APPENDIX

TABLE OF CONTENTS

APPENDIX A

UNITED STATES COURT OF APPEALS,
SEVENTH CIRCUIT

No. 22-1576

JOHN DOE,

Plaintiff-Appellant,

v.

THE TRUSTEES OF INDIANA UNIVERSITY, *et al.*,

Defendants-Appellees.

Argued October 27, 2022

Decided April 26, 2024

OPINION

Easterbrook, Circuit Judge.

While John Doe was a medical student at Indiana University–Purdue University Indianapolis, he had a romantic relationship with Jane Roe, a fellow student, who accused him of physical abuse. The University's Office of Student Conduct investigated and found Doe culpable. It suspended Doe for one year and imposed conditions on his return to school. The medical school's Student Promotions Committee recommended that Doe be expelled. Dean Jay Hess of the medical school rejected the Committee's recommendation. So, as of March 2020, Doe was under suspension with a right to return in a year, after satisfying the conditions.

Doe then applied to the University's MBA program at the Kelley School of Business. His application disclosed his suspension but described the Dean's decision as an exoneration. This led to investigation by the University's Prior Misconduct Review Committee, which told Dean Hess that Doe had "withheld pertinent information and gave false or incomplete information" to the business school. Dean Hess concluded, without inviting further response from Doe, that he is unfit to practice medicine and expelled him from the medical school, effective June 16, 2020.

That decision led to this litigation, in which Doe accuses the University of violating both the Due Process Clause of the Constitution's Fourteenth Amendment and Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681–88. The district court granted summary judgment to the defendants. 2022 U.S. Dist. LEXIS 59743 (S.D. Ind. Mar. 31, 2022).

All of Doe's misconduct took place off campus. (We refer to his "misconduct" rather than "alleged misconduct," because the University found that Doe engaged in physical violence against Roe.) There is some doubt how, if at all, Title IX applies to student-against-student misconduct that appears to be unrelated to a university or its facilities. See *Davis v. Monroe County Board of Education*, 526 U.S. 629, 645–48, 119 S.Ct. 1661, 143 L.Ed.2d 839 (1999). This case does not require us to address whether Title IX required the University to investigate and act, because it did both. Any contest under Title IX to the University's response depends on proof that it engaged in sex discrimination. 20 U.S.C. § 1681(a). Coming to the wrong answer in deciding who was to blame for unwelcome events in a romantic relationship, or selecting an inappropriate response, or interviewing

the wrong potential witnesses, or listening to too few or too many witnesses—these and similar matters are of no concern under federal law unless the defendants treated men worse than women (or the reverse). And, as the district court explained, the record does not support an inference of sex discrimination. 2022 U.S. Dist. Lexis 59743 at *11–24.

After the administrative proceedings began, Doe and Roe were ordered to stay away from each other. For two weeks Doe was told to use the University's facilities in West Lafayette, while Roe was allowed to stay in Indianapolis. Doe calls this sex discrimination. The district judge thought not, observing that Doe was the principal aggressor. Requiring a wrongdoer to bear some of the cost of maintaining a no-contact order is hard to call discriminatory. At all events, it is impossible to see how this brief relocation mattered to the ultimate decision. Doe's application to the Kelley School, and the Dean's response, came long after and were unrelated to who was where during the investigation's early days. Similarly, the University's delay in launching an investigation into Doe's complaint that Roe hit him on occasion did not contribute to the ultimate decision, and it is justified by the fact that Doe elected not to pursue this charge against Roe.

Finally, Doe insists that the members of the committees and panels were trained to act in ways favorable to women and rule against men. That serious charge is not borne out by the record. The training materials that the judge examined support a conclusion that the University's personnel were trained to favor *complainants*, but male as well as female students had access to the grievance machinery. More women than men filed complaints, but that can't be described as sex discrimination by Indiana University. Doe observes

that one slide (out of 91) in a training program states that 99% of the perpetrators of sexual violence are men, but another slide reminds viewers that "most men are NOT perpetrators." Still other slides explain how men can be victims of sexual violence. The core question under Title IX is whether the people who resolved Roe's grievances "acted at least partly on the basis of sex in [this] particular case." *Doe v. Purdue University*, 928 F.3d 652, 669 (7th Cir. 2019). And of that Doe has not the slightest evidence.

Doe's constitutional argument is stronger. The district court thought that Doe's claim fails because the University provided plenty of process. There were hearings before multiple bodies. Doe could (and did) present both evidence and argument; he enjoyed the assistance of counsel. He was successful in persuading Dean Hess to set aside the Student Promotions Committee's recommendation that Doe be expelled. How could so much process be constitutionally inadequate? With respect to educational suspensions and expulsions, all the Constitution requires is "some kind of hearing." *Goss v. Lopez*, 419 U.S. 565, 579, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975). Notice and an opportunity for informal comment suffice, *Goss* holds, and Doe had much more. See *University of Missouri v. Horowitz*, 435 U.S. 78, 98 S.Ct. 948, 55 L.Ed.2d 124 (1978) (declining to require elaborate adversarial hearings in academic settings); *Fenje v. Feld*, 398 F.3d 620 (7th Cir. 2005) (same). See also Henry J. Friendly, *Some Kind of Hearing*, 123 U. Pa. L. Rev. 1267 (1975).

Yet the fact that Doe received lots of process does not mean that he had an opportunity to be heard when it mattered most: after his application to the Kelley School. Before his application, he was under a year's suspension; afterward, he was expelled, with a statement

by the Dean that would make any other medical school reluctant to admit him and any hospital reluctant to employ him if he ultimately received a degree. Doe was allowed to communicate in writing with the Prior Misconduct Review Committee, but after that—nothing. The Committee denied Doe's application to study at the business school and sent a package of papers to Dean Hess at the medical school. Doe did not know that this had happened until he received the Dean's letter expelling him. We asked at oral argument whether Doe (and other similarly situated students) received either notice or an opportunity to comment under similar circumstances. The answer: an unequivocal "no." It is hard to see how this could satisfy even the minimal requirement of *Goss*.

According to the University, the absence of process is irrelevant because students lack a property interest in a medical education. The University is right that property interests depend on statutes and contracts that create legitimate claims of entitlement, see *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972), but wrong to think that property lies in specific procedural promises. Under the Supreme Court's positivist approach, statutes and contracts create legitimate claims of entitlement, while constitutional law identifies the process due. E.g., *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). Cf. *Olim v. Wakinekona*, 461 U.S. 238, 249–50, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983) (state procedures do not define liberty interests). As far as we can see, Indiana University entitles medical students to finish their educations unless specified events happen—failure to pay tuition, poor grades, violence against other students, and similar matters. The University does not assert that Dean Hess had authority to expel Doe for

any reason Hess chose, such as wearing loud clothes or mocking the football team. Doe thus had a legitimate claim of entitlement to remain a student unless he transgressed a norm. That's a property interest in constitutional lingo and requires some kind of hearing.

One more issue needs discussion before we remand. We have so far referred to the plaintiff as "John Doe." That's how he referred to himself in the pleadings and briefs. But it is not his real name. The district court said that it permitted him "to proceed under a pseudonym to protect his identity." 2022 U.S. Dist. Lexis 59743 *1 n.1. That's what a pseudonym does, but this effect is not a *justification.* The norm in federal litigation is that all parties' names are public. See, e.g., *Doe 3 v. Elmbrook School District*, 658 F.3d 710, 721–24 (7th Cir. 2011), adopted on this issue by *Doe v. Elmbrook School District*, 687 F.3d 840, 842–43 (7th Cir. 2012) (en banc); *Doe v. Smith*, 429 F.3d 706, 710 (7th Cir. 2005); *Roe v. Dettelbach*, 59 F.4th 255, 259–60 (7th Cir. 2023). See also *Doe v. Doe*, 85 F.4th 206 (4th Cir. 2023) (same general approach in another circuit). Judicial proceedings are open to the public, which has an interest in knowing the who and the how about the behavior of both judges and those who call on the large subsidy of the legal system.

One justification for anonymity is youth. Fed. R. Civ. P. 5.2(a)(3) requires the use of initials rather than names for minors. Otherwise "the complaint must name all the parties." Fed. R. Civ. P. 10(a). Doe is well into his adult years (recall that the events in question occurred while he was a medical student). A substantial risk of harm—either physical harm or retaliation by third parties, beyond the reaction legitimately attached to the truth of events as determined in court—may justify anonymity. *Doe 3* discusses this consideration.

