SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION — SECOND JUDICIAL DEPARTMENT

JANE DOE, a minor, by her Mother and Natural Guardian **MARY DOE**, *Petitioners-Appellants,* —against— **THE DIOCESE OF HOLY TRINITY** and **ST. JOSEPH'S ACADEMY**, *Respondents-Respondents.*	**Index No.: 2024-1234**

BRIEF FOR PETITIONERS-APPELLANTS

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PRELIMINARY STATEMENT

This appeal presents the question whether a private educational institution may disregard the plain terms of its own disciplinary code, impose a second and substantially more severe sanction for conduct already fully adjudicated, and openly retaliate against a parent's good-faith complaint—each without notice, hearing, or written explanation—and then shield its decision from judicial review by invocation of "broad discretion." New York law supplies a settled answer. Private schools that promulgate disciplinary rules are bound to follow them. They may not punish the same offense twice. They may not wield the power of expulsion as an instrument of retaliation against a parent who has complained of teacher misconduct. And they owe, at a minimum, the fundamental fairness that *Tedeschi v. Wagner College*, 49 N.Y.2d 652 (1980), has required for more than four decades. Respondents disregarded each of these obligations. The Supreme Court's decision sustaining their conduct should be reversed.

Jane Doe, a sixteen-year-old scholarship honor student, was suspended for two days after muttering "Screw this place" under her breath as she left a classroom in which her teacher had just publicly ridiculed her and disclosed confidential academic information in front of her peers. She served the suspension without protest. Two days later, during the re-entry conference prescribed by the Student Handbook, the same teacher appeared uninvited and remarked that Jane had "ghetto ways"—a statement so plainly improper that the Dean removed her from the meeting. When Mary Doe thereafter asked to meet with Principal Williams to address what she believed was a pattern of discriminatory harassment, Principal Williams drafted a behavioral contract. The moment Mary Doe added a single handwritten notation reflecting her concern about the teacher's conduct, Principal Williams expelled Jane on the spot. When Jane herself, moments later, offered to sign any contract he might require, Principal Williams answered: "No. It's your mother."

That admission is neither ambiguous nor susceptible of innocent reconstruction. Jane's expulsion was not the product of her conduct—her conduct had been addressed, and by Respondents' own contemporaneous judgment, the appropriate sanction was a two-day suspension, which she served. The expulsion was the product of her mother's advocacy. It was imposed without written charges, without a hearing, without a stated reason, and without any avenue of review. And it converted an offense plainly categorized under the Student Handbook as Tier 2—for which the maximum authorized sanction is suspension—into a Tier 3 sanction reserved for violence and weapons offenses.

The Supreme Court, while acknowledging the "harsh" consequences of Respondents' actions, concluded that a private school's discretion is sufficient to insulate even this decision from meaningful review. That conclusion cannot be reconciled with the governing authority of this Court and the Court of Appeals. Private educational institutions operate under contractual obligations to their students; those contracts carry an implied covenant of good faith and fair dealing; and secondary schools must afford fundamental fairness before imposing sanctions that terminate the student-school relationship. None of those obligations was honored here. The decision below should be reversed, the expulsion annulled, and Jane's enrollment and scholarship restored.

QUESTIONS PRESENTED

1. Whether the Supreme Court erred in sustaining Respondents' imposition of expulsion—a sanction reserved under the Student Handbook for Tier 3 offenses such as physical violence and weapons possession—for conduct the Handbook itself classifies as a Tier 2 offense carrying a maximum authorized penalty of suspension.

   The Supreme Court answered in the negative. Petitioners respectfully submit the answer should be in the affirmative.

2. Whether the Supreme Court erred in permitting Respondents to impose a second, materially more severe sanction for the same incident after the originally imposed suspension had been fully served and the student readmitted, where the record discloses no intervening misconduct, no newly discovered evidence, and no reservation of rights.

   The Supreme Court answered in the negative. Petitioners respectfully submit the answer should be in the affirmative.

