

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN DOE,	:
	: Civil Action No:
	:
Plaintiff,	:
	:
-against-	:
	:
TRUSTEES OF BOSTON COLLEGE,	:
	:
Defendants.	:

**DECLARATION OF JOHN DOE
IN SUPPORT OF PLAINTIFF’S MOTION FOR A TEMPORARY RESTRAINING
ORDER AND A PRELIMINARY INJUNCTION PROHIBITING BOSTON COLLEGE
FROM ENFORCING THE SUSPENSION OF PLAINTIFF**

PLAINTIFF, who wishes to proceed under the pseudonym John Doe¹, hereby declares subject to the penalties of perjury pursuant to 28 U.S.C. § 1746:

1. I am the Plaintiff in this action and submit the following in support of Plaintiff’s motion for a temporary restraining order and a preliminary injunction.
2. I matriculated at Boston College as a freshman student and [REDACTED] in the fall of [REDACTED], with an expected graduation date of spring [REDACTED].
3. I chose to attend BC due to its rigorous academic curriculum and [REDACTED] program.

¹A separate application seeking the Court’s approval to proceed under a pseudonym has been filed.

The Alleged Incident of November 4, 2018

4. I met Jane Roe sometime during our freshmen year. Though we did not engage in any regular communications, we were on friendly terms and would exchange greetings when we saw each other around campus.

5. On the evening of November 3, 2018, several of my friends and I pre-gamed in my suite, from approximately 9:00 p.m. until 10:30 p.m.

6. During this time, I consumed roughly three glasses of wine, which did not cause me to feel impaired.

7. We decided to go to a bar downtown and took an Uber there. Upon arriving, we discovered there was a long line to get in.

8. After waiting in line for approximately 15-20 minutes, some of us decided to go to another bar.

9. We waited in line at the second bar, until we learned that there was a cover charge to enter. At that point, we decided to take an Uber back to BC, arriving shortly before 1:00 a.m.

10. I did not consume any alcohol in the time between my departure from BC and my return to BC later in the evening.

11. Once we returned to BC, two of my friends and I decided to go to an off-campus party that we had heard about from another friend and took an Uber there.

12. We stayed at this off-campus party for approximately thirty minutes. I did not consume any alcohol at this party.

13. We next took another Uber back to campus, arriving to [REDACTED] around 1:30 a.m. on November 4, 2018.

14. Upon arriving at [REDACTED], I saw Jane Roe waiting in line to get food. My friends and I joined Roe in line, when she either smiled or waved hello to me.

15. I do not recall engaging in any physical contact with Roe at this time, aside from potentially greeting with her with a hug to say hello, since we had greeted each other in this manner in the past.

16. I do recall asking Roe why she was wearing a [REDACTED], to which Roe responded that she had been at a [REDACTED]. We engaged in a normal and coherent conversation as we stood in line for food, along with three of my friends.

17. While waiting in line, I got the impression that Roe was flirting with me, as she seemed to focus her attention on me more than the others, and we talked and stood near each other.

18. Roe offered to buy food for both myself and my friend, [REDACTED], which we accepted.

19. Once we had purchased food, the five of us (me, Roe and my three friends) all decided to walk back to my suite to eat our food there.

20. Roe did not exhibit any difficulties walking, nor did she exhibit any other signs of incapacitation, as she engaged in conversation with one of my friends during this walk back to our suite.

21. When we arrived in the suite, me, Roe and two of my friends (one had gone off to his own room in the suite) sat in the common room to consume our food, while we talked and ate.

22. After a few minutes, my two remaining friends left the common area, leaving me and Roe alone. I asked Roe if she wanted to go into my room and she stated "Yes."

23. We then entered my room, where I climbed up onto my bed, which was raised several feet off the floor, by standing on a desk chair. Roe followed me.

24. After talking for a few minutes on the bed, we mutually started to kiss. We then lay down and continued kissing, as we began grinding against each other.