But "we have refused to allow plaintiffs to proceed anonymously merely to avoid embarrassment." *Roe v. Dettelbach*, 59 F.4th at 259, citing *Doe v. Deerfield*, 819 F.3d 372, 377 (7th Cir. 2016). Doe does not contend that he is at risk of physical harm; his asserted interest lies in protecting his reputation—even though the University found that Doe committed physical violence against Roe.

Consider what happens if someone is charged with crime, as Doe could have been charged with assault and battery. Proceedings before a grand jury are secret, see Fed. R. Crim. P. 6(e)(2)(B), but every indicted defendant's name is open to the public, despite the reputational harm to a person who is presumed innocent. Someone charged with a felony may be shunned or encounter trouble finding a job, but a court would not call that "retaliation" that justifies anonymity. Knowing that a potential student or employee has been charged with a crime legitimately justifies steps for self-protection. Or suppose Roe had sued Doe for the tort of battery. Again his name would have been on the public record. Doe's own suit illustrates how litigation can harm reputations. In addition to the institutional defendants, the complaint names three natural persons, including Dean Hess. Doe wants to protect his own reputation but did not hesitate to expose Dean Hess to the reputational injury that would follow from a judicial conclusion that he violated Title IX or the Constitution.

Why should a plaintiff be able to shield himself from public knowledge of his acts when throwing a harsh light on identified defendants? If there should be a difference, it ought to run the other way—as plaintiffs enjoy an absolute privilege against claims of defamation for what they say in their complaints and briefs. *Restatement (Second) of Torts* § 587. Why should plain-

tiffs be free to inflict reputational harm while sheltering themselves from loss if it turns out that their charges are unfounded? Especially not when the defendants believe that the pseudonymous plaintiff already has used secrecy to attempt to deceive another entity (the Kelley School) about what happened. (We do not say that Dean Hess was right about this; the possibility of error is why the Constitution requires some kind of hearing.)

Our decisions, like those in other circuits, have afforded district judges discretion to permit pseudonymous litigation when the balance of harms justifies it. In this case a magistrate judge permitted Doe to keep his name out of the public eye even before the defendants had an opportunity to take a position. The magistrate judge's brief opinion mentions a multifactor approach drawn from opinions of a few district judges, an approach that has not been adopted by this circuit. For example, the first factor was whether the defendant is an educational institution. We don't see how this consideration is pertinent. Suits by or against educational institutions are litigated in the public view all the time. The magistrate judge also wrote that disclosure would reveal "information of the utmost intimacy," which is an odd way to describe the University's finding that Doe engaged in assault and battery. This suit is not about what happened during sexual relations. It presents a claim of sex *discrimination*, certainly, but the defendants rather than Doe are the accused discriminators. Federal courts adjudicate thousands of sex-discrimination suits annually without concealing the plaintiffs' names.

The magistrate judge found that Doe faces a risk of "stigmatization from the community and the public at large", yet this circuit has held that embarrassment

does not justify anonymity. The magistrate judge did *not* find that Doe faces a risk of physical harm or retaliation (and could not properly have done so without an evidentiary hearing). For his part, the district judge said only what we have already quoted: that pseudonyms enable anonymity. That will not do. "It is important that a reviewing court be confident that the [district] court actually engaged in the careful and demanding balancing of interests required in making this determination." *Doe 3*, 658 F.3d at 722. That cannot be said of the events in this case.

At oral argument we directed the parties to file supplemental briefs addressing the propriety of anonymity. Defendants contended Doe's name must be revealed. Doe, unsurprisingly, took the contrary position. His submission tells us that plaintiffs in Title IX suits regularly are allowed to conceal their identities. But the assertion "this is how things have been done" is not a justification for doing them that way. It says more about the litigation tactics used by plaintiffs' lawyers (such as inducing a magistrate judge to make a decision before defendants even have time to reply) than about legal entitlements. The principal appellate opinion that the magistrate judge cited, *Doe v. Columbia University*, 831 F.3d 46 (2d Cir. 2016), recognized that the plaintiff was using an alias but did not analyze the propriety of that step. The same can be said of *Doe v. Purdue University, supra.* Lots of other decisions are similar and do not create a Title IX easement across the norm of using litigants' names. (The statute itself does not provide for anonymous suits.)

Neither Doe nor the district court relied on 20 U.S.C. § 1232g(b), which restricts institutions that receive federal funds from releasing educational records under certain circumstances. (Doe mentions § 1232g but does not develop an argument.) The statute does not apply

directly; after all, Doe is not an educational institution and is free to disclose his own records. We need not and do not consider when, if ever, this statute may limit public access to students' identities—for example, whether it offers nonparties such as Roe greater protection than what is available to someone such as Doe who sets litigation in motion.

The district judge abused his discretion when permitting "John Doe" to conceal his name without finding that he is a minor, is at risk of physical harm, or faces improper retaliation (that is, private responses unjustified by the facts as determined in court). Title IX litigation is not an exception to the norm that adult litigants are identified by name.

But it does not follow that we should immediately put the real name in the public record. The magistrate judge's *ex parte* order allowed Doe to prosecute this suit in secret. Now that we have found the assurance to be an abuse of discretion, Doe is entitled to an opportunity to dismiss the suit under Fed. R. Civ. P. 41(a)(2). This is how we proceeded in *Doe v. Smith*, 429 F.3d at 710. Plaintiff may choose to withdraw the suit and keep his name secret, just as he could have withdrawn the suit had the magistrate judge ruled against him.

The judgment is vacated and the case remanded to the district court. If Doe elects to continue with the suit, his true name must be disclosed to the public, and the district court must decide what remedy is appropriate for Dean Hess's failure to allow Doe an opportunity to present his position before expelling him. If Doe elects not to reveal his name, the complaint must be dismissed. The district court then would need to decide, as Rule 41(a)(2) provides, whether the dismissal is with or without prejudice.

APPENDIX B

UNITED STATES DISTRICT COURT,
S.D. INDIANA, INDIANAPOLIS DIVISION

No. 1:20-cv-02006-JRS-MJD

JOHN DOE,

Plaintiff,

v.

THE TRUSTEES OF INDIANA UNIVERSITY, Indiana University School of Medicine, Indiana University Kelley School of Business, Gregory Kuester in his official and individual capacity, Bradley Allen in his official and individual capacity, Jay Hess in his official and individual capacity, Indiana University Purdue University Indianapolis, Indiana,

Defendants.

Signed 03/31/2022

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

JAMES R. SWEENEY II, JUDGE

On May 20, 2019, Indiana University Purdue University Indianapolis ("IUPUI") suspended medical student John Doe for dating violence.[1] Doe then applied for the MBA program at Indiana University's

[1] Plaintiff has been permitted to proceed under a pseudonym to protect his identity. Likewise, the student who accused him of dating violence is referred to by the pseudonym Jane Roe.

Kelley School of Business ("IUKSB"). But in preparing his application, Doe misrepresented his disciplinary status. IUPUI noticed the misrepresentation, notified Doe's medical school—Indiana University School of Medicine ("IUSM")—of it, and on June 16, 2020, IUSM expelled Doe.

Doe brought this action against IUSM, Indiana University ("IU"), the Trustees of IU, IUKSB, IUPUI, IUSM Dean Jay Hess, IUSM Senior Associate Dean Bradley Allen, and former Title IX investigator Gregory Kuester, in their individual and official capacities (collectively "Defendants"). Doe alleges a violation of Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681 *et seq.*, and a deprivation of procedural due process, cognizable under 42 U.S.C. § 1983. Doe seeks damages and injunctive relief.[2] Defendants moved for summary judgment. (Defs.' Mot. Summ. J., ECF No. 122.) The parties have fully briefed the issue. (Defs.' Br. Supp. Summ. J., ECF No. 124; Pl.'s Resp. Opp'n, ECF No. 128; Defs.' Reply, ECF No. 135.) Doe also moved for an oral argument on Defendants' motion. (Pl.'s Mot. Oral Arg., ECF No. 129.)

Regarding the due process claim, asserted in Count II of the Amended Complaint, the Court previously granted in part and denied in part Defendants' Partial Motion to Dismiss, (Order Mot. Dismiss, ECF No. 140), dismissing with prejudice Doe's due process claims as against the Trustees, IU, IUPUI, and IUSM; the due process claims for damages against Dean Hess, Associate Dean Allen, and Kuester in their official capacities; and the due process claim for prospective

[2] On October 29, 2021, Doe withdrew his claim for damages related to psychological and emotional distress. (Notice Pl.'s Withdrawal Claim, ECF No. 145.)

injunctive relief against Kuester in his official capacity. Doe did not assert a due process claim against IUKSB. Thus, the only due process claims remaining for consideration in this summary judgment ruling are (1) the due process claims for prospective injunctive relief against Dean Hess and Associate Dean Allen in their official capacities, and (2) the due process claims for damages against Dean Hess, Associate Dean Allen, and Kuester in their individual capacities. (Order Mot. Dismiss 9, ECF No. 140.) For the following reasons, Defendants' Motion for Summary Judgment, (Defs.' Mot. Summ. J., ECF No. 122), is granted. Doe's Motion for Oral Argument on Summary Judgment, (Pl.'s Mot. Oral Arg., ECF No. 129), and Defendants' Motion to Exclude Plaintiff's Damages Experts or Limit Certain Opinions, (Defs.' Mot. Exclude, ECF No. 147), are each denied as moot.

