exception that on May 20, 2016, Doe and Roe's boyfriend had argued briefly at the fraternity house. [Pet. ¶79]

Title IX investigator Brian Quillen conducted the administrative investigation. [Pet. ¶80] Quillen formed the opinion that it was more likely than not that Doe had engaged in the conduct alleged as part of a pattern of sexual violence-stalking. [Pet. ¶¶81-85] On November 11, 2016, Sandra Vasquez, Ed.D., Associate Dean of Students & Director, Office of Judicial Affairs, wrote to Doe that, based on her review of Quillen's report and meeting separately with Jane Roe and John Doe, she had decided that Doe violated University sexual violence and harassment policies and the appropriate disciplinary sanction was dismissal from UCSB and the University of California. [Pet. ¶87]

Doe appealed Vasquez's decision and, on January 30, 2017, the appeal hearing proceeded before the University's Interpersonal Violence Appeal Review Committee ("IVARC"). [Pet. ¶¶88, 89] IVARC denied Doe's appeal. [Pet. ¶91]

Doe contends that respondent's actions, sanctions, and decision are invalid because respondent 1) failed to grant Petitioner a fair hearing, or any hearing at all; 2) committed a prejudicial abuse of discretion, in that respondent failed to proceed in the manner required by law; 3) respondent's decision is not supported by the findings; and 4) respondent's findings are not supported by the evidence. [Pet. ¶93]

Doe seeks: 1) an alternative writ of mandate directing respondent to set aside the findings and sanctions issued against Doe, or to show cause why a peremptory writ of mandate to the same effect should not be issued; 2) a peremptory writ of mandate directing respondent to set aside its findings and sanctions against Doe; and 3) reasonable attorney's fees and litigation expenses as permitted by statute.

In its summary of administrative proceedings, the court will use abbreviations. Here is a glossary of those abbreviations: "SVPH" = University of California Sexual Violence and Sexual Harassment Policy; "TIX/SHPC" = Title IX and Sexual Harassment Policy Compliance Office; "OJA" = Office of Judicial Affairs; "IVARC" = Interpersonal Violence Appeal Review Committee. (The parties use "IPVARC" but, since "Interpersonal" is one word, the court will use "IVARC.") References to the administrative record are designated as "AR" followed by a page number and any other information specifically identifying where on the page the material referenced can be found.

Note regarding AR: When providing an administrative record, Regents can assist the court and expedite proceedings by providing an electronic version of the administrative record, such as a CD or DVD. This was not done in this case and the court had to manually reproduce portions of the record in this decision. (The only DVD provided included audio files only.)

Request for Judicial Notice: Petitioner requests the court to take judicial notice of certain documents. The first four are statements and documents from the U.S. Dept. of Education dated in September 2017 and California Governor Brown's veto message dated October 15, 2017, regarding Senate Bill 169. The court agrees with Regents that these documents are irrelevant as they post-date the administrative procedures in this case. The fifth document is an order granting a petition for writ of mandate in Case No. RG16-843940 in the Alameda Superior Court. Regents does not oppose judicial notice of this document. The court denies the request for judicial notice of Exhibits 1-4 and grants the request for judicial notice of Exhibit 5.

1: University of California SVHP: The court will briefly summarize the relevant substantive and procedural provisions of the SVHP, including its Implementing and Response Procedures for Reported Student Violations of the SVHP.

The prohibited conduct includes four types of sexual violence: a) sexual assault – Penetration; b) sexual assault – contact; c) dating violence; and d) stalking. [AR 1262-1263] This case involves an allegation of stalking. Stalking is defined as: "Repeated conduct directed at a Complainant (e.g., following, monitoring, observing, surveilling, threatening, communicating or interfering with property), of a sexual or romantic nature or motivation, that would cause a reasonable person to fear for their safety, or the safety of others, or to suffer substantial emotional distress." [AR 1263; I.B.1.d.]