3. Whether the Supreme Court erred in declining to find retaliation where the expulsion was imposed within minutes of Mary Doe's complaint of teacher harassment, where no additional misconduct by the student had occurred, and where Principal Williams expressly stated, in response to Jane Doe's offer to comply with any behavioral condition the school might impose, "No. It's your mother."

   The Supreme Court answered in the negative. Petitioners respectfully submit the answer should be in the affirmative.

4. Whether the Supreme Court erred in holding that Respondents could expel Jane Doe from St. Joseph's Academy without written notice of charges, without a hearing, without a stated rationale, and without any avenue for review, in derogation of the fundamental fairness required of private educational institutions under *Tedeschi v. Wagner College*, 49 N.Y.2d 652 (1980).

   The Supreme Court answered in the negative. Petitioners respectfully submit the answer should be in the affirmative.

STATEMENT OF THE CASE

A. Nature of the Proceeding

Petitioners commenced this Article 78 proceeding on May 22, 2020 (R. 1–19), seeking annulment of Respondents' February 24, 2020 decision expelling Jane Doe from St. Joseph's Academy. Following full briefing and oral argument, the Supreme Court, Jefferson County (Hon. [Name], J.S.C.), denied the petition in its entirety by Decision and Order dated [Date] (R. 245–260). Petitioners timely filed their notice of appeal on [Date] (R. 261). This appeal followed.

B. The Parties

Petitioner-Appellant Jane Doe was, at the time of the expulsion, a sixteen-year-old sophomore at St. Joseph's Academy (R. 35). She had been admitted to the Academy in September 2018 as a scholarship recipient through the Student Sponsor Partners program, which serves academically promising students from low-income households (R. 35). Mary Doe is her mother and natural guardian. Respondent St. Joseph's Academy is a private secondary school located in Jefferson County; Respondent Diocese of Holy Trinity is its sponsoring religious corporation (R. 20–24).

C. Statement of Facts

1. Jane's Academic and Disciplinary Record

Jane's record at the Academy was, prior to the events at issue, without blemish. She maintained honor-roll standing through her freshman year and into her sophomore year (R. 35–36). She had never been the subject of any disciplinary proceeding, informal or formal, during her nearly two years of enrollment (R. 87–88).

2. The Classroom Conduct of Ms. Smith

Beginning early in Jane's freshman year, her history teacher, Rebecca Smith, repeatedly addressed Jane in front of her classmates as "the ghost" (R. 42, 67). Jane and her mother raised these incidents with the administration on multiple occasions and received no meaningful response (R. 67–72). The practice continued unabated into Jane's sophomore year.

3. The February 18, 2020 Classroom Incident

On February 18, 2020, Jane arrived a few minutes late to Ms. Smith's class. Ms. Smith announced to the assembled students: "Look who decided to grace us with her presence — the ghost is here." (R. 38.) Later in the same period, when Jane was unable to answer a question, Ms. Smith disclosed private academic information to the class, stating: "Even Tom and Lisa know the answer, and that's why you had to go to summer school." (R. 38.) As Jane gathered her belongings at the end of the period, she muttered "Screw this place" under her breath (R. 39). The record is uncontested that the remark was not directed at any person, contained no profanity, and was the first disciplinary incident of Jane's enrollment (R. 87–88).

4. The Two-Day Suspension

Respondents imposed a two-day suspension for the remark (R. 39, 93). Jane and her mother did not contest the suspension, and Jane served it in full (R. 39, 93). Consistent with the Student Handbook, Respondents scheduled a re-entry conference for February 20, 2020 (R. 40).

5. The Re-Entry Conference and Ms. Smith's Remarks

At the re-entry conference, Dean Johnson met with Mary Doe and Jane (R. 40). Ms. Smith unexpectedly entered the meeting and, in the course of the exchange, stated: "Now I see where [Jane] gets her ghetto ways from." (R. 40.) Dean Johnson immediately asked Ms. Smith to leave (R. 40). Mary Doe then requested an audience with Principal Williams to address what she believed to be a pattern of discriminatory harassment by Ms. Smith (R. 41).