I. Background

Given the summary judgment standard, the Court takes the facts in the light most favorable to Doe. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (quotations omitted). As the Court has previously detailed, (Order Mot. Dismiss, ECF No. 140), Doe entered IUSM and began dating Jane Roe, another student at IUSM, in October of 2017. (Doe Decl. ¶ 2, ECF No. 70-1; Final Inv. Report 3, ECF No. 87-13.) Their on-and-off relationship was "at times tempestuous," (Am. Compl. ¶ 119, ECF No. 8), as evidenced by some relevant examples. In June 2018, Roe struck Doe several times and threw a flower vase at Doe's head. (Final Inv. Report App. 178–79, ECF No. 88-16; Final Inv. Report 4, 9, ECF No. 87-13.) Then, in July 2018, Doe and Roe got into an argument at Roe's father's house. (Doe Decl. ¶ 25, ECF No. 70-1.) As Doe was leaving the house, he collided with Roe. (*Id.*) But Roe

detailed that Doe then pushed her through a closed door onto the laundry room floor and that he had been verbally and physically abusive on other occasions. (Final Inv. Report 3, 5, ECF No. 87-13; Letter from Gregory Kuester, Title IX Investigator, OSC, to John Doe 1 (Jan. 18, 2019), ECF No. 77-13.) On January 18, 2019, Gregory Kuester, a Title IX Investigator with IUPUI's Office of Student Conduct ("OSC"), notified Doe that the OSC was investigating Roe's allegations. (Letter from Gregory Kuester, Title IX Investigator, OSC, to John Doe 1 (Jan. 18, 2019), ECF No. 77-13.)

After an investigation by Kuester, an OSC hearing panel found Doe, who appeared before the panel with his counsel, responsible for dating violence in violation of the Student Sexual Misconduct Policy. (OSC Hr'g Tr. 2–4, ECF No. 81-15; Ferguson Aff. ¶¶ 47–48, ECF No. 70-3.) The panel suspended Doe for one year and imposed conditions on any potential return to IU. (Letter from Kelly Freiberger, Student Conduct Coordinator, IUPUI, to John Doe (May 23, 2019), ECF No. 69-6.) Because the panel found that Doe violated the Student Sexual Misconduct Policy, IUSM's Student Promotions Committee ("SPC") met with Doe and considered imposing additional, IUSM-specific sanctions. (Reeser Aff. ¶¶ 6–7, ECF No. 70-8; Letter from Emily Walvoord, Assoc. Dean for Student Affairs, IUSM, to John Doe (May 24, 2019), ECF No. 76-7.) After speaking with Doe, the SPC recommended that Doe be dismissed from IUSM. (Comm. Meeting Mins. 2, ECF No. 78-1.)

Doe appealed the SPC's recommendation to the Dean of IUSM, Jay Hess. (Doe Dep. 92–100, ECF No. 75-1.) Following a meeting with Doe, Dean Hess decided not to dismiss Doe. (*Id.*; Hess. Aff. ¶¶ 29–34, ECF No. 70-5.) Dean Hess's decision letter to Doe said that Dean Hess was granting Doe's appeal of the

dismissal recommendation, but it added that "[t]o be eligible to return to [IUSM], [Doe] must complete all the sanctions" outlined by the OSC, as well as the additional conditions listed in Dean Hess's letter, and noted that "any subsequent violation of academic or personal codes of conduct" would potentially impact or jeopardize Doe's return in spring 2021. (Letter from Jay Hess, Dean, IUSM, to John Doe 1 (Mar. 27, 2020), ECF No. 76-16; Hess Aff. ¶ 34, ECF No. 70-5.) If Doe satisfied those conditions, he could "apply for reinstatement" to IUSM. (Letter from Jay Hess, Dean, IUSM, to John Doe 1 (Mar. 27, 2020), ECF No. 76-16.)

Two months later, Doe applied to IUKSB's MBA program. (IUKSB Appl., ECF No. 83-5.) As part of his application, Doe disclosed his disciplinary history, stating that Dean Hess "overturned the erroneous findings" of the Title IX panel and "fully authorize[d]" his reinstatement "without limitation or restriction." (*Id.* at 5–7.) Doe's disclosure triggered a review by the IUPUI Prior Misconduct Review Committee ("PMRC"). (Email from John Doe to Monica Henry, Assoc. Dir., IUPUI Graduate Off. (May 21, 2020), ECF No. 69-18.) The PMRC reviewed Doe's application, and wrote to Doe that "[t]here appear to be inconsistencies between your statement and Dean Hess's [March 27, 2020 decision] letter." (Email from Monica Henry, Assoc. Dir., IUPUI Graduate Off., to John Doe 1 (May 19, 2020), ECF No. 76-18.) Because of this inconsistency, the PMRC asked Doe for clarification. (*Id.*)

Doe defended his application in writing. (*Id.* at 3–4.) After reviewing Doe's argument, the PMRC concluded that Doe "withheld pertinent information and gave false or incomplete information." (Email from Monica Henry, Assoc. Dir., IUPUI Graduate Off., to John Doe (May 29, 2020), ECF No. 76-19.) Thus, the PMRC

denied Doe's IUKSB application and notified Dean Hess of Doe's actions. (*Id.*; Email from Monica Henry, Assoc. Dir., IUPUI Graduate Off., to Jay Hess, Dean, IUSM 1 (June 1, 2020), ECF No. 82-11.)

Dean Hess reviewed Doe's application and Doe's explanation of the inconsistency between it and Dean Hess's actual disposition of Doe's appeal. (Hess Aff. ¶ 39, ECF No. 70-5; Email from Jay Hess, Dean, IUSM, to Eric Weldy, Vice Chancellor for Student Affairs, IUPUI (June 10, 2020), ECF No. 83-8.) Dean Hess agreed that Doe had misrepresented Dean Hess's decision and concluded from the incident that Doe was unfit to practice medicine. (*See* Hess Aff. ¶¶ 39, 44–45, ECF No. 70-5; Email from Jay Hess, Dean, IUSM, to Eric Weldy, Vice Chancellor for Student Affairs, IUPUI (June 10, 2020), ECF No. 83-8.) Thus, IUSM dismissed Doe effective immediately. (Letter from Jay Hess, Dean, IUSM, to John Doe 1 (June 16, 2020), ECF No. 37-21.)

II. Legal Standard

Summary judgment is appropriate if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant bears the initial burden of production. *Modrowski v. Pigatto*, 712 F.3d 1166, 1168 (7th Cir. 2013). That initial burden consists of either "(1) showing that there is an absence of evidence supporting an essential element of the non-moving party's claim; or (2) presenting affirmative evidence that negates an essential element of the non-moving party's claim." *Hummel v. St. Joseph Cnty. Bd. of Comm'rs*, 817 F.3d 1010, 1016 (7th Cir. 2016) (citing *Modrowski*, 712 F.3d at 1169). If the moving party discharges its initial burden, the burden shifts to the non-moving party, who must present

evidence sufficient to establish a genuine issue of material fact on all essential elements of the case. *See Lewis v. CITGO Petroleum Corp.*, 561 F.3d 698, 702 (7th Cir. 2009). "A genuine dispute as to any material fact exists if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Daugherty v. Page*, 906 F.3d 606, 609–10 (7th Cir. 2018) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)) (quotations omitted).

The Court must construe the facts and reasonable inferences arising from those facts in the light most favorable to the non-moving party. *See Anderson*, 477 U.S. at 255. Doe's brief does not specifically controvert many of Defendants' facts. (Pl.'s Resp. Opp'n 12–28, ECF No. 128.) Thus, as to Defendants' facts that are asserted, supported, and not specifically controverted, the Court takes those facts as true. S.D. Ind. L.R. 56-1(f).

III. Discussion

Doe brings two counts against Defendants. First, he says that Defendants discriminated against him on the basis of sex, in violation of Title IX, during their Title IX investigation into him. (Am. Compl. 59, ECF No. 8.) Second, he says that Defendants deprived him of due process in dismissing him from IUSM over his IUKSB application. (*Id.* at 72.) The Court begins with the Title IX allegations.