Among the options for a person impacted by sexual violence is filing a complaint with law enforcement, TIX/SHPC, or both. [AR 1266; II.1-4.] TIX/SHPC makes an initial assessment with respect to whether an investigation is warranted. [AR 1268; III.B.] TIX/SHPC conducts investigations. [AR 1269; III.C.1.] TIX/SHPC sends notice of the investigation and charges to complainant and respondent. [AR 1269; III.C.2.] The TIX/SHPC investigation includes outreach to complainant, outreach to respondent, gathering relevant evidence, and outreach to witnesses. [AR 1270-1271; III.C.8] The investigator makes analyses of: "i. Credibility assessment based on inherent plausibility, the demeanor of the involved parties, bias and motive to falsify and any historical reports of similar behavior or issues. ii. Analysis of facts: disputed, undisputed and other evidence. iii. Make a recommendation about whether the UC SVSH Policy was violated." [AR 1271; III.C.8.g.] The investigator prepares a written report and notifies both parties. [AR 1271; III.C.8.h., i.]

The written report is forwarded to OJA, which determines whether to move forward with sanctions. [AR 1272; III.D.3.] Either party may meet with OJA and/or submit a written statement. [AR 1272; III.D.4.] OJA then sends notice of whether the charges have been substantiated and any sanctions to be imposed. [AR 1272-1273; III.D.5., 6.]

The parties may appeal the OJA decision and/or sanctions to IVARC on one or more of four grounds: "i. There was a procedural error in the process that materially affected the outcome, such as the investigation was not fair, thorough or impartial; ii. The decision was unreasonable based on the evidence; iii. There is new, material information that was unknown and/or unavailable at the time the decision was made that should affect the outcome; and iv. The disciplinary sanctions were disproportionate to the findings." [AR 1273; III.F.1.a.] IVARC serves as the decision-making body on the appeal. [AR 1273; III.F.1.b.]

IVARC conducts a hearing. The IVARC panel may question the TIX/SHPC investigator, witnesses present, complainant, and/or respondent. The investigation report and supporting documents or materials will be entered as evidence at the appeal hearing. [AR 1274; III.F.2.d.] Complainant and respondent have the opportunity to present information. [AR 1274-1275; III.F.2.b., f.] They have the right to hear all individuals who testify and to propose questions to be asked of those individuals. They must submit those questions to the chair of IVARC before or during the hearing. [AR 1275; III.F.2.g.]

IVARC will reach a decision based on a preponderance of the evidence standard. [AR 1275; III.F.3.a.] IVARC shall take into account the record developed by the investigator and the evidence presented at the hearing and may make its own findings and credibility determinations based on all the evidence before it. [AR 1275; III.F.3.b.] IVARC may uphold the findings and sanctions, overturn the findings or sanctions, or modify the findings and or sanctions. [AR 1275; III.F.3.c.] If the findings and sanctions are upheld, the matter is closed with no further right to appeal. [AR 1275-1276; III.F.3.f.]

2. Investigation, Notice of Charges: Doe and Roe briefly dated in September 2015. Roe ended the relationship in mid-October 2015. [AR 373] Roe reported that Doe began following her to classes; she received anonymous threatening phone calls. [AR 374-377] On April 29, 2016, after the first series of anonymous calls, Roe called the Santa Barbara County Sheriff's Office. [AR 374, 765] On June 1, she made a complaint to TIX/SHPC. [AR 367] TIX/SHPC did a preliminary assessment and determined that an investigation was the most appropriate response. [AR 368, 943] The case was designated Title IX Case #2016-0121.

Brian Quillen is the principal investigative analyst for TIX/SHPC and was charged with managing the investigation into Roe's complaint. [AR 938:6-11] On June 10, Quillen sent Doe a letter notifying him that the investigation into the stalking complaint was opened and included a copy of the SVHP. [AR 2-78] On July 21, Quillen sent Doe the written allegations made against him. [AR 167-168] Those allegations are:

1. That Doe committed sexual violence against Roe when:

a. From October 2015 to June 2016, he stalked Roe by waiting for her on her route to class and then following her as she walked to class for 3-4 days every week.