6. The Expulsion and Principal Williams' Admission

At the meeting that followed, Principal Williams began drafting what he characterized as a "behavioral contract" (R. 41). Mary Doe added a single handwritten notation recording her concern about Ms. Smith's conduct (R. 41). Principal Williams, without further discussion, declared Jane expelled, ordered Mary Doe out of his office, and terminated the meeting (R. 41–42, 98–99).

Moments later, Jane, who had been waiting outside, approached Principal Williams and asked whether she could sign the behavioral contract herself and remain enrolled. Principal Williams answered: "No. It's your mother." (R. 42, 101.)

Respondents provided no written notice of charges (R. 189); convened no hearing (R. 190); offered no explanation, written or oral, for why the suspension Jane had already served was insufficient (R. 191); afforded no opportunity to present mitigating evidence or contextual information (R. 192); and permitted no avenue of appeal or reconsideration (R. 193). The expulsion—and with it, the revocation of Jane's scholarship—took effect immediately (R. 44).

D. The Decision Below

The Supreme Court denied the petition in its entirety (R. 245–260). While acknowledging the "harsh" consequences of the expulsion, the court held that private schools possess "broad discretion" in disciplinary matters sufficient to foreclose judicial intervention (R. 252). The court did not address Petitioners' contentions that Respondents had departed from the Student Handbook, that they had imposed a second sanction in violation of disciplinary finality, that the record established retaliation on its face, or that Respondents had afforded no process of any kind. This appeal followed.

SUMMARY OF ARGUMENT

The decision below should be reversed on four grounds, any one of which is independently sufficient.

First, the Student Handbook creates a binding contract between the Academy and its students. *Vought v. Teachers College, Columbia University*, 127 A.D.2d 654, 655 (2d Dep't 1987). Its three-tier disciplinary classification is not advisory; it prescribes the sanctions available for each category of offense. Jane's single, undirected verbal expression falls squarely within the Handbook's Tier 2 category of "verbal outbursts" and "inappropriate language," for which the maximum authorized sanction is suspension. Expulsion is reserved for Tier 3 offenses—physical abuse, weapons possession, and the like—of which Jane plainly committed none. Respondents' unilateral reclassification of her offense to justify expulsion is a material breach of the contract. *Carr v. St. John's Univ.*, 17 A.D.2d 632, 634 (2d Dep't), *aff'd*, 12 N.Y.2d 802 (1962).

Second, Respondents had already punished Jane. A two-day suspension was imposed, served in full, and concluded with Jane's readmission to class. No reservation of rights accompanied that determination, no new evidence emerged, and no further misconduct occurred. Under *Kickertz v. New York University*, 25 N.Y.3d 942 (2015), an

educational institution that has rendered a final disciplinary determination may not later modify it to the student's detriment. The second, materially more severe sanction imposed hours after Jane's return contravened that rule and the elementary principles of contractual finality from which it derives.

Third, the record contains direct evidence of retaliation. Within minutes of Mary Doe's complaint regarding Ms. Smith's conduct, Principal Williams expelled Jane. When Jane personally offered to comply with any behavioral term the school might propose, Principal Williams answered, "No. It's your mother." An admission of this kind is rare. It dispenses with the need to infer retaliatory motive from temporal proximity—though proximity measured in minutes would itself suffice. *See Summa v. Hofstra Univ.*, 708 F.3d 115, 128 (2d Cir. 2013). The implied covenant of good faith and fair dealing forbids the use of disciplinary authority to punish a student because her parent has lodged a good-faith complaint about teacher conduct. *See 511 West 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 153 (2002).

Fourth, Respondents afforded Jane none of the fundamental-fairness protections required under *Tedeschi v. Wagner College*, 49 N.Y.2d 652 (1980). There was no written notice of charges, no hearing, no statement of reasons, and no mechanism of review. That is not a deficient process; it is the absence of process. The Supreme Court's characterization of this vacuum as an exercise of "discretion" is irreconcilable with four decades of settled New York precedent.