A. Count I: Title IX

Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). The Court must determine whether

a reasonable jury could find that Defendants discriminated against Doe "on the basis of sex" during any part of Doe's Title IX process.[3] *Doe v. Purdue Univ.*, 928 F.3d 652, 667–68 (7th Cir. 2019). The Seventh Circuit has identified three types of circumstantial evidence that will support an inference of intentional discrimination: "ambiguous or suggestive comments or conduct; better treatment of people similarly situated but for the protected characteristic; and dishonest . . . justifications for disparate treatment." *Joll v. Valparaiso Cmty. Schs.*, 953 F.3d 923, 929 (7th Cir. 2020) (Title VII case); *see Doe v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816, 822–23 (C.D. Ill. 2008) (listing cases and showing that Title VII precedent can generally aid in assessing Title IX claims).

At the outset, the Court notes that Doe has not raised any Title IX arguments against IUKSB. Doe's Title IX allegations only concern the Title IX process. None of the decisions made in that process were made by IUKSB. Since Doe has not shown a genuine dispute regarding whether IUKSB violated Title IX, the Court summarily grants summary judgment on Count I for IUKSB.

In an attempt to show discrimination on the basis of sex, Doe points to four instances of alleged anti-male

---

[3] The Parties tend to use "sex" and "gender" interchangeably, (*see, e.g.*, Defs.' Br. Supp. Mot. Summ. J. 2, ECF No. 124; Pl.'s Resp. Opp'n 8, ECF No. 128), but sex and gender are not the same, *see Gender*, Am. Psych. Ass'n Dictionary of Psych., https://dictionary.apa.org/gender (last visited Jan. 8, 2022) ("Sex usually refers to the biological aspects of maleness or femaleness, whereas gender implies the psychological, behavioral, social, and cultural aspects of being male or female (i.e., masculinity or femininity)."). Since nothing in this case suggests that Doe was discriminated against because of his gender, the Court uses the term "sex."

animus. (Pl.'s Resp. Opp'n 35–40, ECF No. 128.) The Court addresses each in turn below.

1. Relocation to West Lafayette Campus

First, Doe argues that during the Title IX investigation, IUSM imposed additional, more stringent restrictions on him, a male, but not on Roe, a female. (Pl.'s Resp. Opp'n 8, 36, ECF No. 128.) Doe says that both he and Roe had university-sponsored no contact orders ("NCOs") placed on one another, but despite this similarity, IUSM relocated him to IUSM's West Lafayette campus for two weeks. (*Id.*; Email from Bradley Allen, Senior Assoc. Dean for Med. Sch. Educ., IUSM, to John Doe 2–3 (Apr. 5, 2019), ECF No. 77-17.) Doe argues that the relocation was sex discrimination because IUSM did not make Roe relocate. (Pl.'s Resp. Opp'n 36, ECF No. 128.) The Court assumes that the relocation was adverse—since Defendants have not argued otherwise, although they do note the relocation was not a punitive action—thus, the Court proceeds to whether the relocation decision was based on sex.

Comparator evidence can raise an inference of discrimination, but the inference is only reasonable when the comparators are similarly situated. *See Coleman v. Donahoe*, 667 F.3d 835, 841 (7th Cir. 2012) (citing *Humphries v. CBOCS W. Inc.,* 474 F.3d 387, 405 (7th Cir. 2007), *aff'd*, 553 U.S. 442 (2008)) ("In other words, the proposed comparator must be similar enough to permit a reasonable juror to infer, in light of all the circumstances, that an impermissible animus motivated the employer's decision."). Here, Doe has not shown that he and Roe were similarly situated at the time the relocation decision was made. Doe claims that he and Roe had "identical" NCOs imposed on one another when the decision was made, (Pl.'s Resp. Opp'n 36, ECF No. 128), but that assertion is incomplete if not

speculative. While Doe and Roe both had NCOs imposed on one another after February 20, 2019, before that date, only Roe had an NCO on Doe. (Allen Dep. 108–09, ECF No. 134-1; Kuester Aff. ¶¶ 13–14, ECF No. 70-6.) Based on the NCO issued in January 2019 in place only against Doe and based on Roe's complaint, the planning process to move Doe so he could complete his training despite the NCO began at that time. (Allen Dep. 109–11, ECF No. 134-1.) Again, putting aside whether this was a non-punitive accommodation in his favor rather than a harm to him, and acknowledging that moving both of them would frustrate any NCO, there is no evidence showing that the plan to move him was based on his sex or was not made before February 20, 2019. Doe has no evidence definitively showing that the relocation decision was made after February 20, 2019. Rather, although communicated in April 2019, Doe has only produced evidence that the relocation *decision* was made sometime prior to April 2019, (Allen Dep. 109–10, ECF No. 134-1), but that only makes it *possible* that the decision was made while both Doe and Roe had NCOs. Speculative assertions are not sufficient on summary judgment. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 897 F.3d 835, 841 (7th Cir. 2018). Since Doe has not provided evidence to reasonably suggest that the relocation decision was made while he and Roe were allegedly similarly situated, no reasonable jury could infer that the decision was made on the basis of sex.

Even if Doe and Roe did have dueling NCOs at the time of the relocation decision, there is a distinguishing characteristic between them: Roe is a complainant in a Title IX case, while Doe is a respondent. (Defs.' Reply 14, ECF No. 135.) *See Doe v. Trustees of Ind. Univ.*, No. 1:21-cv-00973-JRS-MPB, 2021 WL 2982186, at *6 (S.D. Ind. July 15, 2021) ("Doe and Roe are not

similarly situated but for their sex. Doe was accused of sexual misconduct [while] Roe was the accuser."). Thus, they are not similarly situated, but rather are distinguished as complainant and respondent. Since Doe and Roe were not similarly situated but for sex, their different treatment does not give rise to a reasonable inference of sex discrimination.

2. Doe's Allegations against Roe

Second, Doe says that Defendants ignored his allegation against Roe, but pursued Roe's allegations against him. (Pl.'s Resp. Opp'n 36–37, ECF No. 128.) Specifically, Doe argues that the OSC knew of Roe's alleged dating violence (stemming from the June 2018 vase-throwing incident), but did not pursue those allegations. (*Id.*) Doe further complains that the Director of the OSC, Sara Dickey, met with Roe and gave her information on the Title IX process, but did not meet with him or advise him. (*Id.*)

As to the disparate investigation argument, Defendants agree that no investigation was launched against Roe, but they say that was because of their sex-neutral standard for deciding when to pursue an investigation. (Defs.' Reply 14–15, ECF No. 128.) Under that standard, if a complainant wants to proceed with a claim, then an investigation will almost always go forward. (Dickey Dep. 70, ECF No. 72-1.) But if a complainant does not want to proceed, then the university will weigh various factors in determining whether to investigate without the complainant's involvement. (*Id.*) Defendants say that they applied this standard to both Doe and Roe, and their different treatment resulted from Roe ultimately wanting to proceed with an investigation, while Doe did not. (Defs.' Reply 14–15, ECF No. 128.)

When a Title IX defendant provides a legitimate, nondiscriminatory reason for differential treatment, it becomes the plaintiff's burden to show that the defendant's reason is pretextual. *See Andriakos v. University of S. Ind.*, 867 F. Supp. 804, 810 (S.D. Ind. 1992), *aff'd*, 19 F.3d 21 (7th Cir. 1994) (unpublished) (under *McDonnell-Douglas*, if a Title IX defendant produces a legitimate nondiscriminatory reason, the presumption of illegal discrimination dissolves). Here, Defendants have provided a legitimate nondiscriminatory reason—the OSC's investigation standard.

That standard explains the OSC's investigation decisions here. When the OSC first learned of the respective allegations, Roe expressed interest in an investigation, (*see* Final Inv. Report 2, ECF No. 87-13), while Doe did not, (Kuester Aff. ¶ 57, ECF No. 70-6; Dickey Aff. ¶¶ 29–30, ECF No. 70-2). Director Dickey testified that the OSC applied its investigation standard to Doe and concluded that the factors weighed against opening an investigation. (Dickey Aff. ¶¶ 29–30, ECF No. 70-2; Dickey Dep. 61, ECF No. 75-2.) While both Doe and Roe wavered on their respective decisions at one point, (Final Inv. Report 2–3, ECF No. 87-13; Email from Sara Dickey, Dir., OSC, to John Doe 2 (June 26, 2019), ECF No. 83-4), in the end, Roe wanted to proceed and Doe did not, (Final Inv. Report 2–3, ECF No. 87-13; Email from Sara Dickey, Dir., OSC, to John Doe 2 (June 26, 2019), ECF No. 83-4; Doe Dep. 50, ECF No. 75-1). Since Defendants have offered a legitimate nondiscriminatory reason for their actions, and since Doe has not presented any evidence to suggest that the stated reason is pretextual, no reasonable jury could find that the OSC ignored his allegations against Roe on the basis of sex. Moreover, these facts show that Doe and Roe were not similarly situated: Roe was interested in a Title IX investigation

and Doe was not. Therefore, no reasonable jury could conclude that Director Dickey discriminated on the basis of sex.