2. That Doe committed sexual violence against Roe when:

a. During Spring Quarter 2016, he stalked Roe by engaging in the following repeated conduct directed at her:

i. On 04/28/16, Doe followed Roe to Ellison Hall, stood outside the building, and watched and laughed at her as she exited the building;

ii. On 04/29/16, Doe had an unidentified third-party call Roe three (3) times from an (805) and a (661) phone number, threatened to kill her, rape her, and made sexually explicit comments directed at her;

iii. On 05/01/16, Doe had an unidentified third-party send a text message to Roe from the same (661) phone number;

iv. On 05/18/16, Doe had an unidentified third-party call and send text messages to Roe, making sexually explicit comments directed at her;

v. On 05/19/16, Doe waited outside of Roe's apartment building for her;

vi. On 05/20/16, Doe followed Roe's boyfriend and his friend from a party at Del Playa to her boyfriend's fraternity house and argued with her boyfriend; and,

vii. On 05/26/16, Doe arranged to attend Roe's sorority's formal event and deliberately maintained close proximity to Roe and engaged in conduct directed at her and her boyfriend. [AR 168]

Quillen conducted a verbal interview with Doe on August 5 to allow Doe to respond to the allegations against him. AR 368, 944] Quillen interviewed 10 witnesses in addition to Roe and Doe. [AR 384-388] On August 23 and 25, Quillen conducted debrief interviews with Doe and Roe respectively. [AR 944:24-945:11]

Between August 25 and October 28, Quillen wrote his 55 page report. [AR 945:18-20; 367-477] He concluded that allegation #1—that Doe followed Roe to class 3-4 days per week from October 2015 to June 2016—more likely than not did occur. He concluded that allegation #2—that Doe engaged in repeated conduct directed at Roe at Ellison Hall, at her apartment building, at her boyfriend's fraternity house, at her sorority formal event, and through anonymous threatening phone calls and text messages—more likely than not did occur. He concluded both allegations were substantiated and "there is sufficient information to support a reasonable cause for a policy violation in relation to this matter." [AR 421]

Doe chose to meet with Sandra Vasquez of OJA. [AR 478] OJA concurred with TIX/SHPC's findings and recommendations. [AR 478] OJA determined that the appropriate sanction is dismissal form UCSB and the University of California. [AR 479]

3. Appeal and Hearing: On December 16, 2016, Doe submitted an appeal request form initiating his appeal of the OJA determination. [AR 483-533] His grounds for appeal were: i. There was a procedural error in the process that materially affected the outcome, such as the investigation was not fair, thorough or impartial; ii. The decision was unreasonable based on the evidence; iii. There is new, material information that was unknown and/or unavailable at the time the decision was made that should affect the outcome; and iv. The disciplinary sanctions were disproportionate to the findings. [AR 483-484]

At the hearing, Doe and Roe gave their opening statements. [AR 924:17-937:14] TIX/SHPC officer Brian Quillen summarized his investigation and findings, which were part of the record. [AR 919:4-959:21] Then he defended those findings in addressing Doe's grounds for appeal. [AR 959:22-976:23] IVARC then interrupted Quillen's testimony to hear witness JB. (The court will use initials of witnesses, instead of numbers. The court does not want to create confusion with the witness numbers in Quillen's report.) JB was Doe's date at the formal event at Roe's sorority on May 26, 2016. [AR 980:7-990:23] IVARC asked questions of Quillen, including questions from Doe. [AR 991:9-1014:12]

Doe gave narrative testimony. [AR 1027:-1039:10] The Panel asked questions of Doe, including questions from Roe. [AR 1039:22-1058:16] AB testified about the May 26 sorority formal he attended with Doe on a double date; vernacular used in a Snapchat post; and that Doe was not an angry person. He answered questions from the panel, Doe, and Roe. [AR 1067:6-1100:8]

TM testified about an argument between Roe's boyfriend (KP) and Doe. [AR 1103:19-1107:19] KP testified. [AR 1109:6-1114:7]TC testified about reaching out to Roe after he heard about text messages she had received. He also reached out to KP about helping Doe. [AR 1119:21-1123:6]