On this record, the invocation of "broad discretion" is not a reason for affirmance; it is a substitute for one. The decision below should be reversed, the expulsion annulled, and Jane's enrollment and scholarship restored.

ARGUMENT

POINT I

RESPONDENTS BREACHED THE STUDENT HANDBOOK BY IMPOSING A TIER 3 SANCTION FOR CONDUCT THE HANDBOOK EXPRESSLY CLASSIFIES AS TIER 2

A. The Student Handbook Creates Binding Contractual Obligations That Must Be Substantially Observed

New York has long recognized that the relationship between a private educational institution and its students is fundamentally contractual in character. *Vought v. Teachers College, Columbia University*, 127 A.D.2d 654, 655 (2d Dep't 1987). The institution's catalogues, circulars, and handbooks — the documents by which it defines the terms of its relationship with its students — "become part of the contract" between school and student. *Id.* That principle is not limited to post-secondary institutions. It applies with equal force to private secondary schools, and with particular force where, as here, the institution has taken the trouble to publish a detailed disciplinary framework on which its students and their families rely.

This Court has made clear that the obligation to adhere to such published procedures is not aspirational. An educational institution that promulgates disciplinary rules must "substantially observe" them. *Carr v. St. John's Univ.*, 17 A.D.2d 632, 634 (2d Dep't), *aff'd*, 12 N.Y.2d 802 (1962). Where an institution departs from its own published procedures to the student's detriment, the departure is subject to judicial review and correction. *Id.*; *see also Tedeschi v. Wagner Coll.*, 49 N.Y.2d 652, 660 (1980).

B. The Handbook's Three-Tier Framework Is Unambiguous and Leaves No Room for the Sanction Imposed

The Student Handbook establishes a graduated three-tier disciplinary system (R. 123–125). It is prescriptive, not advisory. Tier 2 offenses are defined to include, among other things, "verbal outbursts" and "inappropriate language," with authorized sanctions in escalating order of written warning, behavioral probation, and suspension (R. 124). Expulsion is conspicuously absent from the authorized Tier 2 sanctions. Tier 3 offenses are defined narrowly, and comprise conduct of a manifestly different character: "physical abuse," "possession of weapons," and similar grave misconduct (R. 125). Expulsion is the authorized sanction for Tier 3 offenses, and for Tier 3 offenses alone (R. 125).

Jane's conduct — a single, undirected expression of frustration uttered under her breath after her teacher publicly ridiculed her and disclosed her academic history to the class — fits the Tier 2 definition precisely. It did not, by any ordinary reading of the Handbook or any rational application of its categories, constitute physical abuse or its equivalent.

C. Respondents' Ad Hoc Escalation Is Not an Exercise of Discretion Entitled to Deference

Respondents have not contended, and on this record cannot plausibly contend, that Jane's remark constituted a Tier 3 offense within any ordinary meaning of that term. Their position must therefore be that they retain the discretion to escalate sanctions notwithstanding the Handbook's classifications. That position, if accepted, would empty the Handbook of content. A classification scheme that the promulgating institution is free to disregard at will is not a classification scheme at all; it is an ornament on the exercise of unconstrained discretion. New York law does not permit a private institution to publish rules, invite reliance on them, and then set them aside when inconvenient. *Powers v. St. John's Univ. Sch. of Law*, 25 N.Y.3d 210, 216 (2015); *Carr*, 17 A.D.2d at 634.

The deference owed to academic judgments, moreover, is neither absolute nor unprincipled. *Tedeschi*, 49 N.Y.2d at 658. Where the question presented is not the academic evaluation of a student's performance but the institution's adherence to its own written disciplinary code, the reviewing court's role is not to second-guess pedagogical judgment; it is to ensure that the institution has abided by the terms of its own bargain. *Id.* Deference is owed to reasonable interpretations of ambiguous rules; it is not owed where, as here, the institution has ignored rules that admit of no ambiguity. The remedy is correspondingly direct. Because Respondents imposed a sanction the Handbook did not authorize for the offense charged, the sanction cannot stand.