25. Roe asked me to kiss her neck, which I did, and told me “I know you want to do it.”

26. I did not respond to this comment but understood Roe to mean that she knew I wanted to have sexual intercourse with her.

27. Roe assisted me in removing her spandex shorts, which she wore under her [REDACTED], by arching her back.

28. Roe then directed me to “get a condom.”

29. With her instruction, I got off the bed and retrieved a condom from my wallet.

30. When I returned to the bed, I did not put the condom on immediately, at which point Roe stated “Other people have done that [had sex without a condom]”, to which I responded “I wouldn’t do that.”

31. Roe instructed me not to remove her underwear, and instead pulled her underwear to the side using one hand.

32. I then put the condom on, and after being instructed by Roe to “do it”, penetrated her vagina with my penis.

33. Roe told me to “go slow” because it had “been a while.”

34. We engaged in sexual intercourse in missionary position for 5 to 7 minutes, during which Roe told me to kiss her neck and gave me verbal instructions, including “go slow” and “keep it there.”

35. I asked Roe to flip on to her stomach, however she replied that she did not want to do this because she “did not want [me] to cum too fast.” When I told her I would not do so, she then turned over onto her stomach.

36. After approximately two to three minutes in this position, Roe told me that her back hurt. Although she did not ask me to stop, the intercourse ceased at this point.

37. We then both got off the bed and got dressed. I walked Roe to the door, where we said goodbye. Roe also said goodbye to one of my roommates, who was sitting in the common room.

38. To my complete shock and surprise, on December 4, 2018, mine and Roe’s mutual friend █████ informed me that Roe was “thinking of coming forward with sexual charges” against me. Roe had told █████ that she had “blacked out” during our encounter and only recalled asking me to get a condom.

39. Subsequently, I texted Roe, asking if she would meet me to discuss the night of November 4. The following day, Roe responded, and agreed to meet with me on December 7, 2018.

40. On December 7, we met in the dining hall to discuss the encounter and each of our recollections, which varied substantially.

41. During this conversation, Roe mentioned the fact that she was upset I had not spoken to her at a football game we both attended the weekend after the encounter (even though I did not see her there), and was very upset that I had “ignored” her when she requested that I return the shorts she had left in my room.

42. This was the last communication I engaged in with Jane Roe.

Roe's Complaint and the Investigation

43. Thereafter, on December 11, 2018, I received a mutual Stay Away Order from Associate Dean of Students Corey Kelly, prohibiting me from having any contact, either direct or indirect, with Jane Roe. The Order noted that a violation could result in my arrest, a summary suspension from Boston College, and other disciplinary action by the University.

44. On December 14, 2018, I met with Dean Corey Kelly to discuss the charges. Kelly specifically informed me that I would receive written notification of the allegations and the policy sections that were implicated by those allegations, from Dean O'Driscoll.

45. More than one month later, on January 23, 2019, I received a Notice to Appear from Assistant Dean of Students Kristen O'Driscoll, stating she was "in receipt of a report of alleged violations of the Boston College Code of Student Conduct" in relation to the November 4, 2018 encounter.

46. The Notice to Appear identified the general Sexual Misconduct Policy (Section 4.4.6 of the Code of Student Conduct) as the policy I may have violated. O'Driscoll specifically noted that I was accused of sexually assaulting Roe in my residence hall by "engaging in non-consensual sexual contact through kissing and touching of intimate body parts and penetrating her vagina with [my] penis without her consent ***while [Jane Roe] was incapacitated.***"

47. The Notice also advised me of a second allegation related to an earlier encounter at Lower Dining. The only description of this offense was that the encounter was a "non-consensual touching."

48. The Notice to Appear underscored that if additional allegations were to arise during the investigation, "***we would provide an updated notice to you.***"

49. O'Driscoll requested that I schedule an interview with her and an external investigator, during the week of January 29.

50. Thus, I appeared for an initial interview on January 29, 2019 with Investigators O'Driscoll and Davis. My attorney advisor accompanied him to the interview, which lasted approximately two hours.