FM testified. He had been involved in the closure of Doe's fraternity. He testified about contact from Roe regarding voicemails. He searched blocked numbers on his phone and found a match with a number from which Roe had received a threatening call. The calls FM received were sarcastic messages inviting him to events at the fraternity chapter, including graduation and alumni weekend. The calls included fraternity songs, cursing and derogatory comments. [AR 1128:1- 1136:15] It is important to note that IVARC did not consider this testimony because FM appeared by phone and IVARC rules require that witnesses appear in person or by some technology that permits the panel to see the individual testifying. [AR 1209; 1274, III.F.2.e.] Even if they had considered his testimony, IVARC would have found the testimony redundant of statements he made to the TIX/SHPC investigator, which they did consider. [AR 1209]

Doe and Roe gave their closing statements. [AR 1138:18-1146:13]

3. IVARC Appeal Decision: IVARC upheld the OJA decision and the sanction imposed. [AR 1205] IVARC stated that it took into account the record developed by the TIX/SHPC investigator; the OJA decision; the arguments and evidence accepted on appeal; the presentation of the Title IX/SHPC investigator's investigation, analysis, and the findings in this case; the testimony of all witnesses at the hearing; and the opening and closing statements of Doe and Roe. [AR 1205-1206] IVARC stated that it "made our decision independently based on a preponderance of the evidence." [AR 1206]

4. Writ of Mandate Standard of Review: In mandamus, the court's inquiry is whether there was a fair hearing at the administrative level and whether there was any prejudicial abuse of discretion. "Abuse of discretion is established if … the order or decision is not supported by the findings, or the findings are not supported by the evidence." CCP § 1094.5(b). "Generally, a fair procedure requires 'notice reasonably calculated to apprise interested parties of the pendency of the action ... and an opportunity to present their objections.'" *Doe v. Univ. of S. California*, 246 Cal.App.4th 221, 240 (2016) [citation omitted]. A student must be told what he is accused of doing and the basis of the accusation; and he/she should be given the names of the witnesses against him and a statement of the gist of their proposed testimony. *Id*. at 246.

"Notice of the charges sufficient to provide a reasonable opportunity to respond is basic to the constitutional right to due process and the common law right to a fair procedure." *Rosenblit v. Superior Court*, 231 Cal.App.3d 1434, 1445 (1991). "Where student discipline is at issue, the university must comply with its own policies and procedures." *Doe v. Regents of the Univ. of California*, 5 Cal.App.5th 1055, 1073 (2016).

5. Petitioner's Contentions Regarding Procedures:

a. Doe's Opportunity to Question Roe: Doe contends the procedure was unfair because he had no opportunity to question Roe. He has no due process right to cross-examine her. "There is no requirement under California law that, in an administrative hearing, an accused is entitled to cross-examine

witnesses." *Doe v. Regents of the Univ. of California*, *supra*, 5 Cal.App.5th at 1084.

Doe did not avail himself of the opportunity IVARC provided him to question Roe. As noted above, the parties have the right to propose questions to be asked of individuals who testify. They must submit those questions to the chair of IVARC before or during the hearing. [AR 1275; III.F.2.g.] It is true that Roe did not testify. Doe did not propose her as a witness. [AR 798] Roe did not list herself as a witness. [AR 797] Doe did not ask IVARC to question Roe at the hearing. Nor does he inform this court what questions he would ask.

Doe's failure to seek examination of Roe as a witness does not make the procedure unfair.

b. Doe Contends He Was Denied Access to Evidence During the Investigation: Doe complains that Quillen did not provide him with evidence, including witness statements, a timeline Roe created with dates and times he supposedly followed her to class; text messages he allegedly directed a third party to send Roe; recordings of anonymous phone calls, and Santa Barbara County Sheriff's Office reports. Doe does not contend any of this information was withheld before the IVARC hearing, only that he did not receive it before Quillen wrote his report and made his determination.