POINT II

RESPONDENTS' IMPOSITION OF A SECOND, MORE SEVERE SANCTION FOR THE SAME COMPLETED OFFENSE CONTRAVENED THE PRINCIPLE OF DISCIPLINARY FINALITY

A. The February 18 Suspension Was a Final Disciplinary Determination

When Respondents imposed a two-day suspension on February 18, 2020, they made a definitive judgment as to the appropriate sanction for Jane's remark. Jane served the suspension in full, and the Academy permitted her return to class (R. 43). Respondents reserved no right to revisit the matter, gave no notice that the disciplinary inquiry remained open, and undertook no further investigation of the February 18 incident (R. 156–157). So far as the record discloses, Respondents considered the matter closed.

Under *Kickertz v. New York University*, 25 N.Y.3d 942 (2015), and the principles of contractual finality it reflects, an educational institution that has rendered a disciplinary determination may not, absent a reservation of rights or genuinely extraordinary circumstances, revise that determination to the student's detriment. The rule is rooted in ordinary contract doctrine: a party to a contract cannot, having resolved a matter,

unilaterally reopen it. It is equally rooted in the reasonable expectations of students, who must be able to depend on the consequences their schools impose.

B. No Circumstance Justified Revisiting the Completed Sanction

The record supplies no ground on which Respondents could properly have reopened the February 18 matter. Jane committed no additional misconduct between the imposition of the suspension and the expulsion two days later. No new facts about the February 18 incident came to light. No further investigation was undertaken. The only event of significance that intervened between suspension and expulsion was Mary Doe's complaint about Ms. Smith's conduct—a matter that bore no relationship whatever to the sufficiency of Jane's prior punishment.

The absence of any proper predicate for reopening the sanction is not a technical deficiency. It is dispositive. An institution that imposes a second and materially more severe punishment for the same incident without any reason rooted in the student's own conduct has not exercised discretion; it has exacted retribution. The Supreme Court's willingness to accept this course as lawful cannot be reconciled with *Kickertz* or with the principles of contractual finality on which it rests.

POINT III

THE RECORD ESTABLISHES RETALIATION BY DIRECT ADMISSION AND BY TEMPORAL PROXIMITY, AND RESPONDENTS HAVE OFFERED NO LEGITIMATE COUNTER-EXPLANATION

A. The Timeline Is Itself Sufficient to Raise a Compelling Inference of Retaliation

The chronology of February 20, 2020 is brief and unmistakable. Ms. Smith's "ghetto ways" remark was made during the re-entry conference that morning (R. 40). Mary Doe, upon being advised that Ms. Smith would be removed from the meeting, requested an audience with Principal Williams to address what she understood to be a pattern of discriminatory harassment (R. 41). In the meeting that followed, Principal Williams drafted a behavioral contract. Mary Doe added a single handwritten notation reflecting her concern about Ms. Smith's conduct. Within approximately one minute of that notation, Principal Williams declared Jane expelled (R. 41–42).

Courts have recognized that temporal proximity of this order is itself sufficient to support an inference of retaliatory motive. *See Summa v. Hofstra Univ.*, 708 F.3d 115, 128 (2d Cir. 2013) (temporal proximity that is "very close" supports inference of causation). Where adverse action follows protected activity by minutes rather than months, the inference is not merely permissible; it is compelling.

B. Principal Williams' Admission Removes the Need for Inference

Petitioners need not, however, rely on inference. When Jane herself — the student whose conduct was ostensibly at issue — offered to sign whatever behavioral contract the principal might devise and remain at the Academy, Principal Williams answered: "No. It's your mother." (R. 42, 101.)

The admission is clear. It identifies, without ambiguity and without qualification, the reason for Jane's expulsion: her mother's complaint, not her own conduct. Nothing in the record reconciles that admission with any permissible rationale for the sanction.