51. On February 9, O'Driscoll provided me with the Investigators' summary of my initial interview and requested that I provide any comments to the summary within 5 calendar days.

52. On February 22, 2019, I submitted a photo of my bedroom and Uber receipts from the night of the alleged incident to the Investigators, to corroborate the facts and timeline of events I had presented.

53. Also on February 22, 2019, O'Driscoll contacted me to schedule a follow up interview, during the week of March 11.

54. By email dated February 27, 2019, I inquired whether I would be able to review the evidence collected to date, prior to appearing for my second interview. O'Driscoll responded the same day, stating that the Investigators would not share the evidence with me prior to my follow up interview.

55. On March 5, 2019, I submitted comments on the summary of my initial interview, by email.

56. I appeared for a second interview on March 11, 2019.

57. On March 18, 2019, O'Driscoll provided me with a written summary of my second interview and instructed that I submit any comments to the summary within five days.

58. I submitted comments to the second interview summary on March 21, 2019.

59. On March 27, 2019, O'Driscoll emailed me to advise that all comments had been received on both follow up interview summaries and that the evidence binder was near completion.

60. On April 5, 2019, O'Driscoll notified me that the evidence binder related to the investigation was available for review. I was informed that I would have 10 calendar days in which to review the evidence in the Dean of Students Office, and to submit any comments on the evidence, by April 15.

61. O'Driscoll noted that I was only permitted to review the materials in their office and was prohibited from making any copies. Thus, I was never provided with a copy of the full investigation file, consisting of approximately 60 pages, which required me to review the evidence binder in the Dean of Students Office on several occasions.

62. On April 18, 2019, I submitted my response and comments to the evidence binder, in which I established that the investigation did not reveal any credible evidence to support a finding of responsibility. Specifically, the evidence demonstrated that (i) Roe did not lack the capacity to engage in a consensual sexual encounter, and (ii) she was an active participant in the encounter.

63. On April 24, 2019, O'Driscoll notified me that the Investigators had received final comments to the evidence binder review from both parties and were working on the final report.

64. On May 1, 2019, O'Driscoll emailed me to advise that the final report was still in progress and that she would provide an update once final exams were complete.

65. On May 21, 2019, O'Driscoll again notified me that she and Ms. Davis were working on finalizing the report.

The Disciplinary Decision

66. On June 18, 2019, I received a Resolution Letter from Dean Corey Kelly, notifying me that she and the Student Affairs Title IX Coordinator reviewed and approved the final investigative report and determined that I was responsible for Sexual Misconduct: Sexual Assault (the “Decision”).

67. The Resolution Letter indicated the Investigators concluded I did not know, nor could I have reasonably known, that Roe was incapacitated by alcohol. Yet, they instead found by a preponderance of the evidence that I engaged in conduct with Roe, without her consent.

68. At all times during the investigation, I understood the charges against me to be non-consensual contact due to incapacitation, and focused my defense on combating this specific charge, identifying the witnesses and evidence that would refute Roe’s claims of incapacitation. Yet, when the Investigators concluded that the evidence did not support a finding that Roe was incapacitated, they changed their theory of the case, to a charge of non-consensual sexual contact. At no time was I ever notified that these additional charges were being pursued, as guaranteed by the initial Notice to Appear letter.

69. The Resolution Letter notified me that I had been suspended from the University, effectively immediately, through May 18, 2020, and that such suspension would be noted on my transcript. It also noted that if I were to be readmitted to the College, I would be placed on University Probation for one year following my return.

The Appeal and Appeal Decision

70. On June 27, 2019, I timely submitted an appeal of the Decision on the grounds that (1) BC committed material procedural errors that likely adversely affected the result of the conduct

adjudication, and (2) I had recently become aware of new evidence that was unavailable at the time of the adjudication process, which would have likely affected the finding.