Full discovery is not required by due process in the investigatory stage of an administrative proceeding. *California Teachers Ass'n v. California Comm'n on Teacher Credentialing*, 111 Cal.App.4th 1001, 1012 (2003). The court does not find the procedure unfair in this regard.

c. Doe Contends the Investigator Was Not Impartial Because He Failed to Analyze Exculpatory Evidence in his Report: Doe says Quillen presented four to five times more bullet points supporting Roe's allegations than bullet points supporting Doe's positions. He says an impartial investigator would have considered witness statements and other information favorable to Doe. Doe contends that Quillen was not impartial.

Regents' procedures provide that it will "provide a prompt, fair, and impartial investigation. Investigations and adjudication will be conducted by officials who receive annual training on issues related to … how to conduct an investigation and hearing that promotes fairness…." [AR 1268, III.] Doe contends that Regents have provided no evidence of training required by the rule. But that is not Regents' burden. Doe did not request that showing before the IVARC in his ground for appeal challenging the impartiality of the investigation.

California's "Supreme Court requires a party seeking to show bias or prejudice on the part of an administrative decisionmaker to prove the same with concrete facts." *Burrell v. City of Los Angeles*, 209 Cal.App.3d 568, 582 (1989). "Bias and prejudice are never implied and must be established by clear averments. Indeed, a party's unilateral perception of an appearance of bias cannot be a ground for disqualification unless we are ready to tolerate a system in which disgruntled or dilatory litigants can wreak havoc with the orderly administration of dispute-resolving tribunals." *Andrews v. Agric. Labor Relations Bd.*, 28 Cal.3d 781, 792 (1981) [internal quotations and citations omitted].

Doe has not shown any concrete facts demonstrating a lack of impartiality on Quillen's part, other than the manner in which he conducted the investigation and the content of his October 28, 2016 memorandum. Doe presents a long

litany of items "an impartial investigator would have considered." But in all but a few of these points, Doe cites to pages of Quillen's memorandum in which Quillen states the evidence Doe says he should have considered. Therefore, Quillen did consider this evidence because he included it in his report. Doe seems to complain that Quillen did not include the exculpatory evidence in his analysis and factual findings. But Doe fails to point out that, in some instances, Quillen did include the information. E.g., compare Petitioner's Opening Brief at 9:15-16 with AR 286.

Even if Quillen's analysis and findings ignore certain information important to Doe, that does not necessarily indicate prejudice or lack of impartiality. "If the fact finder has allegedly credited unsubstantial evidence while disregarding utterly irrefutable evidence, the issue before a reviewing court should not be whether the fact finder was biased, but whether his findings of fact are supported by substantial evidence on the whole record." *Andrews v. Agric. Labor Relations Bd.*, *supra*, 28 Cal.3d at 795 [internal quotation and citation omitted]. Contrary to Doe's assertion in his reply brief, by citing this case for this proposition, neither Doe nor the court are acknowledging that Quillen "credited unsubstantial evidence while disregarding utterly irrefutable evidence." The court cites the language to demonstrate the standard for determining bias, prejudice, or lack of impartiality.

Doe has not demonstrated that he was denied an impartial investigation.

d. Doe Contends UCSB's Policies are Confusing, Internally Inconsistent, and Unfair: Doe contends that IVARC erred by not following UCSB's Procedures, not independently reviewing the evidence presented, and not making a decision based on a preponderance of evidence.

In this context, the court reiterates IVARC's charge in the SVPH. IVARC will reach a decision based on a preponderance of the evidence standard; shall take into account the record developed by the investigator and the evidence presented at the hearing; and may make its own findings and credibility determinations based on all the evidence before it. [AR 1275; III.F.3.a., b.]