Doe also argues that Defendants "aggressively pursued" Roe when she was uncertain about her complaint, but did not give him the same treatment. (Pl.'s Resp. Opp'n 36–37, ECF No. 128.) Doe's characterization is unsupported. Doe is referring to the fact that after Roe reported her allegations, Director Dickey had a meeting with Roe, and Kuester then emailed Roe to set up a follow-up meeting. (Final Inv. Report 2, ECF No. 87-13; Email from Jane Roe to Gregory Kuester, Title IX Investigator, OSC 1–2 (Nov. 26, 2018), ECF No. 127-22.) When Roe did not respond to the first email, Kuester sent a short follow-up email, writing, "I am just reaching out to verify you received my November 19th email (below). Please let me know when you are available to meet and if you have any questions." (Email from Jane Roe to Gregory Kuester, Title IX Investigator, OSC 1 (Nov. 26, 2018), ECF No. 127-22.) At that point, Roe responded and said she did not want to continue with the investigation. (*Id.*) There were no further emails from Kuester until Roe later changed her mind two months later and wanted to open an investigation. Nothing in these emails suggests that Defendants "aggressively" pursued Roe's allegations.

3. The Title IX Investigation and Hearing

Third, Doe says that during the Title IX investigation, Kuester did not thoroughly consider Doe's evidence, did not interview five of the eight witnesses Doe identified, and did not seek the documents Doe requested. (Pl.'s Resp. Opp'n 37–38, ECF No. 128.) But Doe does not tie these alleged omissions to sex. Even if Kuester failed to consider Doe's evidence, which was included in the Appendix to Kuester's Final Investigation

Report, (ECF No. 88-16 at 1), or did not seek out the people or documents Doe requested, Doe has not pointed to a similarly situated female respondent who received better treatment, any biased statements, or any shifting justifications. *See Doe v. Marian Univ.*, No. 19-CV-388-JPS, 2019 WL 7370404, at *11 (E.D. Wis. Dec. 31, 2019) (granting summary judgment for a university in a Title IX case where the plaintiff "did not offer any evidence to connect the way he was treated with the fact of his [sex]"), *aff'd sub nom. Johnson v. Marian Univ.*, 829 F. App'x 731 (7th Cir. 2020).

Doe says that Kuester should have interviewed five of the witnesses he identified—known as Friend E, F, G, H, and I—but Kuester stated that these individuals could not assist him in assessing the charge against Doe. (ECF No. 70-6 at ¶ 24; ECF No. 81-20 at 9.) Kuester said that these witnesses were duplicative and would only provide minimal probative value. (ECF No. 81-20 at 9.) Universities and their investigators are allowed to make relevance determinations in viewing and collecting evidence, and such determinations can be a legitimate nondiscriminatory reason. *See Doe v. Columbia Coll. Chi.*, 299 F. Supp. 3d 939, 955 (N.D. Ill. 2017) (allegations that an investigation excluded evidence did not show sex bias when there were legitimate truth-seeking reasons for the decisions), *aff'd* 933 F.3d 849 (7th Cir. 2019). At bottom, this does not show evidence of sex bias.

Doe also takes aim at his Title IX hearing panel. First, he says that the Title IX panel discriminated on the basis of sex by excluding evidence questioning Roe's credibility and limiting his questions on cross-examination. (Pl.'s Resp. Opp'n 39–40, ECF No. 128.) But once again, he identifies no comparator evidence of a female respondent receiving better treatment.

(*Id.*) Doe only protests that he was not able to present some facts that would attack Roe's credibility—namely, (1) a false allegation by Roe that Doe had brought a firearm to campus, which in fact the panel did allow Doe to address, (ECF No. 80-1 at 36–38), (2) an audio recording of Roe making inflammatory comments, and (3) an allegation that Roe engaged in university grant fraud. (ECF No. 128 at 40.) Yet, even if some of the aforementioned evidence was relevant, its exclusion is still not connected to sex. Without comparator evidence, biased statements, or dishonest justifications, there is no reasonable inference that the panel's decision to exclude evidence or limit questions was influenced by anti-male bias.

But Doe adds that the chair of the panel interrupted Doe's opening statement and prevented him from continuing. (OSC Hr'g Tr. 33–37, ECF No. 80-1.) But the transcript he cites belies this assertion. (*Id.*) During his opening statement, Doe began to speak about the unsupported firearm allegation Roe made against him, (*id.* at 33), but, the panel's chair stopped Doe to ask about the allegation's relevance, (*id.*). The panel took a break, and when it resumed, the chair said that Doe could continue his opening and discuss the firearm allegation. (*Id.* at 36–37.) Any harm from this interruption was *de minimis*, and even if there was prejudice, no reasonable jury could find the interruption, followed by a resumption, to be discrimination on the basis of sex.

4. Title IX Trainings

Lastly, Doe argues that his hearing panel was trained to discriminate. (Pl.'s Resp. Opp'n 38–39, ECF No. 128.) First, Doe says that the panel was instructed to use "the trauma-informed method," an investigative and adjudicative technique designed to "prevent inflicting

additional trauma on the complainant." (*Id.* at 38.) Doe claims that this is synonymous with a pro-female viewpoint. (*Id.* at 39.) But this method has no connection to sex, despite Doe's claim to the contrary. Both men and women can be complainants.

Second, Doe complains that IUPUI's Title IX trainings demonstrate an anti-male bias. (*Id.* at 39, 47-48.) But none of the quotes he produces creates a reasonable inference of bias. Doe first cites the quote; "Supporting the Victim . . . Believe them—don't question the story." (Complainant Trauma Presentation 60, ECF No. 73-2.) The word "victim," however, does not indicate anti-male bias because it does not denote any sex—both men and women can be victims. *See Doe v. Marian Univ.*, No. 19-CV-388-JPS, 2019 WL 7370404, at *11 (E.D. Wis. Dec. 31, 2019) ("While their comments are pro-victim, this does not compel the conclusion that they are also pro-woman, or anti-man."), *aff'd sub nom. Johnson v. Marian Univ.*, 829 F. App'x 731 (7th Cir. 2020). Doe's second cited quote, which refers to Indiana University's support for victims, (Univ. Hr'g Comm'n Sexual Misconduct Training 4, ECF No. 77-7), fails for the same reason—being pro-victim is not the same as being anti-male.

Doe also quotes from a ninety-one-slide presentation titled "Complainant Trauma and Respondent Stress." (Complainant Trauma Presentation 1, ECF No. 73-2.) One slide in that presentation says that "[s]exual assault is an act of dominance . . . [i]t is the use of a sex act to fulfill the perpetrator's desire for power/control, revenge, recreation, proof of masculinity, and/or sexual gratification." (*Id.* at 6.) Another slide says that "99% of sexual violence perpetrators are male." (*Id.* at 8.)

But no reasonable jury could find that this presentation taught bias. For one, the presentation included only two questionable slides out of ninety-one, the remaining of which Doe does not challenge as having an anti-male viewpoint. *See Doe v. Williams Coll.*, 530 F. Supp. 3d 92, 116 (D. Mass. 2021) (the phrase "hostile masculinity" on two slides out of ninety was insufficient to show anti-male bias). Moreover, the other slides in this presentation undercut any anti-male sentiment. *See Doe v. Grinnell Coll.*, 473 F. Supp. 3d 909, 925 (S.D. Iowa 2019) (using male pronouns to describe perpetrators and listing hypotheticals involving male perpetrators did not create a genuine issue of material fact regarding sex discrimination where the trainings also undermined such bias). Doe's highlighted quotes appear next to statements like "most men are NOT perpetrators" and "~7% of men are responsible for >90% of sexual assaults." (Complainant Trauma Presentation 8, ECF No. 73-2.) Other slides describe how men can be victims of sexual misconduct, and the presentation warns that men are sometimes viewed as perpetrators even when they are victims. (*Id.* at 49.) Because of the context around Doe's cited quotes, no reasonable jury could find that this presentation is evidence of anti-male bias.