71. Specifically, I outlined that BC engaged in substantial procedural errors including: (i) BC failed to notify me of the allegations against me, when I was found responsible for conduct in violation of the Policy that differed from the alleged violation with which I was initially charged; (ii) the Investigators failed to complete the investigation within 60 days; (iii) the Investigators misapplied the preponderance of the evidence standard; (iv) the Investigators required me to prove my innocence rather than affording me a presumption of innocence; (v) they did not examine whether the encounter was consensual as demonstrated through both words and actions; (vi) the investigation was not thorough or impartial; (vii) I was not permitted to review my accuser's statements, witness statement or any evidence until after I had appeared for two interviews; (viii) BC does not provide a hearing in cases of sexual misconduct while providing hearings in other conduct matters; and (ix) BC failed to ensure confidentiality in the process when it permitted Roe to discuss the allegations with my [REDACTED]

72. Further, I described that I had recently become aware of new evidence that was not available to me during the investigation process, which would affect the finding of non-consent—specifically, one of the witnesses previously interviewed confided in me that he had been present in the adjacent living room within the suite during the sexual encounter and had heard unambiguous signs of consensual sex from both parties.

73. On July 24, 2019, Vice President for Student Affairs Joy Moore denied my appeal, on the grounds that it did not state a valid ground for appeal in accordance with BC's Policy.

Irreparable Injury Caused by the Suspension

74. I submit this Declaration in support of my application for a Temporary Restraining Order and Preliminary Injunction because I have already suffered and will continue to suffer significant damages as a result of BC's erroneous finding of responsibility and imposition of a one-year suspension.

75. In addition to the damages I will suffer as a result of the permanent disciplinary notation on my academic record, the resultant delay in my anticipated graduation date, and the disclosure to all potential graduate schools and employers that I was found responsible for sexual assault, I will also suffer immense irreparable harm with respect to my [REDACTED].

76. Specifically, I will [REDACTED] to [REDACTED] while on suspension from the College during my [REDACTED], which will translate into lost [REDACTED], a high probability of not being [REDACTED] whatsoever in the [REDACTED] (even though it is not in the [REDACTED]
[REDACTED]
[REDACTED] or a significant lowering of my [REDACTED], an all but certain loss of career opportunities to ever [REDACTED], and consequent loss of a [REDACTED], as well as loss of substantial future earning capacity.

77. The likelihood of me being [REDACTED] by the [REDACTED] is not purely speculative; last year, I was interviewed by [REDACTED]
[REDACTED] this coming year due to my [REDACTED]
[REDACTED].

78. However, it is well known that [REDACTED] with any disciplinary violation in their background are [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].

79. A suspension of even one day from Boston College will likely result in a loss of my [REDACTED] on the BC [REDACTED], directly resulting in the irreparable damages described above.

80. I am currently a member of the [REDACTED], which is essentially a [REDACTED]. It is widely accepted and touted that it is the [REDACTED].

81. This is my second [REDACTED] [REDACTED].

[REDACTED]

[REDACTED]

82. [REDACTED] [REDACTED] [REDACTED] [REDACTED].

[REDACTED] in the [REDACTED]. In addition, [REDACTED] [REDACTED], [REDACTED], and [REDACTED] to be eligible.

83. Thus, if the [REDACTED] is notified of the suspension from Boston College, I will no longer [REDACTED] [REDACTED].

84. The purpose of the [REDACTED] is to gather the [REDACTED] into one area so that they can [REDACTED], allowing [REDACTED].

85. In this way, it provides [REDACTED] from the [REDACTED] the opportunity to [REDACTED] [REDACTED] [REDACTED].

86. In fact, the [REDACTED] are scheduled in such a way as to allow [REDACTED] to see more than [REDACTED].

87. On average, there are approximately [REDACTED], and [REDACTED].

88. In 2017, of the approximately [REDACTED] [REDACTED]

[REDACTED]

89. I was named a [REDACTED] which also increases my chances of being [REDACTED].

90. As of July 25, 2019, I am currently in the [REDACTED].

91. [REDACTED]

[REDACTED]

92. [REDACTED]

[REDACTED]

93. [REDACTED]

[REDACTED]

94. Approximately, [REDACTED], while [REDACTED]

[REDACTED]

[REDACTED], and only [REDACTED]. Once a [REDACTED] reaches the [REDACTED], the

[REDACTED] is [REDACTED], with potentially more in [REDACTED]

[REDACTED]

95. Should a [REDACTED] be [REDACTED] after [REDACTED], the [REDACTED] [REDACTED] will [REDACTED]. If I go [REDACTED], this shall be lost.