Generally, IVARC stated that it considered all the evidence and "made our decision independently based on a preponderance of the evidence." [AR 1206] In the decision, IVARC states that it took into account the record developed by the TIX/SHPC investigator; the OJA decision; the arguments and evidence accepted on appeal; the presentation of the Title IX/SHPC investigator's investigation, analysis, and the findings in this case; the testimony of all witnesses at the hearing; and the opening and closing statements of Doe and Roe. [AR 1205-1206]

Specifically, in evaluating Doe's second ground for appeal—whether decision was unreasonable based on the evidence—IVARC said it "evaluated whether the decision was unreasonable based on the evidence, using only the evidence in the Title IX investigative report. We recognize that decision makers in Title IX and the Office of Judicial Affairs employed the preponderance of the evidence standard; therefore, we evaluated whether or not the findings are reasonable in this context." [AR 1210] In its conclusion with respect to Ground 2, IVARC stated: "In conclusion, we found that the Title IX Investigator's conclusions and the decision were not unreasonable based on the evidence. We found that Title IX came to a sensible and replicable conclusion based on the evidence in the Title IX Investigative Report and applying the preponderance of the evidence standard." [AR 1211]

In its opposition, Regents emphasizes what IVARC stated generally and with respect to the first and third grounds for appeal. [AR 1205-1206, 1208, 1211-1213] But the court must focus on what IVARC said about its review of the TIX/SHPC and OJA decision with respect to whether the decision was unreasonable based on the evidence.

IVARC must reach a decision based on a preponderance of the evidence standard; shall take into account the record developed by the investigator and the evidence presented at the hearing; and may make its own findings and credibility determinations based on all the evidence before it. But, in determining whether the decision was unreasonable based on the evidence, IVARC expressly stated that it "evaluated whether the decision was unreasonable based on the evidence, using only the evidence in the Title IX investigative report." In essence, IVARC reviewed the TIX/SHPC and OJA decision for substantial evidence. That is inconsistent with the independent *de novo* review of all the evidence, including the testimony at the hearing that the SVPH demands.

This inconsistency between the SVPH and IVARC practice is further demonstrated by the UCSB Appeal Request Form. For Ground 2, the form directs the appellant: "In your statement of the reasons supporting this ground for appeal, please: 1. Describe why the decision was unreasonable based solely on the evidence in the Title IX Investigative report. Note: no new evidence will be considered in reviewing this ground for appeal."

As noted above, due process requires that the "the university must comply with its own policies and procedures." *Doe v. Regents of the Univ. of California*, *supra*, 5 Cal.App.5th at 1073. IVARC did not do that with respect to its review of Ground 2 on appeal.

This is not an academic conclusion. The standard of review is very important in a reviewing whether a decision is unreasonable based on the evidence. Under substantial evidence review, a body does not "weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it." *Doe v. Regents of the Univ. of California*, *supra*, 5 Cal.App.5th at 1073. The reviewing body accepts all evidence which supports the successful party, disregards the contrary evidence, and draws all reasonable inferences to uphold the decision. Credibility determinations are left for the finder of fact—in this instance the TIX/SHPC investigator—to resolve. *Id*. at 1074. Following the SVPH, IVARC should have independently reviewed the evidence before the TIX/SHPC investigator and at the hearing, weighed the evidence, resolved conflicts in the evidence, drawn its own inferences, and made its own credibility determinations. IVARC cannot do that if it considers the issue based solely on the evidence in the TIX/SHPC investigative report. From the plain language of the IVARC decision, it did not perform the function mandated by the SVPH.

Therefore, the court will grant the petition for writ of mandamus and remand to IVARC for reconsideration of the case in light of the court's opinion as set forth below.

e. Imposition of Dismissal as Disciplinary Sanction: Doe contends that IVARC impermissibly dismissed him upon finding he committed stalking. The court cannot divine the result on remand. A determination that a sanction is warranted is a possible outcome. Therefore, before remanding the case, the court will consider whether dismissal is a permissible sanction for stalking under the SVPH.

The disciplinary sanction scheme under the SVPH is as follows:

Disciplinary sanctions will be assigned as follows:

1. Sexual assault, domestic/dating violence, or stalking in which one or more of the following factors are present will result in a minimum sanction of Suspension for at least two years, up to dismissal:

i. force, violence, menace, or duress;

ii. deliberately causing a person to become incapacitated or deliberately taking advantage of a person's incapacitation; or

iii. recording, photographing, transmitting, viewing, or distributing intimate or sexual images without consent.

2. Sexual assault involving penetration; domestic/dating violence; or stalking will, absent exceptional circumstances, result in a minimum sanction of Suspension for two years, up to dismissal.