Doe lastly points to an eight-slide presentation titled "Sanctioning Activity." (Sanctioning Activity 1, ECF No. 73-3.) This presentation walks the audience through five hypothetical Title IX cases and asks the audience to discuss how they would sanction the students in the hypotheticals. (*Id.* at 2.) The hypotheticals make up a majority of the slideshow and appear to be the main purpose of the slideshow. (*See id.* at 2–8.) Doe claims that this presentation indicates bias because every hypothetical features a male respondent found responsible of sexual misconduct. *(Id.* at 3–8.)

Giving a presentation in which every hypothetical involves a male perpetrator may imply to the listeners that males are more likely to commit sexual misconduct. It may create an inference of bias on behalf of *the speaker*. But Doe must produce evidence that the Title IX panelists who heard this training "acted at least partly on the basis of sex *in his particular case*." *Doe v. Purdue Univ.*, 928 F.3d 652, 669 (7th Cir. 2019) (citing *Doe v. Baum*, 903 F.3d 575, 586 (6th Cir. 2018)) (emphasis added). Here, the nexus is missing. This training occurred at some point in 2018. (*See* Yost Dep. 62, ECF No. 84-4.) On May 20, 2019, the panelists presided over Doe's hearing and made the decisions of which Doe complains above. (OSC Hr'g Tr. 1–3, 18–21, ECF No. 81-15.) But it is not reasonable to infer that the panel's decisions were based on sex just because the panelists heard a potentially suggestive presentation in the past. Since no reasonable jury could find that the panel's decisions were based on sex, Doe cannot prevail on his Title IX claims. Thus, the Court grants Defendants' Motion for Summary Judgment as to the Title IX claims.

B. Count II: Procedural Due Process

Doe originally raised a procedural due process claim against all Defendants except IUKSB. (Am. Compl. 72, ECF No. 8.) In ruling on Defendants' motion to dismiss, the Court dismissed all due process claims against IUPUI, IU, the Trustees of IU, and IUSM. (Order Mot. Dismiss 9, ECF No. 140.) Furthermore, in opposing this summary judgment motion, Doe did not respond to Defendants' arguments that Associate Dean Allen and Kuester are improper parties for injunctive relief and are protected by qualified immunity. (Defs.' Br. Supp. Mot. Summ. J. 27–30, ECF No. 124.) Thus, the Court treats those issues as conceded, *see, e.g.*,

Alioto v. Town of Lisbon, 651 F.3d 715,721 (7th Cir. 2011) (forfeiture occurs when a "litigant effectively abandons [a claim or claims] by not responding to alleged deficiencies" raised in a motion to dismiss), and grants summary judgment in favor of Associate Dean Allen and Kuester on the procedural due process claims. Thus, the only remaining due process claim involves Dean Hess in his individual capacity for damages and in his official capacity for injunctive relief as relates only to his decision to expel Doe from IUSM.

The Due Process Clause guarantees certain procedures when a state actor deprives someone of "life, liberty, or property." U.S. Const. amend. XIV, § 1. When assessing a procedural due process claim, the Court must (1) identify the protected property or liberty interest at stake, and (2) determine what process is due under the circumstances. *Charleston v. Board of Trs. of Univ. of Ill. at Chi.*, 741 F.3d 769, 772 (7th Cir. 2013) (citing *Omosegbon v. Wells*, 335 F.3d 668, 674 (7th Cir. 2003)). Doe bears the burden of showing that he had a cognizable property or liberty interest. *See Petru v. City of Berwyn*, 872 F.2d 1359, 1362 (7th Cir. 1989).

Here, Doe alleges both a property interest and a liberty interest, and argues that Dean Hess deprived him of such without due process in expelling him from IUSM. He says that he has a property interest in "pursuing his education and in future educational and employment opportunities and occupational liberty." (Pl.'s Resp. Opp'n 20, ECF No. 128.) He also says that he has a liberty interest in "his good name, reputation, honor, and integrity." *(Id.)* The Court assumes that Doe has a cognizable property interest here because Dean

Hess has not fully responded to Doe's argument.[4] *See Bonte v. U.S. Bank, N. Am.*, 624 F.3d 461, 466 (7th Cir. 2010) (failing to respond results in waiver). Given that assumption, the Court does not reach Doe's purported liberty interest and instead proceeds to assessing whether Doe received due process.

How much process is due depends on whether Doe's dismissal was academic or disciplinary. *See Fenje v. Feld*, 398 F.3d 620, 624–25 (7th Cir. 2005). An academic dismissal occurs when a school dismisses a student based on an "academic" rationale. *See id.* at 624 (citing *Board of Curators of the Univ. of Mo. v. Horowitz*, 435 U.S. 78, 89–90 (1978)). In the medical school context, if

---

[4] Specifically, Dean Hess did not respond to one of Doe's asserted grounds for a property interest. Doe says that he has a property interest arising from an implied contract with IU. (Pl.'s Resp. Opp'n 20–22, ECF No. 128.) In order to have a property interest in an implied contract, however, "[a] student must first show that the implied contract establishes an entitlement to a tangible continuing benefit." *Bissessur v. Indiana Univ. Bd. of Trs.*, 581 F.3d 599, 602 (7th Cir. 2009). Doe cites two provisions of an IUSM policy for support, (Pl.'s Resp. Opp'n 21–22, ECF No. 128), but Dean Hess has only argued against one of them, (Defs.' Reply 2–3, ECF No. 135). The unaddressed provision states that "[s]tudents in good standing who have passing grades and evaluation reports automatically advance to the next unit of instruction." (IUSM Guidelines 3, ECF No. 69-2.) Doe says that this provision gives him an entitlement to advance to the next semester, since he was in good standing. (Pl.'s Resp. Opp'n 21–22, ECF No. 128.) It is not clear that Doe was in good standing. Various IU committees had found that Doe violated IUSM and IU policies, (Comm. Meeting Mins. 2, ECF No. 78-1; Letter from Kelly Freiberger, Student Conduct Coordinator, IUPUI, to John Doe (May 23, 2019), ECF No. 37-7), and Doe had just started his one-year leave of absence from IUSM and could only return to IUSM upon fulfilling various conditions, (Letter from Jay Hess, Dean, IUSM, to John Doe 1 (Mar. 27, 2020), ECF No. 76-16). Still, since Dean Hess has not contested Doe's argument, it is conceded.

a dismissal is based on "whether a student will make a good doctor" or whether a student has the personal attributes to be a good doctor, then the dismissal is academic. *See id.* (citing *Horowitz*, 435 U.S. at 89–90). Disciplinary dismissals, on the other hand, are those involving "the violation by a student of valid rules of conduct or disruptive and insubordinate behavior." *Id.* (internal quotations omitted). Disciplinary dismissals are "more objective in nature and not dependent upon the analytical expertise of professional academicians," and thus "will bear a resemblance to traditional judicial and administrative factfinding." *Id.* at 625 (citing *Horowitz*, 435 U.S. at 89–90).

If a dismissal is academic, less process is due. Academic dismissals only require that the student be informed of the nature of the faculty's dissatisfaction and that the decision be "careful and deliberate." *Id.* at 626. In disciplinary dismissals, however, more is required. *See Pugel v. Board of Trs. of Univ. of Ill.*, 378 F.3d 659, 664 (7th Cir. 2004) (citing *Goss v. Lopez*, 419 U.S. 565, 578 (1975)). The Seventh Circuit has not set out what process is due in graduate school disciplinary dismissals, but it has suggested that due process requires something "more extensive" than "oral or written notice of the charges," "an explanation of the evidence the authorities have[,]" and an opportunity to respond to the charges. *See id.* (citing *Goss*, 419 U.S. at 578) (commenting on graduate school dismissals).

The Parties dispute whether Doe's dismissal was an academic or disciplinary decision. Dean Hess argues that it was academic because Doe's misrepresentations directly impacted his honesty, a trait that is—in Dean Hess's view—essential to the practice of medicine. (Defs.' Br. Supp. Mot. Summ. J. 22, ECF No. 124; Hess Aff. ¶¶ 37–46, ECF No. 70-5.) Doe argues

that the dismissal was disciplinary because Dean Hess's dismissal letter did not indicate that Doe lacked "the attributes necessary" to be a doctor, and because it allegedly mentioned that Doe was being dismissed for violating IUSM guidelines. (Pl.'s Resp. Opp'n 29, ECF No. 128.)