96. It is generally known that the [REDACTED] form relationships with [REDACTED]. Thus, if the [REDACTED] become aware of any problems, including a disciplinary issue, they are likely to relay that information to the [REDACTED].

97. Similarly, if my Boston College [REDACTED] is made aware of the finding and disciplinary suspension, it is likely he will convey this information to the [REDACTED], who will in turn relay this information to the [REDACTED].

98. This would have the likely effect of immediately [REDACTED] the [REDACTED] [REDACTED], destroying my chances of ever being [REDACTED].

99. As of this summer, [REDACTED] [REDACTED].

100. Being [REDACTED] in the [REDACTED] could command a [REDACTED] of [REDACTED] with the highest during [REDACTED]. Even being [REDACTED] in the [REDACTED] [REDACTED] would garner a [REDACTED].

101. The [REDACTED] schedule concludes, depending on [REDACTED] schedules, around [REDACTED] [REDACTED].

102. Once the [REDACTED] concludes, I expected to return to BC and begin fall [REDACTED], with [REDACTED] and [REDACTED], as well as [REDACTED] [REDACTED].

103. During this time period, [REDACTED] from the various [REDACTED] come to schools to meet with [REDACTED] and [REDACTED], and set up individual [REDACTED].

104. Last year for instance, I interviewed with [REDACTED] from the [REDACTED], who expressed an interest in me. I also had meetings with the [REDACTED] [REDACTED] [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

105. Last fall, a [REDACTED] came to campus to interview me and the following week, the [REDACTED] and I [REDACTED] came to BC to also conduct an interview with me. Later that same fall, I was invited by the same [REDACTED] for an additional interview, [REDACTED] [REDACTED], and to meet with some current [REDACTED] [REDACTED].

106. Further, last fall I had a [REDACTED] for the [REDACTED] for the [REDACTED] after meeting with him at BC.

107. The [REDACTED] also held meetings with my parents and me after our initial conversations with the express purposes of finding out about my family values, educational plans and to provide a full background of how the [REDACTED] felt about those mentioned above and how they supported their [REDACTED].

108. If I am not present for these meetings during the fall semester, the [REDACTED] will find out that there was a disciplinary issue and report back to their [REDACTED]. This will result in me either being crossed off their lists as a potential [REDACTED], or my [REDACTED], making it unlikely that I will ever make it to [REDACTED].

109. Alternatively, if the suspension remains in place and I am not eligible to return to Boston College until the fall of 2020 for my [REDACTED], which is not guaranteed as I will have to apply for reinstatement, I will be treated as a [REDACTED] as that would be my original

graduating year. Once a [REDACTED] enters their [REDACTED], their [REDACTED] dramatically, as does their overall chance of ever being [REDACTED]

110. In addition, transferring to another institution is not a possibility as [REDACTED] [REDACTED] and requires the [REDACTED] to [REDACTED] before they are permitted to [REDACTED]. This would undoubtedly raise questions by [REDACTED].

111. Therefore, absent an order staying the suspension, I will be unable to [REDACTED] during my [REDACTED] will most certainly not be [REDACTED]. will most likely lose out on a [REDACTED] my [REDACTED] and the opportunity for [REDACTED].

112. Consequently, an order restraining BC from enforcing the finding and suspension is necessary to avoid immense irreparable harm, while the merits of the complaint are adjudicated.

Dated: Boston, MA
July 26, 2019



John Doe