3. Other sexual contact in violation of policy will, absent exceptional circumstances, result in a minimum sanction of Suspension for one year.

[AR 1284; IV.B.]

Sanctions 1 and 2 above are relevant to Doe's argument. He contends that those two sanctions, which are the same—two years suspension up to dismissal—only apply to stalking when there is some aggravating circumstance: either one of the three aggravating factors in Sanction 1, or sexual assault in Sanction 2. Doe reads Sanction 2 as providing a sanction for "sexual assault involving stalking." He contends IVARC and OJA dismissed him for stalking not involving sexual assault and, therefore, could not dismiss him from the university.

It is an odd construction to provide the same sanction for stalking with aggravating circumstances as for stalking without aggravating circumstances. But Regents are free to legislate appropriate sanctions. It would be even odder for Regents to have provided no sanction for stalking at all absent aggravating circumstances. Regents would not have gone to the trouble of defining stalking and prohibiting it if stalking carried no consequence. The court presumes that a legislative body "intended reasonable results consistent with its expressed purpose, not absurd consequences." *Santa Clara Cty. Local Transportation Auth. v. Guardino*, 11 Cal.4th 220, 235 (1995).

The court determines that, under the SVPH, dismissal is an authorized sanction for stalking. The court is not opining that there is a reasonable basis for imposing dismissal or whether reasonable minds can differ on the propriety of dismissal in this case.

6. Sufficiency of Evidence: Doe argues that the IVARC abused its discretion because its findings are not supported by substantial evidence in light of the whole record. Analysis of the sufficiency of the evidence would be premature. IVARC must first reach a decision following the standards set forth in the SVPH.

7. Order: For reasons stated above, the court grants petitioner John Doe's petition for writ of mandate. CCP § 1094.5(d) provides: "(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in light of the court's opinion and judgment and may order respondent to take such

further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent."

The court sets aside the Appeal Decision of the Interpersonal Violence Appeal Review Committee, University of California, Santa Barbara, in Title IX Case #2016-0121. To be clear, this means that John Doe is again a student at the University of California, Santa Barbara. The Interpersonal Violence Appeal Review Committee shall reconsider the case in light of the court's opinion and judgment. The same panel of the Interpersonal Violence Appeal Review Committee may, though it need not, conduct a new hearing. It can consider the evidence before it, including the transcript of the hearing, and render a new decision in accordance with the University of California Sexual Violence and Sexual Harassment Policy. Because credibility determinations must be made, if the same panel cannot be reconstituted, a new hearing will be necessary.

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 888 West Sixth Street, Suite 400, Los Angeles, California 90017.

On December 22, 2017, I served the foregoing document described NOTICE OF OPINION AND JUDGMENT GRANTING PETITION FOR WRIT OF ADMINISTRATIVE MANDATE on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

Hailyn J. Chen
Munger Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071
Telephone: (213) 683-9548
Facsimile: (213) 687-3702
E-mail: Hailyn.Chen@mto.com
ATTORNEYS FOR RESPONDENT

☐ **BY FACSIMILE TRANSMISSION** from FAX number (213) 624-1942 to the fax number set forth above. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(i), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

☒ **BY MAIL** by placing a true copy thereof enclosed in a sealed envelope addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE** by delivering a copy of the document(s) by hand to the addressee or I cause such envelope to be delivered by process server.

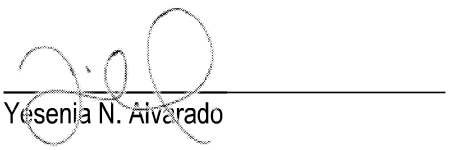
☐ **BY EXPRESS SERVICE** by depositing in a box or other facility regularly maintained by the express service carrier or delivering to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served.

☒ **BY ELECTRONIC TRANSMISSION** by transmitting a PDF version of the document(s) by electronic mail to the party(s) identified on the service list using the e-mail address(es) indicated.

☒ I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on December 22, 2017 in Los Angeles, California



Yesenia N. Alvarado

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