The Court concludes that Dean Hess's expulsion decision—premised on the misrepresentations in Doe's IUKSB application and not on the violation of any IUSM guidelines—was an academic dismissal, and therefore, less process was due. *Fenje* is on point. In that case, a doctor applied to be a resident at the University of Illinois at Chicago, but did not disclose his prior dismissal from a hospital. *Fenje*, 398 F.3d at 622–23. When the school's program director learned of the doctor's omission, the director dismissed the doctor for his dishonesty. *Id.* at 623, 625. The Seventh Circuit said that this was an academic dismissal because the director determined that the doctor's lack of candor undermined "his future credibility as a source of information concerning the care of seriously ill patients." *Id.* That connection "between [the doctor's] lack of candor in the application process and his capacity to be trusted with patient care clearly pushe[d] [the] decision into the realm of an academic dismissal." *Id.*

Here, in applying to IUKSB, Doe described his prior disciplinary record in a way that Dean Hess, correctly, believed was inaccurate. Like the program director in *Fenje*, Dean Hess saw Doe's retelling as an indication that Doe was unfit to be a doctor. As Dean Hess wrote in his affidavit:

> Honesty and integrity are essential attributes for any student at IUSM and for any person to become a doctor. Careful attention to detail and accuracy in documentation created by a physician

> is a core manifestation of these essential attributes . . . [w]e cannot admit to our profession individuals who do not communicate honestly on academic matters. Such a person cannot be trusted with the lives of patients.

(Hess Aff. ¶¶ 41–42, ECF No. 70-5.) This rationale shows that Dean Hess's decision was "an academic judgment by [a] school official[ ], expert in the subjective evaluation of medical doctors," that Doe did not demonstrate the personal attributes necessary to be a physician. *Fenje*, 398 F.3d at 624 (citation omitted).

Doe complains that Dean Hess's decision letter did not explain that Doe lacked the personal attributes necessary to be a doctor, or that such an opinion motivated the dismissal. (Pl.'s Resp. Opp'n 29, ECF No. 128.) The letter explains only that Doe was being dismissed for the misrepresentations in the IUKSB application. (Letter from Jay Hess, Dean, IUSM, to John Doe 1 (June 16, 2020), ECF No. 37-21.)

While an expulsion letter's language can be probative on whether a decision is academic or disciplinary, there is no requirement for Dean Hess to state any magic words in his letter. The Court looks to see if *the decision* was academic or disciplinary, and here, Dean Hess has produced evidence showing that the decision was based on Doe's lack of honesty, (Hess Aff. ¶¶ 41–42, ECF No. 70-5), a trait that Dean Hess said was essential to the practice of medicine, (*id.* at ¶ 45). Doe has no evidence to the contrary. Doe tries to argue that his dismissal was based on an alleged violation of IUSM rules. (Pl.'s Resp. Opp'n 29, ECF No. 128.) But he does not provide any support for this, and despite Doe's assertion otherwise, the letter from Dean Hess does not mention any disciplinary guidelines or rules.

(Letter from Jay Hess, Dean, IUSM, to John Doe 1 (June 16, 2020), ECF No. 37-21.)

Having concluded that Doe's expulsion was an academic decision, the Court now assesses whether Doe was afforded due process. In an academic dismissal, due process only requires that the student be informed of the nature of the faculty's dissatisfaction, *i.e.,* Hess's dissatisfaction, and that the ultimate decision to dismiss be "careful and deliberate." *Fenje*, 398 F.3d at 626 (citing *Horowitz*, 435 U.S. at 85).

Doe argues that he had no notice of Dean Hess's dissatisfaction with the IUKSB application. (Pl.'s Resp. Opp'n 29, ECF No. 128.) Indeed, Doe first learned of Dean Hess's opinion on the matter in the dismissal letter. (Letter from Jay Hess, Dean, IUSM, to John Doe 1 (June 16, 2020), ECF No. 37-21.) Doe says that since he was not given notice of Dean Hess's dissatisfaction ahead of his dismissal, Doe was deprived of due process. (Pl.'s Resp. Opp'n 29, ECF No. 128.) But—putting aside the fact that the PMRC afforded him the opportunity to explain away the discrepancy in his application, which he failed to do—Doe has provided no authority that he should have been afforded additional notice beyond that contained in the dismissal itself that it was based on the "conclusion that statements in support of your KSB application do not accurately represent the discussion I had with you nor my letter to you dated March 27, 2020." (Letter from Jay Hess, Dean, IUSM, to John Doe 1 (June 16, 2020), ECF No. 37-21.) This is enough notice to satisfy the due process requirements for an academic dismissal.

But Doe received more process than what was due. Dean Hess wrote to Doe and explained to him that he was being dismissed for his misrepresentations in the

IUKSB application. (*Id.*) As noted, this dismissal letter gave Doe notice of Hess's dissatisfaction and that Doe was being dismissed. Doe has cited no requirement that the notice be prior to or separate from the dismissal itself. Yet, Dean Hess did tell Doe that he needed to be an "exemplary citizen" in order to return to IUSM. (Doe Dep. 107, ECF No. 71-10.) Being dishonest on his application was neither exemplary, nor, in Dean Hess's mind, in keeping with the candor required of a doctor. Still, despite having been forewarned, Doe wrote his application in a way that mischaracterized his disciplinary status. In sum, Doe received more than sufficient notice for an academic dismissal.

There is no genuine dispute that Dean Hess's decision was "careful and deliberate." Dean Hess reviewed Doe's application, Dean Hess's March 27 letter, Doe's response letter to the PMRC, and a letter sent by Doe's attorneys. (Email from Jay Hess, Dean, IUSM, to Eric Weldy, Vice Chancellor for Student Affairs, IUPUI (June 10, 2020), ECF No. 83-8.) Only after considering these documents, did Dean Hess make his decision.

Although there is no evidence that Dean Hess consulted with other faculty members like the decisionmaker in *Fenje* did, 398 F.3d at 623, Dean Hess had all of the evidence in documentary form right in front of him and he was able to see the inconsistency for himself. Dean Hess had the March 27 decision letter, which outlined the conditions on Doe's eligibility to return to IUSM, and Dean Hess had Doe's application, in which Doe claimed that Dean Hess had "fully authorize[d]" Doe's return to IUSM "without limits or restrictions." (IUKSB Appl. 5, ECF No. 83-5.) Further, Dean Hess had first-hand knowledge of his own discussions and communications with Doe. Not only is there no requirement

that the decisionmaker consult others to meet the careful deliberation requirement, here any such deliberations would not have provided Dean Hess with any relevant information not already known to him through his unique personal knowledge. To Dean Hess, Doe's misrepresentations were glaring and irrefutable.

Doe suggests, without authority, that the decision was not "careful and deliberate" because Dean Hess's letter did not state that the decision was "careful and deliberate." (Pl.'s Resp. Opp'n 29, ECF No. 128.) But no magic words are required; the Court looks to the decision, not just the letter announcing it.

In sum, Doe has not shown that a reasonable jury could find a deprivation of due process. Thus, the Court grants Defendants' Motion for Summary Judgment regarding the § 1983 claims.

IV. Conclusion

For the foregoing reasons, Defendants' Motion for Summary Judgment, (Defs.' Mot. Summ. J., ECF No. 122), is granted. Doe's Motion for Oral Argument, (Pl.'s Mot. Oral Arg., ECF No. 129), and Defendants' Motion to Exclude Plaintiff's Damages Experts or Limit Certain Opinions, (Defs.' Mot. Exclude, ECF No. 147), are denied as moot.

SO ORDERED.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

No. 1:20-cv-02006-JRS-MJD

JOHN DOE,

Plaintiff,

v.

THE TRUSTEES OF INDIANA UNIVERSITY, *et al.*,

Defendants.

ORDER ON *EX PARTE* MOTION TO PROCEED UNDER A PSEUDONYM

This matter is before the Court on Plaintiff's *Ex Parte* Motion to Proceed Under a Pseudonym. [Dkt. 3.] For the reasons set forth below, the Court GRANTS Plaintiff's Motion.

I. Background

Plaintiff John Doe brings this action against Defendants asserting claims of a denial of his due process rights under the Fourteenth Amendment of the United States Constitution brought pursuant to 42 U.S.C. § 1983, a violation of Title IX of the Education Amendments of 1972, and other state law claims.[1] [Dkt. 8.]

---

[1] The Court's usage of the pronoun "he" to refer to John Doe reflects the gender of the pseudonym John Doe and not necessarily the gender of the individual the pseudonym represents.

On August 7, 2020, the Court issued an Order requiring Plaintiff to identify himself for the record including his references to his accuser, Jane Roe, on or before August 13, 2020, so that the Court could determine whether there was a conflict of interest. [Dkt. 11.] On August 13, 2020, Plaintiff filed a Disclosure Statement identifying himself and the names of certain other persons who are referred to by pseudonym in this matter. [*See* Dkt. 12.]