Respondents offered no contemporaneous explanation, and the explanations adumbrated in litigation are irreconcilable with the Principal's own words. An expulsion motivated by a parent's protected advocacy is not an exercise of discretion. It is a breach of the school-student contract, and it cannot be sustained.

C. The Implied Covenant of Good Faith and Fair Dealing Forbids the Use of Discipline to Punish Parental Advocacy

The implied covenant of good faith and fair dealing, which inheres in every contract governed by New York law, prohibits a contracting party from exercising its discretion in a manner that "destroys or injures the right of the other party to receive the fruits of the contract." *511 West 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 153 (2002). Applied to the student-school relationship, the covenant plainly forbids the use of disciplinary authority as an instrument to punish a student because her parent has made a good-faith complaint about teacher conduct.

A rule to the contrary would yield intolerable consequences. It would permit schools to insulate teacher misconduct from scrutiny by threatening the students whose parents dare to report it. It would place parents in the position of choosing between their child's enrollment and their duty to advocate for that child's safety and dignity. And it would convert the very mechanisms of institutional accountability—the re-entry conference, the meeting with the principal, the request for review—into occasions for retaliation. The covenant of good faith and fair dealing was designed precisely to foreclose such perversions of contractual discretion.

POINT IV

RESPONDENTS DENIED JANE THE FUNDAMENTAL FAIRNESS REQUIRED UNDER *TEDESCHI v. WAGNER COLLEGE*

A. Private Institutions Must Afford Fundamental Fairness Before Imposing Sanctions That End the Student-School Relationship

Tedeschi v. Wagner College, 49 N.Y.2d 652 (1980), has governed this area of New York law for more than four decades. Although private educational institutions are not bound by constitutional due process, *Tedeschi* holds that they must comply with their own stated procedures and, beyond that, must afford their students "fundamental fairness" before imposing sanctions that end the student-school relationship. *Id.* at 660–62. The principle applies with particular force at the secondary level, where expulsion forecloses not only continued enrollment but, in cases such as Jane's, the scholarship that made that enrollment possible.

B. Respondents Afforded No Process At All

At a minimum, fundamental fairness requires that a student facing expulsion receive (i) written notice of the specific charges, (ii) an opportunity to respond, (iii) a statement of the reasons for the sanction imposed, and (iv) some mechanism, however limited, for review of the decision. Jane received none of these.

She received no written notice of charges (R. 189). She was afforded no opportunity to respond before the sanction was imposed (R. 190). Respondents provided no explanation, oral or written, for why the suspension Jane had already served was insufficient (R. 191). She was foreclosed from presenting mitigating evidence or contextual information (R. 192). And Respondents furnished no avenue for appeal or reconsideration (R. 193).

This is not a case in which the adequacy of the procedures provided is debatable. It is a case in which no procedures were provided at all. The Supreme Court's

characterization of that vacuum as a permissible exercise of discretion is not merely in tension with *Tedeschi*; it is its negation.

C. Respondents' Disregard of Their Own Written Procedures Constitutes an Independent Breach

Independent of the baseline set by *Tedeschi*, Respondents were obligated to follow the procedures articulated in their own Handbook (R. 123–128), which contemplate investigation, documentation, and an opportunity for the student to be heard prior to the imposition of serious sanctions (R. 126–127). Respondents departed from each of those procedures. That departure is a contractual breach in its own right, and a separate and sufficient ground for annulment. *See Vought*, 127 A.D.2d at 655; *Carr*, 17 A.D.2d at 634.

CONCLUSION

For each of the foregoing reasons, Petitioners-Appellants respectfully submit that the Decision and Order of the Supreme Court, Jefferson County, should be reversed, that Jane Doe's expulsion from St. Joseph's Academy should be annulled, and that her enrollment and scholarship should be restored. The matter should be remanded for entry of judgment in favor of Petitioners, together with such other and further relief as this Court deems just and proper.

Dated: [Date]
New York, New York

Respectfully submitted,

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