In the instant motion, Plaintiff filed an *ex parte* motion to leave to proceed under a pseudonym, requesting that Plaintiff be allowed to proceed using John Doe in lieu of his name because of the sensitive information in this case that could cause irreparable harm to Plaintiff.

II. Discussion

Rule 10(a) of the Federal Rules of Civil Procedure requires a complaint to include the names of all the parties to the suit. That rule "instantiates the principle that judicial proceedings, civil as well as criminal, are to be conducted in public." *Doe v. Blue Cross & Blue Shield United*, 112 F.3d 869, 872 (7th Cir. 1997). Although there is a strong presumption in favor of open proceedings in which all parties are identified, federal courts also have discretion to allow a plaintiff to proceed anonymously. *Doe v. Indiana Black Expo, Inc.*, 923 F. Supp. 137, 139 (S.D. Ind. 1996). The presumption that a plaintiff's identity will be public information can be rebutted by showing that the harm to the plaintiff of proceeding publicly exceeds the likely harm from concealment. *Doe v. City of Chicago*, 360 F.3d 667, 669 (7th Cir. 2004).

This Court has "an independent duty" to determine whether "exceptional circumstances" exist to justify a

departure from the typical method of proceeding under a party's real name. *Id.* at 669-70. The test for permitting a plaintiff to proceed anonymously is whether the plaintiff has a substantial privacy right that outweighs the "customary and constitutionally-embedded presumption of openness in judicial proceedings." *Does v. City of Indianapolis, Ind.*, 2006 WL 2289187, at *1-2 (S.D. Ind. Aug. 7, 2006) (internal quotation marks and citations omitted). The non-exhaustive factors articulated in *EW v. New York Blood Center,* 213 F.R.D. 108, 111 (E.D.N.Y. 2003), are helpful:

> (1) whether the plaintiff is challenging governmental activity or an individual's actions; (2) whether the plaintiff's action requires disclosure of information of the utmost intimacy; (3) whether the action requires disclosure of the plaintiff's intention to engage in illegal conduct; (4) whether identification would put the plaintiff at risk of suffering physical or mental injury; (5) whether the defendant would be prejudiced by allowing the plaintiff to proceed anonymously; and (6) the public interest in guaranteeing open access to proceedings without denying litigants access to the justice system.

See also Doe v. Ind. Black Expo, 923 F. Supp. at 140 (applying nearly identical five-factor test). Discretion when applying this test lies with the district court. *K.F.P. v. Dane County*, 110 F.3d 516, 519 (7th Cir. 1997).

Plaintiff argues that his allegations challenge government activity because Defendants are a public institution of higher education. [Dkt. 3-1 at 5.] Plaintiff brings his claims against Defendants under 42 U.S.C. § 1983 for violations of his due process rights under the Fourteenth Amendment and under Title IX. This first factor favors Plaintiff's request to proceed under a pseudonym. *See Doe v. Purdue Univ.*, 321 F.R.D. 339,

341-42 (N.D. Ind. 2017); *Does v. City of Indianapolis, Ind.*, 2006 WL 2289187, at *2 (S.D. Ind. Aug. 7, 2006).

Second, this litigation requires the disclosure of "information of the utmost intimacy," as demonstrated by the details set out in the Complaint, including information regarding Plaintiff's and Jane Roe's sexual relationship, Jane Roe's allegations of assault, and the details of the University's findings. Other courts have permitted plaintiffs alleging similar claims against colleges and universities to proceed anonymously. *See, e.g., Doe v. Columbia Univ.*, 831 F.3d 46, 49 (2d Cir. 2016) (ruling on a motion to dismiss under Rule 12(b)(6) and acknowledging, but not analyzing, that the plaintiff is proceeding by pseudonym); *Doe v. Brown Univ.*, 210 F.Supp.3d 310, 312 (D.R.I. 2016) (acknowledging the prior grant of a motion to proceed pseudonymously); *Doe v. Colgate Univ.*, 2016 WL 1448829 (N.D.N.Y. Apr. 12, 2016) (granting plaintiff's motion to proceed under pseudonym after balancing the factors); *Doe v. Washington & Lee Univ.*, 2015 WL 4647996 (W.D. Va. Aug. 5, 2015) (ruling on a motion to dismiss under Rule 12(b)(6) and acknowledging, but not analyzing, that the plaintiff is proceeding by pseudonym); *Doe v. Univ. of Massachusetts-Amherst*, 2015 WL 4306521, at *5 (D. Mass. July 14, 2015) (same); *Doe v. Salisbury Univ.*, 107 F. Supp. 3d 481, 492 (D. Md. 2015) (same).

The third factor—whether the plaintiff would be compelled to admit his or her intention to engage in illegal conduct, thereby risking criminal prosecution—is not at issue in this case.

The fourth factor also lends support for anonymity. To proceed anonymously, a plaintiff must assert legitimate circumstances under which making his name public could cause him to suffer mental or physical

injury due to the personal and sensitive nature of his allegations. *Doe v. Marvel*, 2010 WL 5099346, at *2 (S.D. Ind. Dec. 8, 2010). Plaintiff argues that he will be exposed to harassment and stigmatization from the community and the public at large from the disclosure of his name. Plaintiff also asserts that if his identity is revealed, his "future academic and career prospects would nonetheless be destroyed, as any future employer could easily discover the wrongful accusations of dating violence upon a simple internet search." [Dkt. 3-1 at 8.] Anonymity has been granted in cases where plaintiffs are challenging universities regarding discipline for sexual assault. *See, e.g.*, *Doe v. Purdue Univ.*, 321 F.R.D. 339, 342 (N.D. Ind. 2017) (listing cases). If Plaintiff is successful in his claims against Defendants but is required to publicly name himself in the process, the revelation of Plaintiff's identity "would further exacerbate the emotional and reputational injuries he alleges." *See Doe v. Colgate Univ.*, 2016 WL 1448829, *3 (N.D.N.Y. Apr. 12, 2016); *Doe v. Purdue Univ.*, 2019 WL 3887165, at *3 (N.D. Ind. Aug. 19, 2019) ("[B]eing charged with and found responsible for sexual misconduct by a prestigious educational institution unquestionably bears a strong social stigma."). Accordingly, the fourth factor favors anonymity.[2]

Turning to the fifth factor regarding potential prejudice to Defendants, Plaintiff has stated that Defendants are already aware of Plaintiff's "true

[2] A related issue is whether disclosure of Plaintiff's identity could harm third parties. Jane Roe, who is not named in the instant litigation, accused Plaintiff of assault. It is entirely possibly that any identification of Plaintiff could also indicate the true or likely identity of Jane Roe. Although, the parties have not addressed this issue, the Court will also allow Jane Roe to remain anonymous for the same reasons set forth in this order.

identity" and the identity of Jane Roe. Plaintiff further asserts that Defendants will have an "unobstructed opportunity to conduct discovery, present their defenses and litigation [sic] this matter, regardless of whether Plaintiff identifies himself or proceeds under a pseudonym." [Dkt. 3-1 at 9.] Therefore, the Court concludes that the fifth factor also favors anonymity.

Finally, the public interest in disclosing Plaintiff's actual name is not strong. Although there is a strong presumption in favor of conducting litigation under the litigant's real name, the Seventh Circuit has recognized an "exception" for a particularly vulnerable plaintiff. *Blue Cross & Blue Shield United*, 112 F.3d at 872; *City of Chicago*, 360 F.3d at 669. There does not appear to be any less drastic means of protecting the legitimate interests of either Plaintiff who seeks anonymity or Defendants. And, the public interest will continue to be served as the record in this case will not be sealed and the legal and procedural rulings in this case will remain a matter of public record. The courtroom proceedings will remain open, subject to the least intrusive means possible of protecting the identities of the parties and witnesses. The actual identities of Plaintiff and his accuser, Jane Roe, are of minimal value to the public.

Having balanced the factors, the Court finds that Plaintiff has overcome the strong presumption in favor of requiring a litigant's name to be a matter of public record by showing that the harm to Plaintiff from disclosure likely exceeds the harm from concealment.

III. Conclusion

Based on the foregoing, the Court GRANTS Plaintiff's Motion. [Dkt. 3.] The Court orders the parties to use the pseudonym "John Doe" for Plaintiff, and the pseudonym "Jane Roe" for Plaintiff's accuser.

SO ORDERED.

Dated: 14 AUG 2020

/s/ Mark J. Dinsmore
Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

Distribution:

Service will be made electronically on all ECF-registered counsel of record via email generated by the Court's ECF system.